

GENDER EQUALITY AND ITS CONCEPTUALIZATION: THE ISLAMIC LAW PERSPECTIVE

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Abstract

One of the missions brought by Religion of Islam to mankind is to upgrade the status of women and make it equal with status of men. Before the coming of Islam there was a culture of ignorance which Arabs practice by burying their daughters alive, because they think it is a burden or disgrace to members of the family.¹ When Islam came, this culture or tradition was totally abolished, and women were recognised as individual who have right of inheritances². The Holy Qur'an clearly asserted equality to both genders, for instance it is stated that God has created males and females with the aim to acquaint themselves with each other.³ The general principles of sharia is that the duties and rights of women are equal to those of men, thus the rights and duties of men and women are identical. women have been assigned some duties towards men and also men have been assigned certain duties towards women. This was explain by the provision of Quaran which says:

“And they (women) have rights similar to those of (men) over them in kindness”⁴

This paper will state the equality between men and women as provided in the Quaran, hadith and other sources of Islamic law, and it recommend that people should be educated to know that Islam does not discriminate between men and women , in the sight of Allah both of them are equal.

The Almighty Allah says:

“For Muslim men and women, for believing men and women. For devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves) for men and women who guard their chastity, and for men and women who engage much in Allah's praise, for them has Allah prepared forgiveness and great reward”⁵

In the above verse of Holy Quran Almighty Allah has equated female with their counterparts. Islam regard women and men as human being of the same essence created them from a single soul. Both of them has complete independent personality in Islam. In this paper I will focus on the issues of gender equality under Islam.

¹ Abdullahi Yusuf Ali The Holy Quran Text, Translation and commentary published in the united kingdom by The Islamic foundation 223 London Road Leicester LE2 IZE, UK, Quran 6:151

² Quran4:7

³ Quran49:13

⁴ Quran2:228

⁵ Q 33:35 Yusuf Ali The Holy Quran Text ,Translation and commentary

This paper is a brief review of Gender equality from Islamic perspective. The topic is divided into gender equality under Islamic law the concept and nature and gender issues under Islamic law which consists of equality in seeking knowledge, equality in spiritual rights, and equality in social rights, economic rights, political rights and legal rights.

1:0 INTRODUCTIONS

Before the advent of Islam most of the culture, tribes in the world considered women as inferior human being. To a Muslim believes as Jew or Christian that Adam was created by Allah and Eve was made from Adam's rib. All these got it root from genesis 2 verse 18 – 24 of the Bible it has no basis in the Quran. The Quran uses generic terms to mean human beings for instance *an – nas*, *al – insan* etc and it did not mention Hawa'u or Eve. The Adam word is a Hebrew word from Adamah which means the soil and it served as collective noun referring to human rather than to a male person. The Arabic borrow the word Adam from Hebrew which does not refer to particular human being, rather it refers to human beings in a particular way⁷. Muslims got the idea that Eve was created from the rib of Adam from the Bible since some Muslims read Bible, the story enter Islam through incorporation in the hadith which reads treat women nicely, for a woman is created from rib, and the most curved portion of the rib is its upper portion, so if you would try to straighten it, will break, but if you leave it as it is, it will remain crooked. So treat women nicely⁸.

All scholars have agreed that any tradition which contradicts the provision of Quran should be rejected, one rejection of this hadith it generated that women are inferior in Islam.

Islam view men and women as equal before Allah to this effect Almighty Allah says:-

O people be careful of (your duty to) your lord, who created you from a single being and created its mate of the same kind and spread from these two, many men and women, and be careful of (your rights), and to the ties of relationship, surely Allah ever watches over you⁹

⁷ Iqbal Muhammad, the reconstruction of religious thought in Islam, Lahore shaik Muhammad Asraf 1962

⁸ Khan translation of sahih Bukhari kazi publication 1971

⁹ Quran 4:1

2:0 Gender Equality under Islamic law: The concept and Nature

Islam required that equality has to be exercised regardless of the gender, however there are difference between Islamic theory and the practice of Muslims. When we are speaking of Islam there is no need to look at wrong customs that are practice in some Muslim communities.

Islam regarded both men and women equally and provides them with equal human rights. The functions perform may sometimes differ. The Holy Quran and traditions of Prophet supported this statement. Almighty Allah says-

O mankind indeed we created you from a male and a female, and made you nation and tribes that you may identify with one another. Indeed, the noblest of you in the sight of God is the most God wary among you. Indeed, God is all knowing ¹⁰.

Abdullahi Yusuf Ali in his commentary on this verse he say that this means to all human beings it does not restricted to muslims only as mankind is descended from one pair of parent. Tribes, races, was to know our certain difference but before Allah they are all the same.

In another verse Allah says: O mankind be wary of your lord who created you from a single soul, and created its mate from it, and from the two of them, scattered numerous men and women.¹¹

The tradition of Prophet is to the effect that all people are equal as the teeth of a comb. There is no claim of merit of an Arab and non-Arab, or a white over a black person or a male over a female only Godfearing people have a preference with God¹²

If we reason carefully, we may ask whether equality of rights means their similarity. To vindicate the truth they are two different things equality simply means a condition of being equal in a degree and value while similarity means uniformity. For instance an elder brother will distribute his property to his five brothers equally, but not uniformity. He may have different kind of property he may share them equally in value but different in types. Islam does not believe in uniformity between man and woman, at the same time it does not give preferential treatment to men in the matter of rights. It observed the principle of equality between the two sexes but it opposed to the uniformity of their rights.

¹⁰ Quran49:13

¹¹ Quran 4:1

¹² Ahmad b hanbal, Al musnad Vol 6 pg 411

A.Q. Oudah in his Book criminal law of Islam vol.1 at page 29 stated that the principles of equality between man and woman was provided by sharia thirteen hundred years ago at a time when the world was not ready to provide equal treatment between man and woman in respect of rights and duties. Therefore, it will be wrong to say that there is discrimination between man and woman under Islamic law.

3.0 Gender Equality issues under Islamic law

Physically or biologically men and women are different but this does not indicate that women are inferior to men. The equality between men and women provided by the Quran and hadith are as follows.

3.1 Equality in seeking knowledge

Knowledge is required to be sought by any Muslim without regard to sex. The present day development came through education. For instance scientific findings and others contributed immensely to better life of human beings. In Islam, seeking knowledge is obligatory on every man and woman, boy or girl. The importance of knowledge was emphasized by the first revelation to prophet Muhammad (s.a.w) through Angel Gabriel,¹³ which to the effect that

- i. Read in the name of your lord who created
- ii. He created a man from a clot
- iii. Read and your lord is most Honour
- iv. . Who taught to write with the pen?
- v. Taught man what he knew not.

In another verse Almighty Allah taught the first prophet Adam (a.s) the nature of things.

“And he taught Adam all the names, and then presented them to the Angels then he said. Tell me the names of those if you are right. They

¹³ Quran96:1-5

said. Glory be to thee we have no knowledge but that which thou hast taught us; surely thou art the knowing the wise, he said O Adam inform them of their names, then he had informed them of their names, he said. Did I not say to you that I surely know what Ghaib in the heavens and the earth and that I know what manifest and what you hide”¹⁴.

He further says: O you who believe when you deal with each other in contracting a debt for a fixed time, then write it down and let scribe writes it down between you with fairness; and the scribe should not refuse to write as Allah has taught him, so he should write and let him who owes the debt dictate, and he should be careful of his duty to Allah”¹⁵.

Allah bears witness that there is no god but He, and so do the angels and those possessed of knowledge, maintaining his creation with justice, there is no god but he, the mighty, and the wise¹⁶

There are traditions of the Prophet (s.aw) which emphasize and state the important of seeking knowledge in Islam.

Narrated by Zayd Ibn Thabit reported that the messenger of Allah may peace be upon him ordered me to learn the writing of the Jews, so I learnt for him the writing of the Jews. He said I swear by Allah I do not trust Jews in respect of writing for me so learnt it¹⁷.

In another tradition reported by Abu Hurayra the Prophet (s.a.w) said whoever takes path upon which to obtain knowledge Allah makes the path to paradise easy for him¹⁸

In yet another hadith reported by Mulaika that whenever Aisha the wife of the Prophet heard anything which she did not understand she used to ask again till she understood¹⁹.

History indicates that even in the early years of Islam there were female scholars. Abu Moosa who was a jurist said whenever the companions lacked knowledge on an issue they went to Aisha to resolve the issue. Nana Aisha wife of female scholars include Safiya (may Allah be pleased with her) she was an expert in the field of Islamic jurisprudence and also Ummu Salma who taught many scholars, both are wives of the prophet Muhammad (s.a.w)²⁰

¹⁴ Quran2:31-33

¹⁵ Quran2:282

¹⁶ Quran3:18

¹⁷ Abi Dawud 3645 BK26 Hadith5

¹⁸ Tirmidhi 2646 Bk 41 Hadith 2 and 3. Abi Dawud 3643 Bk 26 Hadith 3. Riyad as salihin BK 13 hadith 6

¹⁹ Sahih Bukhari 103 BK3 Hadith 45

²⁰ Nadwi, mohammed Akram al-muhaddithat: The women schoolars in islam. Sayeed Asma women and the transmission of religious knowledge in islam cambrige university press pg 163-166

Going by the above authorities we will be convinced that seeking knowledge is obligatory on Muslim.

3.2 Equality in Spiritual rights

In Islam, paradise is made for Muslim faith who observes the teachings of Islam as spelt out by Quran and Hadith. To this effect, Almighty Allah says: “whoever does good deeds whether male or female and he or she is believer these shall enter the garden and they shall not be dealt with a jot unjustly”²¹

In another verse Allah says:-

Whoever does good whether male or female and he is a believer, we will most certainly make him live a happy life, and we will most certainly give them their reward for the best of what they did²².

He further says:

The originator of the heaven and the earth, he made mates for you from among yourselves”²³

With regard to worship, Allah say:

And I have not created the Jinn and men except that they should serve me²⁴.

It is obligatory upon Muslims to worship Allah in the ways or manners prescribed by Islam. A tradition of Prophet reported that Ibn Umar said the messenger of Allah (s.a.w) said Islam is based on five principles; to testify there is no god but Allah and Muhammad is his messenger, to offer prayers (five daily prayer) to pay zakat, to perform hajji who have the means and to observed fasting during the month of Ramadan.²⁵

Concerning the pillars of Islam there is no requirement of sex; provided you are a Muslim you are to observe it strictly in accordance to sharia.

²¹ Quran4:124

²² Quran16:97

²³ Quran42:11

²⁴ Quran51:56

²⁵ 40 Hadith Nawawi Hadith 2. Sahih Bukhari 8 BK 2 Hadith1. Sahih muskim 8° BK1 Hadith 5 Tirmidhi 2609 BK40 Hadith4

Allah says:

O you who believe when you intent to offer prayer wash faces and your hands (forearms) up to elbows.²⁶

Zakkat is obligatory on a Muslim and whose property or wealth reaches nisab as required by sharia and which the property is with him for the period of one Islamic calendar year. To this effect Allah says: O you who believe I give of the good things which you have honorably earned and of the fruits of the earth which we have produced.²⁷ Almighty Allah further says eat of their fruits in their season, but render the dues that are proper on the day that the harvest is gathered.²⁸

Another verse says; for those who give in charity, men and women and loan to God. A beautiful loan it shall be increased manifold to their credit and they shall have besides a liberal reward.²⁹

Fasting is also among the pillars of Islam, Allah says. O you who believe! Fasting is prescribed to you as it was prescribed to those before you that you may learn self restrain.³⁰

Regard to Hajj Allah say; and Hajj pilgrimage there to is a duty men owe to God; those who can afford the journey.³¹

3.3 Equality in Social rights

Marriage is a civil contract between man and woman with the aim to establish a Muslim family in accordance to the teachings of Islam. In formation of marriage contract consent of the contracting parties must be sought and obtained where the power of Ijbar was wrongly used and contracted the marriage without the consent of the girl the marriage is voidable at the instance of the girl. To this effect a hadith narrated by Ibn Buraidah that his father said, a girl came to Prophet and said my father married me to someone against my will, the Prophet gave her choice, and she said I approved of what my father did, but I wanted women to know that their fathers have no right to do that.³²

²⁶ Quran5 : 6

²⁷ Quran2: 267

²⁸ Quran6 : 141

²⁹ Quran57 : 18

³⁰ Quran2 : 183

³¹ Quran3 :97

³² Sunan Ibn majah Vol.3 BK.9, Hadith 1874. Sunan Nasai 3269 BK 26, Hadith 74. Abu Dawud 2096. BK 12 Hadith51

Marriage is based on mutual understanding love and peace; therefore the couples have right to their marriage.

Almighty Allah says; and among his signs is that he created for you mates from among yourselves that you may find rest in them, and he put between you love and compassion, most surely there are signs in this for a people who reflect.³³

We can understand that in Islam both the parties to contract have right to accept or reject marriage proposal and consent of the parties is an essential element of a marriage contract.

3.4 Equality in upbringing of children

Islam discourages injustice in upbringing of children. During the life time of Prophet (s.a.w) a man kissed his son and took him to his lap but deny to do same to his daughter then prophet (s.a.w) told him that you are unjust you should have kissed your daughter and also placed her on your lap. Another tradition of the Prophet reported by Amir said I heard An – Numan ibn Bashir on pulpit saying my father gave me a gift but my mother said that she would not agree to it unless he made Allah's messengers as a witness to it my father went to the Prophet and said I have given a gift to my son from Awra bent Rawala but she ordered me to make you as witness to it. O Allah's messengers asked have you given same to every one of your children. He replied no Allah's messenger said be afraid of Allah and be just to your children. My father returned and took back his gift.³⁴

The coming of Islam ended the pre – Islamic practice of female infanticide, Allah says and when the female infant buried alive is asked for what sin she was killed.³⁵

Islam condemned the attitudes among some parents upon hearing the news of the birth, if they asked and heard that it was a baby girl they prone their faces, Allah say:-

And when a daughter is announced to one of them his face becomes black and his full of wrath, he hides himself from the people because of the evil of that which is announced to him shall he keep it with disgrace or bury it alive in the dust now surely evil is what they judge³⁶

³³ Quran30 :21

³⁴ sahihBukhari 2587 BK.51 Hadith 20 and 21

³⁵ Quran81:8 – 9

³⁶ Quran16:58-59

Islam has elevated the status of female to the extent that Jabir um Abdullah reported that the messenger of Allah may Allah bless him and grant him peace, said, anyone who has three daughters and provides for them, do this and shows mercy to them will definitely enter paradise, a man from the people said and two daughters, messenger of Allah? He replied and two daughters.³⁷

Whenever there is marital dispute the couples are expected to settle their dispute privately, when their effort prove abortive them they are to invite their guardians for settlement. In divorce the husband can initiate divorce also the wife has the right to initiate divorce through the means of Khul.

Allah says:

there is no blame on them for what she gives up to become free
thereby³⁸

In a tradition reported by Ibn Abbas said the wife of Thabit Ibn Qais came to Prophet (s.aw.) and said O Allah apostle I did not blame my husband for any defects in his character or his religion but for being a Muslim I don't like to behave in unislamic manner if I remain with him then the prophet (s.a.w) said to her will you give back the garden which he has given you as dowry?

She said yes then Prophet said to Thabit. O Thabit accepts your garden and divorce her once.³⁹

3.5 Equality in Economic rights

Sharia allowed women to own property whether married or unmarried Quran is to the effect that men shall have a portion of what the parent and the near relatives leave, and women shall have a portion of what the parents and near relatives leave, whether there is little or much of it a stated portion.⁴⁰

So in sharing the property of the deceased his heirs are entitled to get their share without sex discrimination. One can acquire property through his or her effort and hard work, to this effect Allah says and do not covet that by which Allah has made some of you excel others; men

³⁷ Al-Adab AL-mufrad 78 BK4 Hadith 3 and 4

³⁸ Quran2:229

³⁹ Sahih Bukhari5273 BK68 Hadith 22 and 24. Abi Dawud 2228 Bk 13, Hadith 54 and 55. Nasai 3462 BK27 Hadith 74 and 75. Bulugh al maram Chapter 6 Hadith 914

⁴⁰ Quran4:7

shall have the benefit of what they earn and women shall have the benefit of what they earn and ask Allah of his grace; surely Allah knows all things⁴¹

Other means of getting property include purchase, gift will and for women they also acquire property through dower which she is entitled from her husband.

In Islam women have right to work if they wish to do, provided the work is lawful. There is no any verse or tradition of Prophet that prohibit women from doing work. All kind of job that are prohibited to women are also prohibited to men for instance selling wine in a hotel and working in a gambling house all these are prohibited in Islam.

Women are also allowed in Islam to work in government sectors for example to work as a class teacher, nurse, doctor, accountant etc. it didnt Contradict the teachings of Islam. If women wish they can do business and where the transaction involves interaction of males she can do it through her agent as Khadija may Allah be pleased with her did through her husband prophet during the time of prophet (s.a.w)

3:6 Equality in political rights

Islam gives women right to vote, almighty Allah says: O Prophet! When believing women come to thee to take the oath of fealty to thee, that they will not associate in worship any other thing whatever with god, that they will not steal, that they will not kill their children that they will not steal, that they will not commit adultery or (fornication) that they will not kill their will not disobey thee⁴²

The word “Bayan” was used which means much more than our present day a messenger of Allah, but also head of a state. Women came to Prophet and agreed with him as being the head of state; this is where women get the right to vote.

Caliphate Umar was discussing with his people with the intent to put limit on Mahr (dowry) because young men were discouraged from getting married, a young lady from the back objected the statement of caliphate Umar and said Quran has put no limit on dowry who is Umar to put limit, the verse reads but if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back: would ye

⁴¹ Quran4:32

⁴²Quran60:12

take it by slander and a manifest wrong?⁴³ Hazrat Umar respond immediately by saying Umar is wrong and the lady at back is right.

The lady objected the head of state for breaching the constitution (Quran). Therefore this indicates that women can participate in law making.

In Islam the head of a state is not just a ceremonial head, he leads Congregational prayers and travel to negotiate with officials of other states who are in most cases males. They held confidential meetings such activities are not in accordance with the teachings of Islam with status of women that is why women were not given the position.

Jihad literally means exertion or striving. In other hand it means a war undertaken for a cause of Allah and to defend religion of Islam. Allah says fight in the cause of God those who fight you, but do not transgress limits, for God loved not transgressor⁴⁴

Jihad is of two types, you can fight in yourself or fight in using your health to this effect Allah says go ye forth whether equipped lightly, or heavily, and alive and struggle, with your goods and your person, in the cause of god. That is best for you, if ye (but) knew⁴⁵ there are traditions of the Prophet which allowed women to take part in jihad.

If has been narrated on the authority of Anas Bin Malik who said that the messenger of Allah (s.a.w) allowed umm Sulaim and some other women of the Ansar to accompany him when he went to war, they give water to soldiers and treat wounded persons⁴⁶

It was also reported that Umm Atiyya the Ansarite who said I took part with the messenger of Allah (s.a.w) in seven battles. I would stay behind in the camp of men cook them food, treat the wounded persons and nurse the sick persons.⁴⁷

Therefore. the traditions qualified that women have right to go to battle field.

3.7 Equality in Legal rights

In Islam law is apply on every one without regard of sex, colour or race. The sharia protect the life and property of both men and women and that any one who killed a believer whether man or women and the act was intentionally he or she shall be killed as provided in

⁴³ Quran4:20

⁴⁴ Quran2:190

⁴⁵ Quran9:41

⁴⁶ Abi Dawud 2531 BK15 Hadith 55. Sahih muslim 1810 BK32 Hadith164

⁴⁷ Sahih Bukhari18129 BK 32 Hadith 172

Quran ‘‘ O ye who believe! The law of equality is preserved to you in cases of murder the free for the free, the slave for the slave, the women for the women, but any remission is made by the brother of the slain, then handsome gratitude, this is a concession and a mercy from your lord. After this whoever exceeds the limits shall be in grave penalty’’⁴⁸

Also almighty Allah says as to the thief male or female cut off his or her hands: A punishment by way of example, from God, for their crime and God is exalted in power.⁴⁹

In another verse Allah say regard punishment of adultery ‘‘the woman and the man guilty of adultery or fornication flog each of them with hundred stripes let no compassion move you in their case in a matter Prescribed by God If ye believe in God and the last day, and let a party of the believers witness their punishment’’⁵⁰.

It is important to note that in Islam no one will be exempted from punishment because of his or her status; whoever committed an offence should be punished according to sharia.

In Islam both sex are allowed to be a witness, to this effect almighty Allah says:- And those who launch a charge against chaste women and produce not for witness to support their allegations flog them with eighty stripes and reject their evidence even after for such men are wicked transgressors⁵¹

In giving evidence in sharia grievous offences requires more witness at least four and for minor offences it required two witnesses.

Allah say; and for those who lunch charge against their spouses and have no evidence in support of their allegations but their own, their testimony can be received if they bear witness four times with an oath by God that they are solemnly telling the truth and the fifth oath should be that they solemnly invoke the curse of God to themselves if they tell lie.⁵²

The punishment would be averted from the wife if she bear witness as in a similar way mentioned above⁵³

There is a situation where sharia requires two female witnesses and one male witness. To this issue Allah says and get two witnesses out of your own men, and if there are not two

⁴⁸ Quran2:178

⁴⁹ Quran5:41

⁵⁰ Quran 24:2

⁵¹ Quran24:4

⁵² Quran24:4

⁵³ Quran24:6-7

men, then a man and two women such as ye choose, for witnesses so that if one of them errs the other can remand her⁵⁴

This does not mean that testimony of two females is equal to testimony of one male. The verse refers to business transaction which is complicated so there is need for corroborate by another female. The verse does not state the inferiority or superiority; it only requires support to prevent the other woman from making mistake.

In Islam there is some situation where men have a degree over women vis-a-vis. For instance in inheritance male takes double share of females and in marriage contract the female is entitled to a dowry. In a tradition of prophet (s.a.w) it mentioned that one is entitled to take care of his/her mother up to three times and the fourth one he mentioned father.

In another tradition Prophet (s.a.w) said if you have three daughters and you take good care of them and marry them to their husbands, on the Day of judgment you will enter paradise⁵⁵

Therefore, we can understand that men and women have one degree over the other in some cases, but this does not mean that they are inferior or superior, they are all equal before Allah.

The prophet Muhammad (s.a.w) said:

All people are equal, as the teeth of a comb there is no claim of merit of an Arab and no n-Arab or a white over a black person, or a male over a female only Allah fearing people have merit in the sight of Allah⁵⁶

Let me give example on the matter of one sex having a degree over the other. In an examination a student score in the questions they answered will be difference but their overall scores would be the same

I therefore recommends as follows

Organizing training courses on gender equality, justice, peace and tolerance in the society.

Character building workshops more especially in the month of Ramadan

Radio programme for creating awareness in gender equality and the rights of each other.

Muslims should adhere to the teachings of Islam more than their cultures and customs.

Conclusion

In conclusion we now understand that Islam has recognized and provides equality of human being and respect of human rights. The rights of women are equal to that of men.

⁵⁴ Quran2:282

⁵⁵ Jamal A. Badawi Gender equity in islam, world Assembly of muslim youth WAMY studies in islam at pg 4

⁵⁶ Ahmad bn Hambali Almusnad vol.6 pg 411

Woman is equal to man in bearing personal duties and receiving rewards for her deeds. In the procreation of mankind women were created the same as creation of man. Islam guaranty both sexes the right to own property, to seek Knowledge, to give evidence and if any one commits an offence his/her penalty would not be less or more than that of the other sex. Inheritance was given to the heirs without discrimination each of the heir gets his or her share as provided by Sharia.

Islamic law considered equality, liberty, dignity and human rights very important, every human being is a member of a family either as a father, mother, brother or sister their rights, duties and responsibilities are equal but they are not necessarily identical that of man and woman.

It is therefore recommended that that people should be educated to know that Islamic law does not discriminate between men and women.