

“Gender Equality in Islam Concerning Human Rights: Introspection”

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1. Abstract

This paper is intended to provide authentic overview regarding the true standard in Islamic jurisprudence with regard to gender equality. The Quran and Sunna provide the source of what Islam contributed towards gender equality in general and woman’s dignity. There are ample proofs to show that men and women have same human spiritual nature and Allah has invested both genders with inherent dignity. It declares that the sole basis for superiority for any person over another is piety and righteousness not gender, color, nationality or social status. The influence of the local cultural practices which are different in the various parts of the world grossly caused differences in the normative teachings of Islam and caused many of the issues of gender justice which are inconsistent with the teaching of Islam. These aspects are being discussed in this paper and the true picture of gender justice is reflected hereby.

It is true that both men and women are the beautiful creations in this world and it is indisputable that for the continuation of human life and development of society women are as essential as men. However, women are still regarded as mediocre citizens and are deprived of very basic rights in many societies due to socio-cultural norms, religious beliefs, patriarchal family settings and dominance of male counterparts, predominantly in matters of marriage and family. Though this is the same for almost all the societies, it is widely understood that gender justice is denied under Islamic law. It is because the Islamic principles on this issue are least understood and most misrepresented.

Keywords : Islam, Justice, Women, Equality.

2. Introduction

It is true that both men and women are the beautiful creations in this world and it is indisputable that for the continuation of human life and development of society women are as essential as men. However, women are still regarded as mediocre citizens and are deprived of very basic rights in many societies due to the socio-cultural norms, religious beliefs, patriarchal family settings and dominance of male counterparts, predominantly in matters of marriage and family. Though this is the same for almost all the societies, it is widely understood that gender justice is denied altogether under Islamic law. It is because the Islamic principles on this issue are least understood and most misrepresented. The revelations of Islam which Holy *Quran* had expressed happened to be in Arab Tribal society. During those times, female infanticide, unrestricted sexual promiscuity and an inheritance system through male descent were prevalent there. Gradually revelations of *Quranic* verses were reflected in their animalistic life styles and the subsequent mandatory directions calling for improving the status of women worked effectively among them resulting in the emancipation

of women from the discriminatory system of the Arab tribal system.¹ The present society may not reflect this change due to the patriarchal imposition of cultural norms or misinterpretation of principles, but the jurisprudential standards of Islam are not responsible for this decay. This paper is intended to provide an authentic overview regarding the true standard in Islamic jurisprudence with regard to gender equality. The Quran and Sunna provide the source of what Islam contributed towards gender equality in general and woman's dignity in particular.

3. Historical Aspects Of Islamic Jurisprudence

Many aspects of the life of Muslims including their views about the women and their family laws rest in substantial part on medieval Islamic jurisprudence. Scholars based this jurisprudence on two components: religious and cultural. The cultural component gave rise to certain fundamental social and political assumptions. These assumptions are deeply-rooted in Islamic jurisprudence and gave rise to common model of family relationships which are best described today as authoritarians/patriarchal. This model has not only been very detrimental to women, but it has also caused serious damage to society as a whole.² As patriarchal forces tightened their grip on Muslim countries, they attempted to reduce the status of women in society to that of inactive, immature and dependent beings who neither are full-fledged citizens of the State nor are capable of being in full control of their own destiny.³ This can be considered as the beginning of the lowering the dignity of women under Muslim law. When their status is compared to that of the Muslim women during the life time of the Prophet Muhammad, the contrast is shocking. The early Muslim women were actively involved in every aspect of the life of the nascent Muslim family and society. They were business women, poets, jurists, religious leaders and even warriors. The best example is the first wife of Prophet Muhammad, Khadijah, who was a highly successful business woman and met Muhammad when she hired him to work as her business agent.⁴ Similarly, the second wife, Aisha of Prophet Muhammad, a major figure in Islamic history and a distinguished political and religious leader of the growing Islamic community,⁵ had lead a group of Muslims into battle during a succession dispute.

4. The Roots Of Gender Equality- Some References From Holy *Quran*

The spirit of equality is well-reflected throughout the Islamic system of life and it is obvious from different verses of *Quran* from which, all other laws of Islamic society are derived. Distorted interpretations of many verses of sacred book lead to many misconceptions about different concepts in the Islamic societies in spite of the fact that *Quran* contains explicit language frequently to preach its fundamental goal. For example, consider the verse below.

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1. Espisto, J & Delong-Bas N.J., *Women in Muslim Family Law 4* (New York Syracuse university press,Edn. 2nd., 2002).
 2. Azizah al-Hibri "Islam, Law, and Custom: Redefining Muslim Women's Rights" 12 *Am.U. J. INT'L L. & POL'Y* 1, 6 (1997).
 3. Azizah Al-Hibri "A Study of Islamic Herstory: or How Did We Get into This Mess" 207 , 214-15 *WOMEN'S STUDIES INTERNATIONAL FORUM* (1982).
 4. Farzana Moon, *No Islam But Islam* 50 (2015).
 5. *Id.* at 55.

“Never will I suffer the work to be lost the work of any of you, be the male or female; ye are from one, another”⁶

It indicates that gender equality is not only acknowledged, but insisted as a norm in Islam. It shows that the natural distinction of men and women will not affect the individual’s right to human dignity in life and worldly affairs, nor a person’s spiritual relationships with his Lord.⁷

There is a growing concern that the idea of gender equality which is inherent to the concept of justice will not go in tune with Islamic legal thought. What justice requires and permits, its scope and its manifestation in laws, and its roots in Islam’s sacred texts, have been the subject of contentious debates.⁸ Those who believe in this line of argument find a reason that laws based on Islamic grounds are not tenable under contemporary conditions, and are contrary to egalitarian societies.⁹ These are faulty and unacceptable views on the basis of an impartial analysis *Quranic* law and Islamic commentaries. A verse from *Quran* runs as follows.

“If any do deeds of righteousness be they male or female and have faith they will enter paradise and not the least injustice will be done....”¹⁰

It is a direct proof that the concept of justice is deeply rooted in Islam’s teaching. It substantiates that gender justice is integral to the basic outlook and philosophy of the Islamic legal system.

5. Islamic Concept Of Women

The Quranic concept of women is that they too are entitled to the same rights which men are entitled to. It declares women too have rights over men similar to the rights of men over women.¹¹ Equality is the natural prerequisite of social justice. It does not mean that equality that stems from social justice requires all social ranks are to be distributed among all the members equally. Instead, it should be interpreted as equality for all to have their proper rights. In this sense, equality can be provided on the basis what each individual member deserves. This is the reason why *Quran* 2; 228 stresses equality in men’s and women’s rights, yet admits the natural differences between them.¹² Islam is not opposing the equal rights for men and women, but is opposed to identical rights. It only indicates that since men and women are different by nature, then different rights may be their need.

6 . Qur’an 3;195.

7. Ali Yusuf, *The Meaning of Holy Qur’an*, 180 (Beltsville, Amana publications, 2002).

8 . Kari voget, Lena Larsen & Christian Morsen, *Justice and Ethics in Islamic Legal Tradition*, 218-219 (I.b Tauris & Co Ltd. Publications 1988, Landon).

9. The Islamic Conception of Justice *available at*: <https://www.researchgate.net/publication/291681949> (visited on August 25, 2018).

10 . Qur’an 4;124.

11. Qur’an, 2:228.

12. Motahrrai, Morteza, *Nizam-e—Huquq-e-Zan Dar Islam* (The system of women’s Rights in Islam) 144 (Tehran; Sadra, 1990).

All norms in Islam to worship treat men and women the same, except in matters that, require difference. Islam upholds the equality between men and women in organizing their lives, but women have been created with two distinct traits. There are some peculiar examples used by Quran to exhibit this, though it was not understood in its perspective by critics. One of such kind is that women are compared to soil. It incorporates an idea that like soil which is necessary for cultivation, women are for the growth of human species, therefore the survival of human species depends upon women. With regards to property rights also men and women can have two kinds of superiority. While one is specific to men like their share of inheritance, women have their entitlement to maintenance.

6. Islamic Laws Of Inheritance And The Issue Of Unequal Distribution

The Islamic laws of inheritance are understood as gender biased as a result of interpretation of the following verse.

“Allah (thus) directs you as regards to your children’s (inheritance) to the male, a portion equal to that of two females.”¹³

A formal understanding of this verse has resulted into spread of above misconception *i.e.* men are entitled to double the share of woman’s share of inheritance due to their inherent superiority and hence gender bias. There are justifications for these both from historical, logical and practical grounds. From historical point of view Islam decreed a right to women, of which, they were deprived both before Islam and after it. It must not be forgotten that the right of independent ownership was denied to women sisters of other communities till recently. The *Shariah* recognizes the full property rights of women before and after marriage. They may buy, sell, and lease any of their properties at will. Muslim women can keep their names after marriage which is also an indication of their independent property rights as legal entities. It is suggested that ‘unequal distribution is due to greater economic responsibility of man towards their family, a responsibility not shared by woman.¹⁴ Since her allocation is solely for her own disposal, the half share should be considered generous not discriminatory.¹⁵ It can be interpreted as the *Quran* intended the subsequent equality of woman, guaranteeing her both financial support of her male relatives and her own economic independence through revelation of female right to inherit.¹⁶

On practical grounds *i.e.* for stability of society, woman may inherit more than, equal to or less than man. The determining factor is her relation with the deceased. The examples given below will clarify the point more.

13. Quran 4:11

14 . Chaudhary, Z, *A Myth of Misogyny; Areal Analysis of Woman’s inheritance in Islamic Law*, 554 (Albany Law Review,1997).

15 . Alison swicker Gokal, “Human Rights and Shari’ah; An essay on development and use of shari’ah in Islamic States and its meaning in Iran” 99 *Hertford shrie law journal* (2007).

16 . Rumsey, A Mohammedan law of inheritance.(1880) *available at:* www.islam101.com (last visited on August 21,2018).

i. More Than Man

- a. A woman dies and leaves behind a daughter and a husband; the daughter gets half her mother's estate while as husband gets one Quarter i.e. the daughter gets double her father's share.¹⁷
- b. A woman dies and leaves behind a husband, a mother, two full brothers, and a half sister from her mother; her half sister gets one sixth of estate while both brothers share in one sixth i.e. the half sisters gets double the share of each of woman's brothers.

ii. Equal To Man

- a. A man or a woman dies leaving neither ascendants nor descendents but has a half brother and a half from the mother; each one gets one sixth of the estate. If there are more than two then all share equally in one third of the estate i.e. sister gets an equal share of brother.¹⁸
- b. A child dies and is survived by both of his parents; the mother gets the share equal to that of father-one third each if their child has no children or one sixth each if the child leaves behind children.

iii. Less Than Man

- a. A parent dies and leaves behind son(s) and daughter(s); the daughter gets half the share of brother.

So it cannot be concluded that the system of inheritance supports man only. It is actually based on the nature of responsibilities and duties entrusted to men or women.

7. Right To Life For Women- A Human Right Long Back In Quran

We know that the present legal system still struggles in making laws for preventing the female infanticide. Right to birth and life for women is yet to be implemented and accepted by many of the societies even now. But the *Quran* introduced this as a mandatory social norm and effectively ended the cruel pre-Islamic practice female infanticide through its bold declaration, many years before of the Human Rights Declaration of 1948. It advocates for fundamental human rights without reserving them to men alone. It projects that these rights are opportunities to develop all of our inner resources. It protects the absolute value of each human life by declaring that each person has the right not only to life but also to respect through its verse quoted below.

*"Verily, we have honoured every human being."*¹⁹

It expressly warns that,

*"When the female (infant) buried alive is questioned for what crime she was killed."*²⁰

17. See Qur'an 4:11.

18. Qur'an 4:12.

19. Quran 17:70.

In this regard also, Islamic law in its true essence have ample provisions for the protection of human rights of women and in ensuring a dignified life for them.

8. Divorce In Islamic Law

It is evident from *Quran* that though divorce is declared as the most unwanted thing, but it is needed on certain grounds. It has well planned provisions and arrangements to preserve the marital ties and meet the requirements of the society. But it is interpreted and understood in such away not suitable to a modern society based on justice, even though Islam speaks much about justice to all in its essence. Its misuse is widely seen in family law, especially in matters of divorce where women are discriminated and humiliated by denying human rights. The *Quranic* concept is that the absolute authority of pronouncing *talaq* should not be misused by the husband. But this was not understood properly even by courts of law. Long back, the Privy Council in *Moonshee Bazloor Raheem v. Shamsoonissa Begum*²¹ observed that the matrimonial law of the Muhammadan's, like that of every ancient community, favours the stronger sex where the husband can dissolve the marital tie at his will.

The concept of divorce and its different forms and procedures have been often described as discriminatory gender biased. The most common example given in support of the above statement is that, man under Islamic laws possess unbridled and unilateral authority of divorcing his wife regardless of reason at his whim and caprice by which woman suffered extreme injustice. The Islamic policy has never been to confer an absolute authority of divorcing power upon a husband to be misused by him. But unfortunately, the unrestricted right of *talaq* has been misunderstood and Islamic guidelines for it have been ignored by the society and the courts of law. This led into a result that of no legal control over the unfettered right of a Muslim husband to dissolve the marriage by uttering few words. However, an indirect check upon this right is the obligation of a husband to pay the dower upon the dissolution of a marriage.²²

The men who misuse this provision of extra judicial divorce conveniently forget the saying of the Prophet Mohammad (S.A.W) that "among all things permitted by the divine law of God, divorce is the most hateful in the sight of Allah."²³ They fail to understand that in Islamic law it is allowed as a necessity only in extreme situations as the last resort when reconciliation between the spouses has become almost impossible and hence can no longer remain in harmony. Different forms of divorce under Muslim Law are considered as gender biased and discriminatory against women overlooking the fact that some of the basic and clear verses of

20. Quran 81:8.

21. Dr. M.A. Qureshi, *Muslim Law* 68 (MIA India 2d edn. 2002).

22 . Ali, *The Meaning of holy Qur'an* 1482.

23 . *Ibid.*

Quran which actually highlight the repugnancy of divorce and consequences of transgressing the limits of Allah.²⁴ The Holy Book warns them by saying that,

*“Those are limits set by Allah: any who transgresses the limits of Allah, does verily wrong his own Soul.”*²⁵

It is directed that men should not opt for divorce on mere impulse and *iddah* must be adhered to. There is a misconception that women are authorized to divorce their husbands through only one of three modes *i.e khula* and *mubarat* (both of which are based on mutual separation) and the third one, *talq-i-tawfeez* which is a delegated right to wife stipulated in marriage contract.²⁶ According to Esposito²⁷, this view point undermines the *Quranic* verse which he interprets as indicating the intention to award equal divorce rights to women.²⁸

The Quran says

*“And women shall have the rights similar to the rights against them, according to what is equitable.”*²⁹

Yusuf Ali interprets this male advantage as referring only to superior economic position of men in pre Islamic Arabia, yet the sexes are on terms of equality in law.³⁰ It is also interpreted that in Pre Islamic Arabia women possessed the power of repudiation and the Quran did not remove such power, instead, deemed practice acceptable.³¹ Thus, it can only be concluded that the present flaws in the area of divorce do not have any jurisprudential support that stems from Islamic legal system.

9. Laws Relating To Polygamy And Monogamy In Islam

One of the common myths is to associate polygamy with Islam as if it was introduced by Islam or is the norm according to its teachings. There is no text in the *Quran* or *Sunnah* that states either monogamy or polygamy is the norm. Instead, monogamy is the norm and polygamy is an exception.³² At the advent of Islam, the regulation of polygamy was intended to raise the status of women by curtailing the unlimited polygamy previously permitted in Pre Islamic Arabia. The primary Quranic verse cited in order to justify polygamy has been assigned an orthodox interpretation, ignorant of context of which it was revealed. The verse is as follows,

24 . Qur'an,65:1.

25 . Qura'an 65:1.

26 .Walker. F “How Gender Biased is Islamic Law” *The Student Law Journal* 2009 available at: <http://www.studentlawjournal.com/articles/2009/ugrad/genislaw.pdf>. (Last visited on August 27,2018)

27. Esposito & De-Long Bas, *Women in Muslim Family Law* 32 (New York Syracuse university press, Edn. 2nd ., 2002).

28 .Qura'an 2:228.

29 . *Ibid*

30. Ali, *The Meaning of holy Qur'an* 92.

31.Murtaza Mutahhari, “The Rights of Women in Islam”,(WOFIS, Tehran) available online at www.al-islam.org.(Last visited on August 30 ,2018)

32 . Qur'an,4;3.

“If ye fear that ye shall not be able to deal justly with orphans, marry women of your choice, two or three or four, but if ye fear ye shall not be able to deal (with them equitably), then only one, or (a captive) that your right hand possesses.”³³

The verse doesn't confer an infallible right of polygamy on men, but a responsibility to ensure social justice is to be done to orphans in the prevailing social conditions at the time of prophet Mohammad (S.A.W). It was revealed in response to battle of *Uhud* in which many Muslim men were killed leaving many women and children without supported.³⁴ Mumtaz Ali a progressive Muslim scholar played important role in recognition of women rights in India and Pakistan. He regarded polygamy as a tolerated institution that must in contemporary society give way to *Qura'anic* ideal i.e. monogamy³⁵.

In spite of all attempts to promote monogamous relationships, many married men have mistresses or are involved in extra-marital affairs resulting in higher divorce rates, broken families and children growing up without fathers. The extramarital affairs are increasing in number. This is one of the highest reasons for divorce. “The extramarital affair has devastating results.”³⁶ What Islam does is that the men are not allowed to be irresponsible towards a second lady, but hold him responsible and tie him down to duties towards that second wife and her children. Islam has given clear guidelines on all kinds of relationships whether it is monogamy or polygamy.³⁷

10. Conclusion

Islamic teachings are universal in nature. They respond to the needs and circumstances of diverse times, cultures, and circumstances. Some measures may work in some cases, cultures, or with certain persons but may not be effective in others. But that is not a reasonable justification to classify it as not suitable or an unjust set of norms. The persons may interpret the matter in their own way leading to excessiveness and real abuse. Thus it can be shown that the existence of gender bias results not from the divinely revealed Quran but from its unjust patriarchal interpretation.

The *Quran*, the revelations of God to the Muslims through Prophet Mohamed and *Hadith* which includes *Sunnah*, the deeds of Prophet Mohamed, and the sayings of him, are the primary sources of Islamic law and they came into existence in the seventh century. The hierarchical order as to the sources of Islamic law, whenever any issue that arises has to be resolved looking at the *Quran* if it provides a solution of it, then no other source can override *Quran*.³⁸ If it does not find a place in the *Quran*, the issue must be resolved referring to

33 . Supra note 21 at 48.

34 . Supra note 21 at 48.

35 . Article *Islam and polygamy* (1990), available at www.sistersinislam.org Last visited on August 30,2018).

36 . *Bhartiben Bipinbhai Tamboli v. State Of Gujrat* In Spl. Cri. Appl. No. 9799 of 2016

37 . USA Today Report: Guidelines on Monogamy & Polygamy, June 1997.

38 . F.E. Peter, *A Reader On Classical Islam* 166-69 (1993).

the *Sunnah* if there is a solution found in.³⁹ There could come up situations in which these two primary sources could not settle the issues in which cases the consensus or *Ijma* of scholars of Islamic principles who were with Prophet Mohamed were relied on to determine such issues.⁴⁰ This shows that Islamic legal system pre-supposes an arrangement to meet the requirements of the society.

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