Volume 13 Issue 54
Originally issued as F7



Global Journal of human social science
Political Science
Volume 13 Issue 7 Version 1.0 Year 2013
Type: Double Blind Peer Reviewed International Research Journal
Publisher: Global Journals Inc. (USA)
Online ISSN: 2249-460X & Print ISSN: 0975-587X

Is Islam Misogynic?

By Dr. Vesna Stanković Pejnović & Dr. Jana Ilieva
MIT University, Macedonia

Abstract- The famous floscule that women have no rights in Islam and are subjected to imminent subordination and oppression is true, at least from the contextual point of view. The basis of the rights of women in Islam derives from the Qur'an, which, with respect to women has adopted one egalitarian approach: women are spiritually and morally equal to men. Unfortunately, the huge collection of Sunnah, along with the Hadiths, as a creative and exclusively man's process do not cherish the egalitarian exegesis of the Qur'an thus contains many negative ideas in the context of women, which reflects their position in some Muslim societies today. Thus, one gets wrongly impression that the whole Islamic thought is misogynic.

Keywords: islam, women, qur'an, sunnah, modern legislations.

GJHSS-F Classification: FOR Code : 220403, 950499



Strictly as per the compliance and regulations of:



© 2013. Dr. Vesna Stanković Pejnović & Dr. Jana Ilieva . This is a research/review paper, distributed under the terms of the Creative Commons Attribution-Noncommercial 3.0 Unported License http://creativecommons.org/licenses/by-nc/3.0/), permitting all non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Is Islam Misogynic?

Dr. Vesna Stanković Pejnović [α] & Dr. Jana Ilieva [σ]

Abstract- The famous floscule that women have no rights in Islam and are subjected to imminent subordination and oppression is true, at least from the contextual point of view. The basis of the rights of women in Islam derives from the Qur'an, which, with respect to women has adopted one egalitarian approach: women are spiritually and morally equal to men. Unfortunately, the huge collection of Sunnah, along with the Hadiths, as a creative and exclusively man's process do not cherish the egalitarian exegesis of the Qur'an thus contains many negative ideas in the context of women, which reflects their position in some Muslim societies today. Thus, one gets wrongly impression that the whole Islamic thought is misogynic.

Keywords: islam, women, qur'an, sunnah, modern legislations.

I. Introduction

Embarking in any discussion regarding the rights of women in Islam would be practically impossible if we lack preliminary knowledge of the normative structure of Islam i.e. of the Islamic law. At present, there is still no consensus on the content and substance of the Islamic law neither among the Muslims Lawyers or scholars.

The origin of Islamic law remains unclear, because many crucial evidences that would certify its occurrence are lost. Some historical indicators suggests that the Islamic law even in its oldest form was quite sophisticated and derives at beginning of the first half of the eighth century. During its historical development, the Islamic law was was significantly influenced in its early stages by Roman provincial, Byzantine, Sassanian, and Rabbinic law. [1] It is believed that the theoretical development of the law had its vigor in Iraq under the Abbasid caliphate (750-1258 CE) and by 900, c.e., all the main genres of legal literature had been established, including extensive legal compendia *(mabsut)*, epitomes of the points of law *(mukhtasar)*, collections of model legal documents *(shurut, watha'iq)*, collections of model court records *(mahadir, sijillat)*, manuals for judges *(adab al-qadi, adab al-qada')*, collections of responsa *(fatawa, masa'il)*, and manuals of jurisprudence or legal method and interpretation *(usul al-fiqh)*. [2]

Author α: Assistant Proffesor Vesna Stanković Pejnović, Institute for Political Studies, Belgrade, Serbia
e-mail: vesna.stankovic.pejnovic@gmail.com
Author σ: Assistant Proffesor Jana Iijeva, MIT University, Skopje Macedonia. e-mail: ilieva80@gmail.com

[1] "Law, Islamic". *http://www.encyclopedia.com/topic/ Islamic_law.aspx*. Accessed March 31, 2013
[2] Ibid.

However, any attempt to identify the sources of the Islamic law begins with an explanation of the term Sharia, then the terms Fiqh (Islamic jurisprudence), fatwā (legal opinions / guidance of the Islamic scholars) and madhhab (Islamic law school). The word Shariah derives from the archaic Arabic word denoting "pathway, path to be followed" and has come to mean the path upon which the believer has to tread. [3] From the legal point of view, the term refers to the canon law of Islam and includes the totality of Allah's commandments[4] i.e. the religious law developed by Muslim scholars in the first three centuries of Islam.

The Qur'an is the Islamic book of revelation and its principles and injunctions are regarded as the most important source of the Shariah law however very little of the law is based on the text of the Qur'an itself. Quran does not contain enough laws and codes to ensure full guidance as to what is permitted and what is forbidden for Muslims. The legal scholars found that only 550 Qur'anic verses are of a legal nature and regulate marital, family, and inheritance relations, as well as criminal law and procedural law issues. The rules and principles of the Qur'an are in certain places quite vague and ambiguous; hence enabling their application requires human interpretation. Also, many of these rules are quite general and rarely go into details about a particular issue. For these reasons, there are three additional sources of Islamic law.

The Sunnah (Arabian routed word that means: path, habit, customary law) refers to the traditional Muslim laws claimed to be based on Prophet Muhammad's genuine statements and acts and is contained in accounts known individually as hadith.[5] Hadiths have been the lens through which the words of the Qur'an have been seen and interpreted.[6] The purpose of the hadiths, is same with the Sunnah: to fill gaps or to provide an appropriate solution for all religious matters not addressed within the Quran as the main source of Sharia law and the Muslim are expected to observe and apply them in their personal and social life. Having underscored the importance of the Qur'an and the Hadith as primary sources of the Islamic

[3] Irshad Abdal-Haqq, *Islamic Law: An overview of Its origin and elements in Understanding Islamic Law: from classical to contemporary*, ed. Hisham M. Ramadan, (Maryland: Rowman Altamira, 2006), 4
[4] Ibid
[5] Ann Elizabeth Mayer, *Islam and Human Rights: Traditions and Practices*, (Boulder: Westview Press, 4ed. , 2007), 227
[6] Charlotte Methuen, Methuen, Charlotte, Zeit, Utopie, Eschatologie, Leuven : Peeters, 1999

© 2013 Global Journals Inc. (US)

tradition, it is necessary to point out that through the centuries of Muslim history, these sources have been interpreted only by Muslim men who have arrogated to themselves the task of defining the ontological, theological, sociological and eschatological status of Muslim women. [7] Therefore, the authenticity of their text is still a very debatable topic among the scholars and possible "hot spot" of our title question.

Ijma refers to the universal consensus reached by scholars of the Muslim community regarding some particular Shariah issue which arose after the Prophet 'death and is not addressed by the other sources of Islamic law. Although the ijma is based on the principle of consensus, there is no generally accepted model or methodology for consultation, so the consensus differs from country to country.

Qiyas is a methodology developed by jurists through which rulings in new areas are kept close to the Qur'an and Sunah because new rulings are based on the Illah (causes) discovered in the legislation of the Qur'an and Sunnah. [8] For example: alcohol has been explicitly declared unlawful, but there is no direct condemnation of heroin, however since both share a common feature i.e. they are intoxicants and alcohol has been declared unlawful because it intoxicates, heroin is also declared unlawful in Islam because, like alcohol, it is an intoxicant. [9]

Finally, whereas Shariah is conveyed mainly through divine revelation (wahy) contained in the Qur'an and authentic hadith, fiqh refers mainly to the corpus juris that is developed by the legal schools (madhhabs), individual jurists and judges by recourse to legal reasoning (ijtihad) and issuing of legal verdict (fatwa)[10] .

II. The Status of Women in Islam and Modern Islamic Legislation

The question of the status and the rights of women in Islam is among the most contentious and most serious issues of the day, not only for the Muslim women and their advocates, but for the entire Islamic world as well. The existing literature regarding the rights of women in Islam is divided in two opposing approaches that dictate different views and positions. Whereas, one holds that Islam is benevolent towards women and grant them special status and respect, others find that the women in Islam are discriminated and oppressed not only in the family but also in the social life in general. The truth is that the Muslim societies place men at the spotlight and guarantee their dominant position, while at the same time tirelessly proclaim that Islam gave more rights and freedom to women than any other religion thus hold women in physical, mental and emotional prison.

It is evident that, today, there are different legislation in different countries applying Islamic law, regarding the status and rights of the woman. It is clear that each country has a different vision of what is the right Islamic way to treat woman. The question that thereupon arises is, what motives different understanding and interpretation of the Islamic rules by the countries whose legal systems are based upon the sacred law of Islam.

There is no explicit discrimination of woman in Qur'an and moreover, the very occurrence of the Qur'an and the Islam as a religion played a revolutionary role in improving the status of women in the Arab world and gaining many rights that previously were not specific for other religions and legal systems. However, many verses of the Qur'an are interpreted and applied in a way that denies equal rights to women, in many gender-biased Islamic jurisdictions today. Let's have a look at some of the basic rights that the Quran provides for women, along with their practical implementation by the states.

1. Right to marriage. Islam gives great importance to the institution of marriage as a vow given among the spouses and the God. Marriage is strongly recommended because of religious, moral and social reasons. According to the Qur'an, the marriage is "mithaqun ghalithun," strong covenant or agreement-nikāh between man and woman. This marriage agreement is entered with their mutual consent prerequisite for the marriage to be valid. Evidently, according to the Qur'an, woman cannot and must not be force to marriage.

Modern national legislation in many Muslim states applies the conservative approach and their laws on personal status require previous consent of the guardians or representatives of women. Such consent is required in Egypt, Iran, Afghanistan, Syria, United Arab Emirates, Yemen and other Middle East countries. In Malaysia, for instance, according to the Islamic Family Law, the approval from the (guardian) is necessary for the marriage to be a valid and this approval may be given by the judge if the guardian i.e. "Wali" refuses to give the approval without any legitimate reason.

Qur'an is silent about the minimum marriageable age and many scholars search for answers in the hadiths. As accepted by most Muslims it is equated to the age of puberty[11] whilst one of the greatest Islamic scholars and Abu 'Abdillah Muhammad

[7] Ibid, 52
[8] http://www.wisdom.edu.ph/Shariah-fiq-usul/qiyas.htm
[9] http://www.unfpa.org/webdav/site/global/shared/documents/publications/2011/De-linking%20FGM%20from%20Islam%20final%20report.pdf
[10] Mohammad Hashim Kamali, *Shariah Law: an introduction*, (Oxford: Oneword Publications, 2008), 3

[11] Mohammad Hashim Kamali, *Shariah Law: an introduction*, (Oxford: Oneword Publications, 2008), 3

© 2013 Global Journals Inc. (US)

ibn Idris al-Shafi'i believed that the right age for a girl to consider marriage is the age of fifteen[12]

The laws of Muslim countries today have a different position for the minimum marriageable age. Legally, although some of them prescribe more or less reasonable level, (16-18 years) in practice, early marriage is still case for conviction. Under Article 8 of the Iraq Law on Personal Status[13], the minimum marriageable age is 18 years for both men and women, but with special authorization from the court, the age can be reduced to 15 years.

In 1999, Yemen's parliament overturned the provision of Article 15 of the Personal Status Law for the minimum age that was previously set to 15 years for both men and women, thus leaving the door open for entering Child marriages. The state has one of the worst portfolios for children marriages in the world. According to UNICEF, in 2005, approximately 48.4% of the Yemeni women aged 20-24 years were married before the age of 18 (14% before the age of 15) [14]

Neither Saudi Arabia has sanctioned the legal minimum for entering marriage. The practice of child marriage in this country is high. In 2008, a court in this state has refused to annul the marriage of eight years girl and her 58-year-old man. [15] In 2010, the Saudi Commission for Human Rights hired a lawyer to divorce a 12-year-old girl from her 80-year-old husband. [16]

2. Right to divorce. Apart to the Christian maxima "until deaths do us apart" there is no moral rule for dissolution of marriage in the Qur'an. Many verses in the Qur'an recommend the divorce when the relationship cannot meet its goals, i.e as the only solution in the event that men and women cannot overcome their irreconcilable differences. ("Live in harmony or separate peacefully" (Qur'an: 2:231). However, women often face many legal and financial obstacles as well as penalties from the social surrounding when trying to exercise this right. In the national legislation of the Muslim states, the traditional approach for limited right of woman to get a divorce prevail. The common justification for this approach is the woman's emotional nature but also the high amount of the dowry that the husband is required to provide, which remains the property of the woman, as well as his obligation for maintenance. One gets the impression that the right of divorce is indeed a "male" right for unprecedented ease with which they practiced this right: somewhere it is not even necessary to inform the public authorities for the decision of the husband. According to the Algerian code of personal status, the man can divorce his wife without any reason, but a woman can divorce her husband only on certain grounds, such as abandonment, thereby risking to lose the right to financial claims. Furthermore, whereas the Iraqi Constitution, [17] based on Sharia law proclaims equality before the law "without discrimination based on sex, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status" the Iraqi Personal Status Law[18] gives a privileged position of men in divorce, inheritance, and also allows for polygamy.

3. Women and inheritance. The right of inheritance is considered to be one of the most revolutionary steps of the Quran for the emancipation of women, because only a small number of women in the world enjoyed this right up to the modern age. The purpose of the Qur'anic rules for inheritance was to provide all hairs the rights over the family property, including women for their greater security and financial independence. Therefore, the Qur'an provides: "Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise." [19]

The rule of this verse that the woman belongs half of the part that man belongs are subject of numerous debates for (un) equal treatment of women in succession and in Islam in general. According to many Islamic scholars, there is no discrimination of women in the field of succession. Reasons why the Qur'an makes such formulation according to them are very reasonable: men throughout their lives are burdened with costs for support of their wives, children and other relatives (sisters, widows, etc.), Unlike women who have no obligation to spend money for their families. [20] Although Muslim countries today are sticking to Qur'anic rules of inheritance, in practice, this right of women is very limited, even when women are economically

[12] Tafsir Al-Jalalayn

[13] apps. americanbar.org/rol/publications/iraq_personal_status_law_1959_english_translation.pdf

[14] For more details see: Early Marriage: A Harmful Traditional Practice, UNICEF, 2005,http://www.unicef.org/publications/files/ Early_Marriage_12.lo.pdf

[15] For more details please see at: http://www. nairaland. com/210667/ saudi-court-tells-girl-aged

[16] For more details, please see at: http://www.msnbc.msn.com/id/36717454/ns/world_newsmideast_n_africa/t/girl-divorces--year-old-husband/#.UKglE4ad8i0

[17] See the translated version of this Code at: http://www.peacewomen.org/portal_resources_resource.php?id=995

[18] Qur'an 4:11

[19] Qur'an 4:11

[20] Shah N. A., "Women, the Koran and International Human Rights Law-the experience of Pakistan", Martinus Nijhoff Publishers, Leideb/Boston, 2006,55

© 2013 Global Journals Inc. (US)

disadvantaged, which is against the intent of the Qur'an. Another problem is that there are Muslim states and societies in which women are under pressure to give up their hereditary rights in favor of male members of the family.

4. Right to work. "To men is allotted what they earn, and to women what they earn" [21], providing that Islamic laws are observed and modesty is maintained at the working place (Surah An-Nisa': 32). There is hardly any Muslim community that has no restriction over women's mobility, travel, dress code, work and participation in economic development although no limitation or prohibition against women's traveling alone or work participation is mentioned in Quran. [22]

5. Right to education. Acquisition of knowledge is considered as religious duty for both men and women in Islam. The Qur'an states: "Can those who have knowledge and those who do not be alike?' So only the wise do receive the admonition. [23] So only those of His servants who have knowledge (of these realities with a vision and outlook) fear Him. Surely, Allah is Almighty, Most Forgiving". [24] However, in Afghanistan, the Taliban regime considered female education as against Islamic teaching spreading vulgarity in society. But, Muslim women face restrictions in accessing education today. Recently, on 17. April, 2012, female students and teachers were victims of mass poisoning through water in Afghanistan. The responsibility was taken over by the conservative and radical Taliban, in order to send message that a woman's place is in the house, not in the school. This practice, which has not been part of any legislation, today, is guided by reasons that have nothing to do with Islam. Misperception resulting from family circumstances combined with the traditions and customs of certain Muslim countries, and supported by interpretative deviations of religious sources by some conservative and rigid members of the ulema has led to this wrong perception of the right to education of women in the Muslim world.

Although the educational structure of women is getting improved nowadays, unfortunately their participation on the labor market is still very low: Many women with high qualifications have diplomas that serve only as a plain sheet of paper.

III. Conclusion

Violations of human rights of women do not correspond with the original Qur'an orientation. Seen from the analysis above, we can determine that the Qur'an adopted more or less egalitarian access to the rights that men and women share. The general rule for any analysis of the Qur'anic text especially the one pertaining to the rights of women should be considered in terms of socio-economic conditions in which the Qur'an has been adopted and applied.

The Sunnah as a second important source of law is in this regard, very questionable from several reasons. First, it is the result of a creative process and is a human act or rather an act of men (women were not allowed to develop the Sunnah) which affected its content: weakening the autonomy and status of women in society. During the long-term history of Islam, the men abused their self-awarded competence to develop the Sunnah in the direction of oppression of women. Why would Islam subjugate women? Why did God which is the second name of justice, equality and love, allow it? Is Islam indeed a misogynic religion?

Women's rights are not the product of any culture and religion as many Muslim countries call in their intention to ignore the international women's rights, but rather they are product of male oppression throughout history.

According to Abdullah an-Naim, it's most popular propagator, liberal Muslims argue that in our world today there are no monolithic religions and that the rejection of human rights is merely a wish to remain ensconced in tradition. With a moral and political justification of rights in Islamic theology, but inconsistency with human rights, there is a need to redefine Islam within the context of human rights to achieve reconciliation despite issues with compatibility.[25] The right way for this to be achieved is through re-interpretation of Islamic sources within the context of the Qur'an which is a basic moral trajectory for the behavior and the actions of the Muslims. The literal and inconsistent interpretation of Islamic religious texts is certainly counterproductive for achieving justice, as one of the basic maxims in the Qur'an.

References Références Referencias

1. Abdal-Haqq I. (2006). Islamic Law: An Overview of Its Origin and Elements in Understanding Islamic Law: from classical to contemporary, ed. Hisham M. Ramadan, Maryland: Rowman Altamira
2. Afkhami M. (1995) Faith and Freedom: Women's Human Rights in the Muslim World, I.B.Tauris.
3. An-na'im A.A. (2002). Islamic Family Law in a Changing World: A Global Resource Book, London, New York, Zed Books
4. Balas A. (2002). Believing Women in Islam, Unreading Patriachal Interpretations of the Qur'an, University of Texas Press, Austin.
5. Husni R., Daniel N. (2007) Muslim Women in Law and Society, Routledge Press, USA.

[21] Surah An-Nisa': 32

[22] Anjuman Ara Begum "Muslim women and right to work", TwoCircles.net, accessed March 20, 2013, http://twocircles.net/node/242162

[23] Surah Al Zumar: 39:9

[24] Surah Al-Fatir, 35:28

[25] Shenata J. "Islam and Human Rights: Revisiting the Debate", Arab Insight, Cairo, 2007

© 2013 Global Journals Inc. (US)

6. Joseph S., McBeth A. (2010) Research Handbook on International Human Rights Law, Edward Elgar Publishing Limited, Cheltenham. Kamali, M. H. (2008). Shariah Law: an introduction, Oxford: Oneword Publications
7. Mayer, A.E. (2007). Islam and Human Rights: Traditions and Practices, Boulder: Westview Press, 4ed.
8. Methuen, Charlotte, Zeit, Utopie, Eschatologie, Leuven : Peeters, 1999
9. Shah N. A. (2006). Women, the Koran and International Human Rights Law-the Experience of Pakistan, Martinus Nijhoff Publishers, Leideb/ Boston.
10. Holly Qur'an
11. http://www.encyclopedia.com/topic/ http://www.wisdom.edu.ph/Shariah-fiq-usul/qiyas.htm
12. http://www.unfpa.org/webdav/site/global/shared/documents/publications/2011/Delinking%20FGM%20from%20Islam%20final%20report.pdf http://apps.americanbar.org/rol/publications/iraq_personal_status_law_1959_english_ translation.pdf
13. http://apps.americanbar.org/rol/publications/iraqpersonal_status law_ 1959_ english_ translation. pdf
14. http://www.nairaland.com/210667/saudi-court-tells-girl-aged
15. http://www.msnbc.msn.com/id/36717454/ns/world_newsmideast_n_africa/t/girl-divorces--year-old-husband/#.UKglE4ad8i0
16. http://www.uniraq.org/documents/iraqi_constitution.pdf
17. http://www.uniraq.org/documents/iraqi_constitution.pdf

© 2013 Global Journals Inc. (US)

Global Journal of Human Social Science (F) Volume XIII Issue VII Version I Year 2013
36

This page is intentionally left blank

© 2013 Global Journals Inc. (US)