

# Equality between Man and Woman and the Spirit of Islam

Hidayat Ur Rehman and Muhammad Aqeel Khan

Department of Law, Abdul Wali Khan University, Mardan, PK Pakistan

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## ABSTRACT

The paper explores the reference to context interpretation of Quran and Sunnah, the primary sources of Islamic Law in order to ascertain the spirit of Islam in relation to Gender. It argues that gender discrimination in Muslim World generally and in Pakistan specifically has been the result of out of context interpretation of Sharia while a reference to context interpretation can obviate this much talked about discrimination.

**KEY WORDS:** Gender, discrimination, Islam[ic], law[s], interpretation, verses, hadiths.

## INTRODUCTION

Does Islam really discriminate on the basis of gender? is the question that naturally comes to mind after having gone through the so called Islamization in Pakistan and other Muslim States and its detrimental effects on women.<sup>1</sup> Since this Islamization is based on Sharia, the study explores the Quran and Hadiths, the primary sources of Islamic Law, to address the question.

General theme of the Islam is reformation, emancipation and equality.<sup>2</sup> The statutory Islamic laws that discriminate between man and woman are based on fundamentalist and out of context interpretation of Quran.<sup>3</sup> Quran is not a legal code, it must be kept in mind; it is a revelation pertaining to ethics and religion, in facts.<sup>4</sup> It contains a total of 6,666 verses out of which only 500 have a legal flavor and more than half of them regulate religious practices. In rigid sense, only eighty verses contain legal subject matter.<sup>5</sup> It is beyond the understanding that how and why the verses which are less than seven, that lay down the male's dominancy over female, prevail over the entire text of Quran.<sup>6</sup> The status of women in Islamic Sharia was determined by the interpretation of these verses in second and third centuries of Islamic calendar by men who, "were heavily influenced by the socio-economic, political and indigenous tribal values of the prevailing times,"<sup>7</sup> and who "frequently adopted male-centric approach."<sup>8</sup> However, a number of scholars have questioned these interpretations. To be discussed in this paper.

The paper has two portions. In order to be able for analyzing the verses that regulate gender in *muamalat* (dealings or social and civil matters) discussed in second portion, the first portion of the paper is earmarked for discussing the equality in *ibadat* (religious matters). This is convenient for properly comprehending of the basic message of Islam. Again, part two discusses the equality under different themes.

It is argued in part two that the evolutionary approach of Islam has been overlooked during the out of context interpretation of the verses that regulate gender in *muamalat*. However, because of space constrain only some verses have been selected for discussion; all the verses cannot be discussed.

### (1) Equality in *ibadat* (worships or religious matters)

Quran nullifies any categorization based on gender. It affirms the commonality of origin of male and female. The fundamental equality appears most strikingly in matters such as "the creation of man and woman, moral and spiritual obligations and the reward and punishment."<sup>9</sup> As Quran says "*O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds)*"

<sup>1</sup> For example see the Hudood Ordinances, 1979, Law of Evidence, 1984, Muslim Family Laws Ordinance, 1961 various sections of Pakistan Penal Code, 1860, etc for a detail study of Islamization and its effects on women in Pakistan

<sup>2</sup> Shaheen Sardar Ali, 'Women's Human Rights in Islam: Towards a Theoretical Framework' (1997-8) 4, Year Book Islamic and Middle East Law, 117

<sup>3</sup> Niaz Ali Shah, 'Women's Human Rights in the Koran: An Interpretive Approach' (2006) 28, Human Rights Quarterly, 868

<sup>4</sup> Javaid Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining The Theory and Practice of Polygamy and Talaaq' (2007) 21, International Journal of Law, Policy and the Family, 108

<sup>5</sup> A. Rahim, *Muhammadan Jurisprudence* (Mansoor Book House Lahore 1995)

<sup>6</sup> Shaheen S. Ali, *Ibid*

<sup>7</sup> Javaid Rehman (n.4)

<sup>8</sup> *Ibid*

<sup>9</sup> Shaheen Sardar Ali (n.2)

countless men and women;- reverence Allah, through whom ye demand your mutual (rights)...”<sup>10</sup> The hadith literature also supports the notion of equality, for example, the prophet Muhammad (PBUH) said in his address at Last Pilgrimage that “All people are equal, as equal as the tooth of a comb. There is no claim of merit of an Arab over non-Arab or of a white over a black person: only God-fearing people merit a preference with God. Thus men and women are equal.”<sup>11</sup>

Men and women both are equally held responsible for their action by Quran.<sup>12</sup> For instance it establishes that “[e]very soul will be (held) in pledge for its deeds.”<sup>13</sup> Thus both Adam and Eve were held answerable and relegated from heaven for their breach.<sup>14</sup> In the like manner the same standards have been established by Quran for judging both men and women in *ibadat* on equal basis.<sup>15</sup>

The equality between male and female in issues of *ibadat* is invariable and “represents the highest expression of the value of equality”<sup>16</sup> and hence, constitutes the fundamental model of Islamic equality. The status of man and woman in matters of *muamalat*, however, is a debatable issue.

## (2) Equality in *muamalat* (dealings or social and civil matters)

The time and society in which the verses regulating the status of women in *muamalat* were revealed must be kept in mind for their proper understanding. Social, moral and spiritual condition of human being has been the primary concern of Islam. The deity proclaimed by Muhammad (PBUH) to the world was both the “Lord of the World”...and “Lord of the People”. Man also became the main theme of the revelation; self-revelation of God to humanity was not the sole object of Quran.<sup>17</sup> As Islam came to emancipate, not relegate, the predicament of the oppressed class of society, including the women hence it “signalled radical departures”<sup>18</sup> from the laws and customs of *jahilliyya*.<sup>19</sup> Nevertheless, it must be acknowledged that “no matter how revolutionary the philosophy of Islam may have been, in order to take root among a tribal, patriarchal society, an outright break with the past would not have served any useful purpose.”<sup>20</sup> Therefore, the Islamic concept of womanhood was automatically influenced by the very culture Islam had come to change.<sup>21</sup> Anyhow, Fazlur Rahman opines that the message of Islam is not confined to those circumstances though Quranic verses were revealed according to the needs of society in a particular time. The original intention of Quran must be applied according to the needs of the day by Muslims.<sup>22</sup> It can be inferred that Quranic verses are responsive to the changing situations of time and society.

### (i) Superiority of Men over Women

Superiority of men over women is justified by conservative interpreters on the basis, inter se, of verse which denotes men as *qawwamun* over women. The word *qawwamun* has been differently interpreted. Conservative scholars translate it as the “ruler or one in charge”, while for the reformists it means “protector or maintainer.”<sup>23</sup> For instance, Yusuf Ali translates the verse as “Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means.”<sup>24</sup>

Traditional patriarchal scholars, says Azizah al-Hibri, perceived the above mentioned verse to refer to superiority of all men over all women at all times, though the suitable meaning of the word *qawwamun* to guide or to consult. This meaning is more conforming with the teaching of Quran concerning gender relations. Thus if properly interpreted the verse refers to man as *qawwamun* over woman only if (i) he supports her financially, and (ii) the God has favored the former over the later in some ways that are material to her concern at the time while he is guiding or advising her. For the sake of example, as to the second stipulation, if a woman is in need of business skill and the man provides them, then he can be regarded as *qawwamun* over the that woman.<sup>25</sup> Asghar Ali

<sup>10</sup> The Quran, verse 4:1, also see verse 6:98, 7:189, 39:6 and 49:13 (Translated by Abdullah Yusufali accessed on 22/08/2012 through <http://www.muslimaccess.com/quraan/translations/yusufali/004.htm>)

<sup>11</sup> As quoted by S. S. Ali (n.2)

<sup>12</sup> Niaz A. Shah (n. 3)

<sup>13</sup> Verse 74:38

<sup>14</sup> Verses 7:20-22

<sup>15</sup> See the Quranic verses: 9:71-72 and 33:35

<sup>16</sup> Esposito, *Women in Muslim Family Law*, as quoted by S. S. Ali (above n.2)

<sup>17</sup> Ebrahim Moosa, ‘The Dilemma of Islamic Human Rights Schemes’ (2000-01) 15, *Journal of Law and Religion*, 185

<sup>18</sup> Nisrine Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, (British Institute of International and Comparative Law, London 2008) 9

<sup>19</sup> *Jahilliyya* literally means ignorance, it denotes the age immediately preceding Islam. It can also be described as the age of darkness like that of Europe.

<sup>20</sup> Shaheen S. Ali (n. 2)

<sup>21</sup> Ibid

<sup>22</sup> Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, (The University of Chicago Press, Chicago 1984) 4-9

<sup>23</sup> Niaz Ali Shah (n. 3)

<sup>24</sup> The Quran, 4:34

<sup>25</sup> Azizah Y. al-Hibri, ‘Muslim Women’s Rights In The Global Village: Challenges And Opportunities’ (2000-01) 15, *Journal of Law and Religion*, 37

Engineer<sup>26</sup> and Esposito<sup>27</sup> also opine that it is actually financial supremacy due to which male are given a degree of excellence, but only to those males who provides for the needs of woman from their resources, and not to all males; all males are not *qawwqmun* over all females.<sup>28</sup> The traditional interpretation that establishes unlimited supremacy of men over women is also in conflict with the tenets of Islam, for example, verse 9:71 says that “*The Believers, men and women, are awliya one of another: they enjoin what is just and forbid what is evil.*” *Awlia* has the meaning of protectors or guides. How women can be the protectors and guides of men if the former are inferior to the later both physically and mentally?<sup>29</sup> The contradiction must be in the conservative interpretation of verse 4:34 and not between the verses themselves as Quran is free from errors.<sup>30</sup>

## (ii) Violence against women

Violence against women by their husbands is mostly justified on the grounds of the later part of the verse 4:34 which says that “*As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly).*” But the defence of violence against women on the grounds of this verse is completely contradicting with spirit of Islam which advocates gradual change.

Beating the wives was a rampant practice during the age of *jahilliyya* which made its way into Islam. The Prophet Muhammad (PBUH) condemned it and allowed the right of qisas (retribution) to women when they complained against it. The men in their meeting with the Prophet the same evening bemoaned that their wives got an edge over them.

The Prophet asked for revelation. When verse 4:34 was revealed, the Prophet said that he wished for a complete ban on beating the wives but God did approve of it. This change in attitude of Prophet Muhammad (PBUH) for eradication of wife abuse should not be taken as a license to abuse her. It was only a momentary change while the Islamic model of matrimonial relations is maintained.<sup>31</sup> Wife abuse the ground of this verse shall be against the spirit of verse 2:231<sup>32</sup>

Wife abuse is prohibited by Hadith literature as well. As the Prophet said “[*how*] can one of you hit his wife like an animal, then he may embrace her?”<sup>33</sup> On another occasion he said to his companion that “[*t*]he best among you, are those who are best toward their wives and I am the best among you in this regard.”<sup>34</sup> It is reasserted that reference to context interpretation of verse 4:34 can be helpful in resolving its conflict with other Quranic verses and Hadiths teaching which prohibits the abuse of wife.

## (iii) Polygamy

Islam permits polygamy for men while orders absolute monogamy for women. However, a close study of the verse which allows polygamy shows that it has been massively abused by literalist interpreters. The verse says that “*If ye fear that ye shall not be able to deal justly with the orphans, Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one.*”<sup>35</sup> It must be kept in mind, before studying the rationales behind it, that this verse was revealed to a society that was pervaded with polygamy in which men was allowed to have more than a hundred<sup>36</sup>, indeed, as many wives as he could afford at a time.<sup>37</sup> Moreover, in a time when a number of Muslims died in battle of *Uhud* and the Muslim society was left with a large number of orphans and widows.<sup>38</sup> It seems that the primary purpose of the verse was to bring justice to orphans, not polygamy itself. In addition, polygamy is permitted but on condition that man must do justice among the wives. On the contrary, another Quranic verse says that “*Ye are never able to be fair and just as between women, even if it is your ardent desire.*”<sup>39</sup> If both the verses are read conjointly the following could be the conclusion:

- (a) Marry up to four wives, if you can be just and fair among them
- (b) You may marry only one, if you cannot be just and fair among women

<sup>26</sup> As quoted by Niaz Ali Shah (n. 3)

<sup>27</sup> As referenced by S. S. Ali (n. 2)

<sup>28</sup> Azizah Y. al-Hibri, *A Study of Islamic History*, as quoted by S. S. Ali, *ibid*

<sup>29</sup> *Ibid*

<sup>30</sup> Quran 4: 82

<sup>31</sup> Azizah Y. al-Hibri (n. 25)

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

<sup>35</sup> The Quran, 4:3

<sup>36</sup> Azizah Y. al-Hibri (n. 25)

<sup>37</sup> Nisrine Abiad (n. 18) 12

<sup>38</sup> Abdullah Yusufali as cited by Niaz Ali Shah (n. 3)

<sup>39</sup> The Quran, 4:129

(c) You cannot be just and fair among women so you may marry only one.<sup>40</sup>

It is also pointed out that the historic justification called forth in defence of polygamy i.e. greater number of women than men because of the loss in battles cannot be invoked any more for unrestricted license of polygamy.<sup>41</sup>

#### (iv) Divorce

As per traditional Islamic law man has the authority to divorce his wife without showing any reason and without getting the Court of law involved in the process. On the other hand, wife has limited power to divorce: she must convince the Court of Law that it is highly undesirable to continue in the wedlock and must forfeit her dower to get herself release through *khula*, alternatively, she will have to choose the *mubarah* in which she is required to make a mutual understanding with her husband to dissolve the marriage, or she must have delegated powers from her husband for dissolution of marriage, called *talaq-e- tafweez*. It is clear that by now way there is any equality between the rights of male and female as far as the divorce is concerned. However, the issue must be viewed proper context, with established attitude of Islam, that is, gradual change.

Man had unqualified power of dissolving marriage in pre-Islamic Arabia. It was the husband himself who was to decide that whether the marriage is dissolved completely or not? And consequently was the women free to enter another marriage? He had the power of revocation the divorce and could resume the matrimonial relationship. He had the power even of suspending the marriage through a declaration: the wife was not entitled to live with him after renunciation; even so, she was not allowed to remarry.<sup>42</sup> Islam disapproved of this custom and championed equality between both the genders in this regard.

After carefully going through the verses 2:228, 2:229, 2:231, 4:128, 4:129 and 65:2 together, it can be concluded that man is not given absolute power of dissolving the marriage; it recommends *equitable* separation through reconciliation. But unfortunately the Quranic reservations could not be translated into law by Muslim jurists, contrarily; they were influenced from “socio-economic” and political conditions of the time which gave superiority to husbands over wives in the matter.<sup>43</sup>

#### (v) Evidence of Women

Another example where the literalists and conventional scholars generalized a particular Quranic rule to the disadvantage of women is the verse 2:282 which reads “*O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing.... and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her.*” By a reference to context interpretation it becomes visible that devaluating the evidence of women is against the tenor of Islam.<sup>44</sup>

Conventional scholars generalized that rule to situations instead of keeping it confined to commercial transactions which involve future obligations.<sup>45</sup> Its application could even more be narrowed down as according to Shaheen Sardar this verse have to do with only “monetary notes or debt notes.”<sup>46</sup> Moreover, it is argued that role of second woman is not that of testifying but reminding.<sup>47</sup> It is also submitted as Allah’s creation which He created “*in the best of moulds*”<sup>48</sup> is free from any fault; therefore the stipulation of two women was not due to any mental weakness. Rather it was a feasible rule in a Arab society where women had no or very little involvement in commercial activities hundreds of years ago.<sup>49</sup>

Why Quran did not equivalents evidence of four women to that of two men, if it regarded the evidence of woman half to that of men, it can be questioned. It cannot be inferred from the verse 2:282 that evidence of women is inferior to that of men in all circumstances. Even if a law is made on such mistaken interpretation then, keeping in view the natural way of Islam, the gradual change, may we not amend it according the needs of the time when women not only acquired higher education but also expertise in business and finance?<sup>50</sup>

<sup>40</sup> Azizah Y. al-Hibri, *A Study of Islamic History*, as referenced by S. S. Ali (n. 2)

<sup>41</sup> Javaid Rehman (n. 4)

<sup>42</sup> Nisrine Abiad (n. 18) 13-14

<sup>43</sup> Javaid Rehman (n.4)

<sup>44</sup> Niaz Ali Shah (n. 3)

<sup>45</sup> Ibid

<sup>46</sup> Shaheen S. Ali, *Equal Before Allah, Unequal Before Man? Negotiating Gender Hierarchies in Islam and International Law* (Ph D Thesis submitted to University of Hull 1998) 117, also see Farida Shaheed, ‘Gender, Religion and the Quest for Justice in Pakistan’ (2009), The United Nations Research Institute for Social Development accessed on 14/6/2012 through <http://www.wemc.com.hk/web/e-bulletin/01-2010/files/df.pdf>

<sup>47</sup> Niaz A. Shah (n. 3)

<sup>48</sup> The Quran, 95:4

<sup>49</sup> Perry S. Smith, ‘Silent Witnesses: Discrimination Against Women in the Pakistani Law of Evidence’ (2003) 11, *Journal of International and Comparative Law*, 21

<sup>50</sup> Fazlur Rahman, ‘*Status of Women in the Quran*’ as cited by Shaheen S. Ali (n. 1)

### Conclusive remarks

Islam deals with men and women, created “*in the best of moulds*”,<sup>51</sup> on equal footings. However, out of context of Quran by men influenced by “socio-economic”, political and patriarchal beliefs of their ages resulted in discrimination against women. Just as Elizabeth Mayer writes, “Even without studying the question of how Islam relates to human rights issues, my experience in work on behalf of the cause of human rights would have sufficed to convince me that Islam is not the cause of human rights problems endemic” to the Muslim world.<sup>52</sup> Consequently, when the governments in the Muslim world justify gender discrimination on the basis of Sharia the grounds offered by them must be carefully investigated to see if there is any political purpose involved?

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<sup>51</sup> The Quran, 95:4

<sup>52</sup> Ann E. Mayer, *Islam and Human Rights: Tradition and Politics* (3<sup>rd</sup> edition, Westview Press Colorado 1999) preface