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The Future of Women's Rights in Islam: Towards a More Harmonistic Interpretation of Sharia Law

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Abstract

The future of the relationship between Islamic law and women's rights is optimistic. The inherent pluralism of Islamic law should be used opportunistically to further gender equality through harmonistic interpretation. Where evolutionary interpretive approaches have been adopted - such as in Tunisia and Morocco - women's rights have been recognised through Islamically justified legislation. International activists for women's rights should restrain from positioning themselves aggressively against Sharia to prevent a sense of Western cultural imposition, and equality should instead be sought through combining politico-legal approaches with socio-cultural initiatives at the grassroots.

Introduction

The intricate relationship between Islamic law and human rights law is as complex as it is controversial. Debate surrounding this relationship is fuelled all the more by the fact that Muslim states are among the countries with the poorest human rights records in the world today (Baderin, 2007, p. 4). Many scholars purport that Islam itself is inherently opposed to the implementation and

execution of women's rights, as it has been shown that average levels of respect for women's rights are lowest in Islamic countries (Richards, 2003), but equality is attainable. This paper posits that gender equality can be established in Muslim states- and indeed has been in several states-; the thesis statement that this paper hereby will attempt to prove is that that the relationship between Islamic law and human rights law is entirely dependent on the interpretation of Islamic law, and modern, harmonistic interpretation can advance women's rights implementation in Muslim majority states.

This essay will begin by outlining what exactly is meant by Islamic law, and will illustrate, using examples, how its interpretation differs across different schools of Islamic thought. The paper will then turn its focus to the history of the relationship between Islamic law and human rights law. It will begin with analysis of the rights inherent in Islam, and then turn to the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The differing degrees of compliance and restrictions across Muslim states will be considered, showing that these are dependent upon Sharia interpretation. The paper will then analyse the efficiency of adopting an evolutionary approach to Islamic law. Finally, this article will consider the future of the relationship between Islam and human rights, highlighting the importance of contemporary interpretation and will put forward some recommendations to attain the successful implementation of women's rights in Muslim states.

What is Meant by 'Islamic Law'?

Islamic law is generally referred to as Sharia, which in the Quran is a divine exhortation regarding the correct way to behave in this world. This law of God has two sources: the Quran, which Muslims take as the literal word of God divulged to the prophet Mohammed, and the sunna, which is the life example of Mohammed (Quraishi, 2011, p.202)

Through a process called ijtihad, Muslim legal scholars carefully studied both of these tangible sources to discern the

detailed rules of the word of God, covering a wide range of topics, including property, contracts and criminal law. This reasoned interpretation was permitted for four centuries after the death of Mohammed in 632AD, after which time the "door of ijtihad" was formally closed (Arzt, 1990, p.204). These rules are called "fiqh" which translates from Arabic to mean "deep understanding." The scholars performing ijtihad, however, did not always arrive at the same conclusions concerning these rules of God, which accounts for the fact that Islam is inherently pluralistic: there is a variety of diverse interpretations (Quraishi, 2011, p.202). Based on these interpretations, different schools of orthodox jurisprudence developed: the Hanafi, which is dominant today in Afghanistan, Pakistan, Turkey, and Egypt; the Shafi, dominant in Indonesia and Eastern Africa; the Maliki, dominant in Northern Africa; and the Hanbali, dominant in Saudi Arabia. The Shi'te school is predominant in Iran and is considered the chief "heretical" divergence from these four Sunnite schools (Arzt, 1990, p.204).

There exists in Islam a self-conscious recognition by fiqh scholars that ijtihad is a fallible, human enterprise and that the rules they discern are only probable interpretations of the rule of God. This leads to a recognition among Muslims that there may very well be an equally legitimate alternative fiqh rule on the same issue or point of law (Quraishi, 2011, p. 203).

Islam is the official religion in twenty-seven countries in Asia, sub-saharan Africa, north Africa and the Middle East (Sherwood, 2017). These states vary in the extent to which their law is based on Sharia, on revisions or rejections thereof, and the dependency on the fiqh interpretations in the dominant school in that state (Arzt, 1990, p.204). The difference in fiqh rules is readily apparent in the distinct zina (extra-marital) sex law in Pakistan and Nigeria. The zina laws in Pakistan follow the majority fiqh position, whereby four eye-witnesses are required to prove that an act of zina has occurred. However, in the Maliki school, unwed pregnancy is enough to constitute a zina prosecution (Quraishi, 2011, p.205).

Therefore in Hanafi, Shafi and Hanbali traditions, it is almost impossible to secure a zina conviction, meaning that rape prosecutions are extremely rare, as four eye-witnesses are needed for a successful conviction if the victim is unwed. In the Maliki school, women are much more commonly prosecuted for zina merely for being pregnant and unwed, while their male counterparts escape without conviction (Quraishi, 2011, p.205). The disparate inequality towards women, arising from different interpretations of Sharia highlight the need that fiqh interpretations be considered when human rights implementation is being attempted, and begins to prove our thesis statement that a lot of the relationship between Islamic law and human rights law hinges upon the interpretation of Islamic law.

Relationship between Islamic Law and Human Rights Law in Relation to Women Thus Far

Majid Khadduri, a leading Islamic law scholar, outlined several important principles of human rights in Islam - dignity and brotherhood, equality among community members with regard to race, colour and class, the right of innocence until proven guilty for every individual, and individual freedom. However, these rights are not absolute: initially, dignity and brotherhood rights were reserved only for other Muslims - there was no element of religious toleration, and equality was not extended to these other religious groups; it is still not extended to women (Arzt, 1990, p.205).

As this paper is solely focused on the relationship between Islamic and human rights law in relation to women's rights, it is apt to note that under Islamic law, women are legally disqualified from holding judicial and political office and cannot initiate a marriage contract nor obtain a unilateral divorce. Moreover, in a court of law, their testimony constitutes only half of a man's testimony and their legal inheritance of property is generally half of that of a male with the same relationship to the deceased (Arzt, 1990, p.208) However, the implementation of this Islamic law, as aforementioned, is dependent upon the interpretation of Sharia in individual states.

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the UN in 1979 and was considered a monumental breakthrough in the movement for women's rights. The Convention repeatedly refers to ensuring women's rights "on the basis of equality with men" and is the first treaty to fundamentally address rights for women in relation to education, healthcare, politics, marriage, family relations, property inheritance, employment and economics (Bonner, 2009, p.27). While prima facie the CEDAW appears to have been successful: ratified by 185 countries - more than 90% of UN member states- several countries where women's rights are most precarious have rejected ratification of the treaty. These include three Muslim states: Iran, Sudan, and Somalia. Furthermore, twenty Muslim countries which have ratified the CEDAW have registered severe, all-encompassing restrictions on particular articles of the treaty, based on their adherence to Islamic law (Meral, 2009, p.877).

These restrictions, compiled, comprise of hundreds of reservations against individual CEDAW articles (Bonner, 2009, p. 33). A state can legally, under the Vienna Convention on the law of treaties, implement reservations to treaties to which it is a signatory to "modify the legal effect of certain provisions of the treaty in their application to that State" (Bydoon, 2011, p.53). The legislation surrounding the ability of a country to make reservations to the CEDAW is very lax, which has permitted a myriad of states to constrain their compliance with the treaty provisions. An example of a country which has made such reservations to the CEDAW is the United Arab Emirates.

The UAE made reservations to Article 2(f), Article 15(2) and Article 16 of the CEDAW. Article 2(f) aims to abolish existing domestic legislation which discriminates against women; the basis for the reservation on this article was that abolishing such legislation would violate the rules of inheritance established by Sharia precepts - where men legally inherit twice as much as women of the same relation to the deceased. Article 15(2) aims to equalise the legal capacity of the genders in relation to civil matters; the submitted reservation posited that this contravened

Sharia regarding the legal capacity, weight of testimony and contract concluding capabilities of women. Article 16 aims to eliminate discrimination in marriage and family matters, with the restriction on this article purporting that the UAE would follow this, as long as it did not conflict with Sharia. It was emphasised that the husband has the right to divorce while a woman's right to initiate divorce is conditional upon judicial discretion and only in a case in which she has been harmed (Bonner, 2009, p.33).

These reservations were widespread across Muslim states; Oman entered a sweeping reservation to the CEDAW which purported to exempt the government from "all provisions of the Convention not in accordance with the provisions of the Islamic Shar'ia" (Cole, 2013, p.233).

Such reservations with regards to the progression of the protection of women's rights is not a new phenomenon in Muslim states. As early as 1948, Saudi Arabia resisted the implementation of laws which would grant women equality arguing that in marriage, "Islamic law was explicit on the smallest details" and therefore ought not to be burdened with what they perceived as "Western" ideals including rules that wives be of full age and be granted equal rights (Arzt, 1990, p.218).

Evolutionary Interpretations of Islamic Law

While such extreme examples may suggest that Islam is inherently opposed to women's rights, this paper posits that this is not so. Countries which have expressed extreme reservations on the implementation of the CEDAW have analysed Sharia in a historic context rather than permitting a more evolutionary, modern interpretation of Islamic law. Viewed historically, several aspects of Islamic law - such as the condemnation of infanticide - were well ahead of their time, but today the majority of interpretations are completely polarised from human rights standards and norms. Contrary to Western perceptions of Islamic law, Sharia is not an "easily identifiable set of rules that can be mechanically applied" (Bonner, 2009, p.44). As has been examined, Sharia law is pluralistic, open to interpretation, and ofttimes, this interpretation

determines the relationship between Islamic law and human rights law. While Islamic law has been applied in its historic context in many Muslim states, several scholars have emphasised that it must not be perceived as static and archaic but rather as adaptable and evolutionary, complementary with human rights through a harmonistic perspective (Baderin, 2007, p.22). More evolutionary interpretations can permit the implementation of more liberal human rights laws to establish greater gender equality.

The approach adopted by several Muslim states shows the flexible nature of the interpretation of Islamic law. For example, Tunisia's first accomplishment after securing independence was the adoption of a Personal Status Code in 1956, known as the CPS or the majalla, which emphasised the legal equality of men and women and provided the foundations for a new organisation of the family. This was made possible through a dynamic, evolutionary interpretation of Islam; the personal status code combines Islamic tradition with "the imperatives of modern life" (Bonner, 2009, p.44). Under the code, women are free to travel without male accompaniment, work in gender-mixed workplaces, dress how they please and are subject to the same divorce laws as males. Tunisian women's rights have been so liberalised by the adoption of this Islamically justified code that in 1965, Tunisia became the first Muslim country to legalise their abortion laws (Nazer, 1980), years ahead of the majority of Western countries. Again, this justification had its basis in interpretation: an interpretation of Hanafi Sharia law permits abortion before the soul is formed, up to four months after conception (Bonner, 2009, p.44).

Similarly, in 2004 Morocco adopted a new women's rights-friendly Family Code called "The Mudawwana." This code marked a landmark reform of the status of Moroccan women, putting them on equal footing with their husbands in matters relating to marriage and children, but it is of particular importance as the code is Islamically justified. During the code's drafting, the Moroccan monarch had "encouraged the use of ijtihad to deduce laws and precepts while taking into consideration the spirit of our

modern era" (Baderin, 2007, p.22). This implementation again demonstrates the success of an evolutionary interpretive approach to Islamic law regarding women's rights.

Both of these examples evidence that evolutionary interpretation of Sharia can permit a symbiotic relationship between Islamic law and human rights law in relation to women.

The Future of the Relationship between Islamic Law and Human Rights Law

Studies have shown that women in Muslim states can be subject to 'victims' consent' which is where victims of human rights violations justify the encroachments on their rights because of cultural and traditional practices which they follow without question (Baderin, 2009, p.9). There is also a strong culture of suspicion in many Muslim states towards a Western cultural imposition through human rights implementation: many women have expressed that although they want rights, they want them within an Islamic framework and not what they perceive as attempted cultural appropriation (Baderin, 2009, p.16). Therefore, it is important that the future of the relationship between Islamic law and human rights law is paralleled with the approach taken in Tunisia and Morocco whereby women's rights were liberalised through Islamic justification and contemporary Sharia interpretation. Politico-legal approaches by governments ought therefore to be complemented with socio-cultural approaches at the grassroots through NGO activity to ensure that citizens are aware that implemented measures are Islamically justified.

Further direction for the future of the relationship between Islamic law and human rights law comes from a 2011 paper by Dr. Asifa Quraishi in which she posits that international activists for women's rights should restrain from positioning themselves aggressively against Sharia and would do better not to mention Islamic law at all. She cites the harrowing example of Bariya Ibrahim Magazyu, a Nigerian teenager who fell pregnant outside of wedlock after being raped by three of her father's acquaintances. After she was convicted of zina, she was sentenced

to 100 lashes after the birth of the child. The case received widespread international media coverage, citing violations of international human rights agreements. Islamic law was also harshly condemned given that flogging is directly mentioned in the Quaranic verses on zina (Quraishi, 2011, p.182). However, the pressure had the opposite of its desired effect: the punishment was ordered by the Governor to be carried out a week early; international condemnation of sharia proved to be a catalyst for the extra-legal acceleration of her sentence. Most notable in this regard was the governor's adamant refusal of clemency on a human rights basis, but his assertion that he would be "willing to consider arguments made from the point of view of Muslim laws" (Quraishi, 2011, p.186).

This leaves the benchmark for future activism to omit condemnation of Sharia and instead highlight evolutionary and contemporary fiqh interpretations through itjihad to ensure effective implementation of women's rights in Muslim states.

Conclusion

In conclusion, the future of the relationship between Islamic law and human rights law in relation to women's rights is positive. Islamic law is inherently pluralistic and should be used opportunistically to further gender equality in Muslim states. It is evident that countries which have registered encompassing restrictions on the Convention on the Elimination of all Forms of Discrimination against Women have interpreted Sharia in its historic context. The approach adopted by Tunisia and Morocco - interpretation of Islamic law in light of the modern era - could be adopted by other Muslim countries to utilise Islam as a vehicle for the successful protection of women's rights. In refraining from condemnation of traditional Sharia, international activists could be more beneficial to the movement for women's rights by studying Islamic law and contributing modern interpretations. It has therefore been proven that the relationship between Islamic law and human rights law is entirely dependent on the interpretation of

Islamic law, and modern, harmonistic interpretation can advance human rights implementation in Muslim majority states.

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