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THE LEGAL STATUS OF WOMEN IN ISLAM: AN EXPLORATORY ANALYSIS OF RIGHTS AND INTERPRETATIONS

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Abstract

ISLAM grants women the rights that enable them to do these jobs and to discharge their temporal commitments with complete freedom, fairness, dignity and harmony. In accordance with Islamic philosophy, human rights are neither a type of charity or a gift of any kind, nor the result of a legislative assembly, nor an innovation of a high-level judicial body or tribunal. Powers are bestowed by kings and legislative assemblies, and such powers can be withdrawn in the same manner in which they are conferred. On the other hand, in Islam, human rights are given by God and no one in the world has the power or authority to reform or amend them. This is because human rights are a human right. They are not subject to repeal or rescission by any individual. They are not only academic ideas without foundation in fact. Nor are they essential human rights given on paper for show and display, to be taken away in the actual world when the performance is over.

Keywords: *Women's Rights, Human Rights, Islam, Quran*

1. INTRODUCTION

Women have been the marginalised section of the population throughout history globally. The great philosopher Aristotle, under the impact of the prejudices of his time, claimed women were like slaves. Both were mutually submissive and neither were fit to take part in public matters.¹ Throughout history, there have been groups that have consistently been subjected to many civil wrongs and injustices by society. Balzac has summed up the story of a woman's life in the words, "the journey of women is from the darkness in the womb to the darkness of the grave; to feel, to love, to suffer, is the saga of the life of every woman."² The gravity of the problem requires an investigation of the norms, legal principles and behaviours that are inherent in the Islamic social system.

The worth of any civilisation is measured in its social structure. She has therefore been the subject of intellectual discussion through the ages. "Man or woman who is better?" "Man for God and woman for God in him." "Never trust a king, a horse, or a woman." "Woman is the sexual victim of man, man is the economic victim of woman." "What has a lady to do with the council of a nation? "Frailty, thy name is woman." These are some old proverbs. What is the value of these classic adages and sayings from an Islamic perspective? These are important questions that have to be examined very carefully. In this chapter we intend to present a comprehensive review of the contributions Islam has made towards the betterment of women's standing in society.

The rights of women in Islam are given by the divine so that they may perform their responsibilities and perform their temporary duties with full freedom, justice, dignity and peace. In Islamic perspectives, human rights are neither a mercy or gift from any legislative body or an innovation of a high-ranking judicial body or tribunal. The rights conferred by monarchs or legislatures may be withdrawn in the same manner in which they were granted. The same is true of rights recognised and backed by authoritarian

regimes. They may provide them at their pleasure, and take them away at their pleasure, and they can publicly disdain them at their pleasure.³ But the rights given to people in Islam are a gift from Allah and no earthly legislature or government has the power or authority to change or amend these rights. They are not subject to revocation or withdrawal by anyone.⁴ They are not simply human rights existing on paper for show and denied in real life after the show is over. They are not abstract intellectual notions having no backing.

2. WOMEN IN ARABIAN SOCIETY BEFORE ISLAM

Women had no independence to contract marriage before the advent of Islam. Her father, brother, or any other male guardian had the right to marry her off to whomever they chose, irrespective of her age or marital status.⁵ It was disturbing to see women forced into marriage. There was no limit to the number of spouses an Arab may have. He was also free to absolve himself of any of his marital duties. His power here was absolute and he was neither required nor expected to explain his exercise of it. Nor was he required to observe any particular process. The birth of a daughter was a disaster for an Arab parent mainly due to the low status of women in society. Female infanticide was therefore widespread, with many fathers burying their daughters alive immediately after birth. When an Arab died his property passed to his male heirs who were capable of bearing arms. Female relatives including daughters, spouses, sisters, and mothers have no share in the inheritance.⁶

Islam created a structure that encourages equality between the sexes. Both individuals have rights and responsibilities to the same extent. It is a fact that Islam has brought a great improvement in the position of women in the world of faiths. The HOLY QURAN puts women on a par with males. AL-Nisa is a different chapter of Quran which deals with the rights of women in general. Similarly, different traditions of the Holy Prophet tell us about different facets of women's lives. The different misconceptions, misgivings, misunderstandings and confusions regarding the

¹ P.C. Tripathi, "criminal victimization of weaker sex and failure of protective measure-An Analysis" CLJ 33(1996).

² S.Mohan, "Expanding horizons of Human Right" 41 ALT 56 (2001).

³ Syed Maududi, "Human Right in Islam" available at: <http://www.islam101.com/right/index.htm>, (visited on 11th February, 2022).

⁴ Right and Limits in Islam available at: http://www.islamtomorrow.com/islam/human_rights.htm, (Last visited on 4th February, 2025).

⁵ A Historical Sketch of Mohammedan Jurisprudence. I. Early customary Law available at: http://archive.org/sream/jstor-1109683/1109683_djvu.txt

⁶ Abdul Rahim, Principles of Muhammadan Jurisprudence 256 (Luzac and company, London, 1951).

Islamic stance on women are due to the misinterpretations of SHARIAH legislation on women.⁷

A common misconception, not only amongst the general public but also among the legal fraternity, is that Islam does not provide any kind of freedom or liberty for women, implying that women are only allowed to live in a state of ignorance behind the four walls of their houses. A woman is an object, a simple object.⁸ She exists just to gratify the carnal appetites of men, or to be exploited by them at their whim and caprice. She is not independent and has no control over who she marries or what her future holds. Her destiny is to be a horrible thing, meaningless in the human scheme of things. She is a creature made to serve the demands of man, living and dying without a right in the world. She is seen as bound by the confines of her home and as not having individuality under the control of a male figure. That is the attitude of many Western observers to the position of women in the Islamic society.

There are all sorts of intellectuals who think they can twist Islamic law to suit themselves, and squeeze the sacred principles of Islam into their own fanciful interpretations. They consider that women have been given some rights and freedoms by Islam, which have allowed them to take part in all social sectors together with males and to work with them. She is sometimes shown as being present on the battlefield, and sometimes supposed to be occupying the post of a deputy or minister. She can get her hands dirty, start a strategy, command troops or sign a peace treaty. Those who for social reasons find it imprudent to openly renounce the tenets of Islam.⁹ They want to explain and interpret Islamic laws in line with their purposes. Such arguments are usually made by a party that is knowledgeable or unaware of its position in the Islamic legal sources.

3. QUR'ANIC FRAMEWORK OF WOMEN'S RIGHTS AND DIGNITY

In the Quranic account of creation, mankind is created from one soul; and in the story of their expulsion from the garden, both Adam and Eve are equally guilty and equally pardoned by God. The

Quran does not say Eve was made from Adam's rib, which implies her secondary or lower rank in creation.

The Quran contains many verses that tell of the equality of men and women. Men and women are addressed same in respect to spiritual things and the duties of their religion: The Quran is in favour of the ability of women to possess property and spend their income anyway they like. "to men is allotted what they earn and to women what they earn," it says. Generally males are seen to be defenders and providers for women. Women are not usually expected to use their income or asset for their own support or for that of their children. Women are also given a dower right on marriage.¹⁰ Dower a present of money or property from the husband to the wife. It remains her personal asset and cannot be taken by her husband or her family. Female infanticide was banned and polygamy was limited to four spouses, a major change in a society where tribal chiefs boasted of having 10 or more wives at the same time. For the first time, women were given a share in an inheritance, although usually half of what men received.

4. STATUS OF DAUGHTERS AND GIRLS

The Prophet of Islam once said: "Shall I not inform you of a great charity?" It is the means you provide to sustain a daughter who has returned to you and whose life depends only on you. It has been said that the phrase, "who has been sent to you," is used of one who has been widowed or divorced from her husband.¹¹ There might be other reasons for visiting the parents. It is a good charity in that it combines (1) Sadaqah, (2) Helping a person in trouble, (3) Strengthening family ties, (4) Caring for one's kid and (5) Caring for a person in grief. Abu Saeed Khudri narrated another narration that the Prophet Mohammad said: "Whoever has three daughters and three sisters, or two daughters and two sisters, and treats them well and kindly, and knows how they are treated according to the principles of divine justice, paradise is ready for him."¹²

5. THE STATUS OF MARRIED WOMEN

A woman has the right to select her own husband. She could have her own ideas about who she marries. And the marriage contract is not complete without her

⁷ SupraNote 1 at 46.

⁸ V.Narian, *Gender and Community: Muslim's Women Right in India* 121 (University of Toronto Press, 2001).

⁹ M. Qureshi, *Status of Women in Islam* 98(References Press, New Delhi, 2003)

¹⁰ Quran, 33:35.

¹¹ Islamic law allows women the right to divorce by khula.

¹² S.S.H. Azmi, "The Status and Role of Muslim Women" 8 KULR63 (1998).

free permission. For males it is the same position. Any marriage contract concluded without the permission of the female is invalid. Guardians of women should guide, oversee and counsel them so that they might choose a decent partner. However, they do not have the power to prevent a marriage just for the purpose of getting something or because they don't like it.¹³

As to dower, it is a sign of her estimation, whilst honour and dignity prescribe some duties to men: And give to the women (their dowers) by way of a requirement; but if after that they make a gift to you of any part thereof, take it and enjoy it with right good intent." And if a woman has allowed her husband to take certain portions of the dowry of her own accord and free will, then he is allowed to do so; otherwise he is not allowed to take it.

The Quran has revealed.

'And do not deal with them harshly, that you may take away a part of the dowry which you have given them. It is also shown, "It is not lawful for you (men) to take back any of your gifts (from your wives). But if both parties apprehend that they would not be able to keep the limits ordained by Allah."¹⁴

6. WOMEN IN CLASSICAL ISLAMIC LAW: DOCTRINE AND PRACTICE

In the centuries after the death of the Prophet, scholars devoted themselves to the thorough study, meditation and interpretation of the fundamental books of Islam, the Quran and Hadith. They wanted to construct a comprehensive Shariah Law that would encompass all elements of life. Most of these scholars were unfortunately men. They approach their duty with a masculine point of view and in doing so often ignore portions of the revelation and the words and deeds of the prophet that were favourable to women.

Moreover, as the Islamic empire spread throughout the Middle East and along the coasts of the Mediterranean, Muslims came into contact with older, more advanced civilisations like the Persian and Byzantine, and were affected by their traditions, especially in the matter of veiling and the beauty of women.¹⁵ Scholars understood the Quran to place women under the authority of male relatives, and Muslim women gradually lost rights. By the close of

the eleventh century women are for the most part secluded and debarred from social life. The status and role of women are discussed in verse 34 of Al-Nissa which has aroused particular interest among Muslim jurists:

"Men are the protectors and maintainers of women, for Allah has given one of them an advantage over the other and for what they spend (to support them) from their means. They are good women who keep in trust what Allah has entrusted to them in secret. For individuals who are afraid of nusyuz, they should be informed, segregated on different beds and disciplined properly. Then if they obey your commands do not turn against them. Conservatives interpreted this phrase to mean that males have control over women and hence all men are superior to women, women should submit to men and men have the right to physically chastise their spouses.

7. SOCIO-ECONOMIC POSITION OF WOMEN IN ISLAM

Let us see to what degree Islam authorises the education of Muslim girls. Islam gives equal opportunity to all genders to acquire information, skills and values necessary for this life and the hereafter. The references to the acquisition of knowledge in the Holy Quran are addressed to the "believers" which include both men and women. It reads:

Women have intellect, wisdom and soul, because both genders have the same origin. The Prophet of Islam made it obligatory for people to be educated irrespective of their gender. The Divine's emissary proclaimed:

"Men and women should look for knowledge. Parents who abandon their obligations and disregard the education of their children irrespective of gender are thought to be under divine disfavour. The converse is that divine favour is granted to those parents who follow the path of virtue in valuing the well-being and quality education of their children, regardless of gender. "None who seek knowledge will be granted it except as a means of atonement for their past wrongdoings. Islam attaches great importance to study and education. It is the duty of every Muslim, male or female, to seek knowledge to better understand himself or herself. In this pursuit, no differentiation is made between boys and girls in the respect given to them.

¹³ Asghar Ali Engineer, *The Right of Women in Islam* 76 (C. Hurst and Company, London, 1992).

¹⁴ Al-Nissa: 4.

¹⁵ David Pearl, *A Text of Muslim Personal Law* 45 (Routledge, London, 1987).

Even the most conservative Muslim admits with reluctance that a woman, with her husband's consent, has the right to seek work outside the home. But traditionalists say women should avoid any job that requires contact with males. A woman should work in a factory or office where no males are employed, or if she is in business she should not have dealings with male clients or suppliers. Professor Abdur Rehman places several restrictions on the kind of jobs a Muslim woman can legitimately hold and this means relatively few women can work at all. It is well known that there is an urgent need for Muslim women to be trained in the medical sector since many have suffered in silence, and even died, without being able to consult with a female physician. But the question remains as to how these women may receive such instruction if they are prohibited from engaging with unrelated men.¹⁶

It is a theoretical issue for millions of poor women in Asia and Africa. They have to do all sorts of things, collecting firewood, fetching water, taking on any work that comes their way to feed themselves and their families. But the notion that it is shameful for women to work, to talk to men, or even to be seen by men not related to them, feeds into the ongoing neglect of women's needs and underestimation of women's contributions.

In Islam there is no distinction of sexes in spiritual matters. God is just as well pleased with the worship of a man as of a woman. All men are to have an equal part in the blessings of Paradise. Their equal spiritual status is not only recognised but emphasised. In this connection, the following verses of the Holy Quran are clear evidence:

"We are going to make everyone responsible for their actions".

Their Lord answered their prayers: 'I shall not lose their deeds. And those who do good works, men or women, being believers, We shall surely give them a good life, and We shall reward them according to the best of their deeds.'¹⁷ Women are equal to males in the five pillars of Islam which are, Belief, prayers, fasting, almsgiving and pilgrimage. The truth is that in some circumstances women could have some advantages over males. For example, a woman is not required to pray daily or fast during her periods and for forty days after giving birth. She is also exempted from fasting

throughout pregnancy and when breastfeeding her infant if there is a risk to her baby's health.

Another example of the equality given by the Quran to both sexes is that the greatest blessing of God, the Divine Revelation, has been given to both men and women. For example, it is stated in the Quran:

We provide the inspiration to the mother of Moses Suckle. But after you have made him fearful, do not fear and do not grieve. We will send him back to you and make him one of our messengers. The woman is depicted in three different stages of her life, and in each stage she charms society with her exceptional qualities. Her life begins as a youngster, then a teenager, a wife, and finally a mother. Let us see how Islam changed her status in these different stages. The subsequent traditions of the holy prophet also show that Islam is for the kind and just treatment of female children.¹⁸

Whoever has a daughter and does not bury her alive, does not insult her and treats her like his son, God will admit him to paradise. One who brings up two daughters till they grow up, he and I shall be on the Day of Resurrection like this." And he put together his two fingers.

Daughters are highly caring and they are a strong source of support and well-being. Islam recognises the right of a daughter to justice and equality as a basic right. She has a right to upkeep and property and she has a right to inherit her part as mentioned in the Holy Quran. Her parents cannot force a spouse on her against her will; she is free to choose her own life mate. No one is biased against her because she is a woman. For these and many more reasons, the prophet of Allah has called the daughter a "shield from the fire of hell" and a "means for entry into paradise."

It is not permissible to make a distinction between a male child and a female child and treat them differently according to the principles of the Almighty Allah and the conduct of the Holy Prophet. It is not in accordance with the Islamic attitude that one should rejoice at the birth of a boy and grieve at the birth of a girl.

Marriage does not mean that a Muslim woman loses any of her rights as an individual member of society. She is free to work at whatever she likes, to

¹⁶ A.E. Mayor, "Universal Versus Islamic Human Right: A Clash of Cultures or a Clash with a Construct" 15 *MJIL* 327 (1994).

¹⁷ C.S. Warren, "Lifting the Veil: Women and Islamic Law" 15 *CJLG* 42 (2008).

¹⁸ Uma Devi, "Human Rights are Women's Rights: A Review" (2) *SCJ* 9 (1998).

contract with whomever she pleases, to manage her property as she wishes. Her personality is still somewhat different from her husband's.

There has been a great deal of confusion about Shariah law in the area of polygamy and divorce. There are many learned men in the Muslim tradition who have said in their works that Islam is not a religion of free polygamy, free divorce. In any event, it does not allow any injustice to be committed by people, whether in the number of spouses or in circumstances of divorce. As far as economic rights are concerned, Islam affirms that women own their own legal personality and rights. She is not a moon that shines by reflected light; she is a solar being, with her own separate identity, that can not be swallowed up by that of a man. The Muslim woman has total independence with regard to her property rights. The law empowers her to use her material possessions in whatever way she likes. Islam guarantees women their right to inherit and women have the right to receive their portion of inheritance as prescribed in the Holy Quran. It is wholly her own and no one, including her father or husband, may claim any right over it. Her share is, of course, half the man's share in most cases. But this concept of a daughter receiving half the share of a boy in inheritance should not be taken to mean that it is discrimination on the basis of gender. This provision is based on the great discrepancy in the economic duties of men and women. The duty of support of the latter rests on the legal obligation of the male-father or the husband.

The unequal inheritance rights of men and women can be explained by the different financial responsibilities of each gender. Those critics who argue that there is inequality between the sexes in inheritance on the basis of uneven distribution of shares should not overlook the fact that there is practically speaking a full "equality of both the sexes".¹⁹

Islam does not prohibit women from working if they are compelled to work, especially in fields that are fitting to their nature and where society is in urgent need of their contribution. These occupations include healthcare, teaching (especially for younger learners), and medical practice. Moreover, there are no constraints on utilising the great talents of women in all fields. Even for the position of a judge, it is seen that Muslim academics say there is no problem. It is

clear that in the history of Islam a Muslim woman has all the civil rights as well as the full political rights. Women would have deep discussions and even argue with the Messenger of Allah. The subsequent verses can be readily evaluated in the manner in which Islam grants political rights.

Islam has been very clear that men and women are equal. However, the male dominated ethos of the mediaeval and feudal periods and the secondary status given to women in our society has created challenges for the Muslim women to fully experience the rights granted to them by Islam. She has either been rendered inactive as a contributor to the productive process, or been significantly reduced by the norms of society, less educated than men, working in a sphere deliberately designated to be subordinate to that of her husband, stifled in the unnatural environment of the artificially imposed *pardha* and used mainly as a child-rearing machine. For instance, the Islamic marriage model does not have dowry, but it has gained substantial ground in Muslim communities. The functional distribution in the family often seeks to confine women to the home. The egalitarian ideals of Islam have freed women from the mundane soul-crushing everyday activities that reduce women to mere domestic workers, and have sparked a revolution among enlightened and emancipated women around the world. A woman under strict Islamic law is not obliged to cook for her husband or children, wash their clothing or breastfeed the children. She may refuse to do any of these things without this being seen as grounds for a legal complaint against her. If it is a question of esteem and love for her spouse that she takes on these chores and it is a voluntary act, an act of pure grace.

8. CONCLUSION

It is clear that men and women have been assigned the same place and the same responsibilities in the sight of God from the beginning of time. That is the way it has been from the beginning of time. In the context of Islamic law, the role played by women in Islamic society is respected and considered an important part of Islamic life. This is a great deal of elevation in this holy mandate. She is held in high regard because of her high status and stature and her position is highly secured and guarded across the whole organization. And she's also highly respected. Though it is clear that some restrictions are put on Muslim women, these constraints have been developed

¹⁹ Akhlaq Husain, Muslim parents: Their right and duties 50 (International Islamic Publisher, Karachi, 1979).

in the honour of women because of the special constitution of Muslims and do not conflict with the respect and dignity of Muslims. These limits are thus imposed for the protection of the honour of women.

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