



# The rights of women in Islam: The question of ‘public’ and ‘private’ spheres for women’s rights and empowerment in Muslim societies

Saira Bano Orakzai\*

*University of New England, Australia  
Visiting Fellow, School of Advanced Study, University of London*

**Abstract:** The question of women rights and empowerment in Islam are one of the most controversial issues within the Islamic schema of human rights. The rights of women as given in the Qura’n and the traditions of Prophet Muhammad were a revolutionary step in the 7th century Arabia. However, the context driven reforms of rights of women in Islam is subject to many challenges in the traditional Muslim societies. This paper examines the question of women rights in Islam based on ‘public’ and ‘private’ sphere of life and its impact on the question of women empowerment. Drawing on hermeneutic–relativist approach, the article reveals the dialectical nature of interpretation of rights of women in Islam. The article also examines the question of classical and reformist understanding of rights and empowerment and suggest an approach for understanding of ‘public’ and ‘private’ spheres of life according to the cultural context of the Muslim societies.

**Keywords:** women rights, Islam, hermeneutics, universalism, empowerment, gender equality.

\*orakzai.saira@gmail.com

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## 1. Introduction

Religion is believed to be one of the most misunderstood and complex phenomena in human history. It not only provides a strong basis for moral conduct in personal and societal life but also defines for humanity the concept of ‘end of life’. Religion is also a central defining characteristic of different cultures and civilizations and most of the great religions are the foundation on which the great civilization rests. In the late twentieth century, there has been a global resurgence of religions consciousness around the world. This phenomenon has intensified religiously inspired movements around the world,<sup>1</sup> which makes it essential to understand the influence of religion within human rights discourse.

Islam, as a religion, remains one of the most influential factors in Muslim societies. Muslim responses to the international human rights regime have been mixed, since its emergence at the universal level after the passage of Universal Declaration of Human Rights by the United Nations General Assembly in 1948. Talking about human rights, there is a sense or assumption about the universality of human rights which gives a linear depiction of understanding of this discourse. On the other hand, within the human rights discourse, women’s rights have been categorized as an unintended issue which raises some crucial questions. This paper takes hermeneutic-relativist approach to the issue of women’s rights in Islam and considers recognition of cultural relativism and hermeneutic understanding of the Qura’n

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1 Samuel P. Huntington, *The Clash of Civilization and the Remaking of World Order*, (New York: Touchstone, 1996).

according to this principle. This is critical since the emergence of women rights in Islam and the verses revealed in this regard have been influenced by the cultural understanding of the society of the 7<sup>th</sup> century Arabia.

The paper takes the approach of understanding the dichotomy of 'public' and 'private' spheres in the lives of Muslim women and its impact on the question of women's rights and empowerment. In this paper, the term 'private' sphere of life means the domestic sphere within the premises of house and family while the 'public' sphere is considered the social and political sphere for women in Muslim societies. This gendered division of society into public and private has a very serious influence on women's empowerment. It impacts their ability to participate in decision-making processes, to influence policymaking discriminating against them and to control the state institutions making decision about their role and life in the society. These divisions of spheres make human rights divisible, which they normally are not. The division of spheres not only stereotypes the role of women but also puts barriers and limits their ability in the society to perform as human beings.

The rights given in Qura'n in the 7<sup>th</sup> century, though revolutionary at that time, recognized the need for a gradual approach towards achievement of the full message of the Qura'n. The United Nations in this regard played an important role by emphasizing a gender focus approach and enhancing critical importance of women empowerment through UNSCR 1325. This paper develops three important points and argues that in order to foster empowerment, the recognition of the rights of women within Muslim societies is crucial. Firstly, it explores the question of cultural relativism and its impact on the human rights discourse and the Islamic understanding of human rights. Secondly, the hermeneutic-relativist approach will be highlighted in the context of women's rights in Islam. Thirdly, the question of equality in matter concerning women rights in Islam and different new interpretations will be discussed. Lastly, it will draw on the question of 'public' and 'private' spheres and its relation to the question of empowerment in the society.

## 2. Islam, human rights and cultural relativity

Human rights are considered to be the rights of the people just by virtue of being human. Primarily, the procedural sense of human rights is about creating and maintaining the space for individuals and groups to achieve justice, personal security, wellbeing, general political stability, economic development and so forth.<sup>2</sup> The basic elements of human rights are equality, freedom, universality, tolerance and peaceful coexistence of the people around the world. The Universal Declaration of Human Rights (UDHR) considers universality and equality as its basic concepts. When the UDHR was passed by the UN General Assembly on December 10, 1948, it did not represent most of the countries in Asia and Africa. The empires that colonized these countries were the main architects behind the universalist project of human rights. Later on, when colonized states got independence, most of the newly independent states reaffirmed this declaration as a matter of policy in order to become an active and cooperating member while declaring reservations on some of its articles that were contrary to their religious-cultural values.

On the other hand, in Islam, *Shariah* (Islamic law) is the basis of its concept of rights and duties. Abdullahi An Naim terms *Shariah* as 'the historically conditioned human understanding of Islam. It is not Islam in its totality'.<sup>3</sup> The primary sources of Islamic law are the *Qura'n* (Holy Book) and *Sunnah* (traditions) of the Prophet Muhammad; and secondary sources, *Ijma* (consensus of opinion of jurist), *Qiyas* (analogical reasoning) and *Ijtihad* (independent reasoning). The traditions of companions of the Prophet Muhammad and earliest generations of Muslims are also authoritative sources of Islamic laws. Later on scholars and jurist developed principles and methodologies, and specific ruling concerning different issues faced by Muslims according to Qura'n and Sunnah. This was followed by a period of adherence to a particular master thus leading to development of *Madhabs* (schools of jurisprudence) strictly followed by the adherents. These schools of jurisprudence are: Malaki, Hanbali, Hanafi and Shafi schools of jurisprudence within the predominant Sunni sect of Islam.

The Qura'nic term for rights is *huqq* (plural *huquq*). According to Muhammad Arkoun the 'Qura'nic term *al haqq* applies to God Himself as well as to the absolute transcendent truth'.<sup>4</sup> *Huquq* here is not the legalistic rights of the Western discourse but a right to be the recipient of certain duties that form the basis of the Islamic understanding of human relations and political and social organisation. It is more comparable to the notion of duty and obligation. Thus, the most widely accepted theory of rights amongst Islamic jurists can be divided into three types:

- Rights of God (*huquq Allah*): these consists of all obligations that one has to discharge simply because they are divine commands, even when human interest or utility in undertaking them are not apparent such as prayers, fasting, *hajj* (pilgrimage), Zakat (charity tax), and so on.

2 Abdullahi Ahmed An Nai'm, 'Human Rights', in *The Blackwell Companion to Sociology*, ed. Judith R. Blau (Malden, MA: Blackwell Publishers, Inc, 2001).

3 Abdullahi Ahmed An Na'im, 'Human Rights, Religion, and the Contingency of Universalist Projects', Occasional Paper PARC 2, 87, (September 2000), <http://www.law.emory.edu/aannaim/pdfiles/dwnld28.pdf>.

4 Muhammad Arkoun, 'The State, Individual and Human Rights: A Contemporary view of Muslims in Global Context', *The Muslim Almanac: The Reference Work on History, Faith and Culture and the People of Islam* (1995), 456.

- Rights shared by God and his servants (*huquq Allah wa al Ibad*): these include acts that are obligatory because God demands them but they are also intended to protect the public.
- Rights of God's servants (*huquq al Ibad*): these are rights intended to protect individuals' interests, such as fulfilling promises, paying back debts and honouring contacts. People are still accountable to God for their fulfillment.<sup>5</sup>

Omar Siddiqui, while discussing the concept of human rights in Islam points that the classical concept of human rights rest on the rights granted by God while the Western concept rests on rights by virtue of our humanity.<sup>6</sup> The source of revelation is the key in Islamic discourses. The source of obligation is what is fundamentally different between the two traditions.<sup>7</sup> The rights of women are mentioned for protection of chastity of women while non-Muslims are given rights of protection of life and security under the status of '*Dhimmi*' (protected) in an Islamic state.

### 3. Women's rights and hermeneutics-relativist approach

The hermeneutic-relativist approach calls for an interpretation of text according to cultural understanding and context. Bernard Lonergan considers two problems concerning interpretation. First, the need to avoid projection of one's own point of view in the interpretation of text which involves bias born out of relativist understanding of interpreter. Second, is the question of communication to a wider audience which is concerned with 'the relativity of interpretation to the audience to which it is addressed'.<sup>8</sup> He points that the areas which are to be considered in hermeneutics are of expression and meaning.<sup>9</sup> The hermeneutic-relativist approach, if applied to the women rights in Islam, will involve understanding of rights of women according to the cultural contexts of different Muslim societies. It also will bring the diversity issue within Islam and respect of diversity, which Islamic principles call for. Moreover, it will disentangle the Muslim societies from the 'arabized' form of Islam and the 'westernized' form of discourse on human rights and bring diverse cultural resources within the Muslim societies for understanding women's rights issues. To this end, Azzizah al Hibri points that in order to gain empowerment as their right,

the majority of Muslim women who are attached to their religion will not be liberated through the use of a secular approach imposed from the outside by international bodies or from above by undemocratic governments. The only way to resolve the conflict of these women and remove their fear of pursuing rich and fruitful lives is to build a solid Muslim feminist jurisprudential basis which clearly shows that Islam not only does not deprive them of their rights, but in fact demand these rights for them... it is imperative that Muslim women find their own way in the thickets of patriarchal religious reasoning.<sup>10</sup>

Therefore to Hibri, the demand of these rights through social and political motivation and influence is the key to empowerment of women as specified by Islam. Similarly, Abdullah Hi An Na'im questions the universality of human rights and believes that it is not universality as such but the important question is whose universality it is representing.<sup>11</sup> He further explains the universally normative systems and points that there is nothing culturally neutral and considers everything to be culturally rooted because it's the eye through which humans see the world. Although human rights as given in the UDHR assert that all humans have certain rights by virtue of their humanity, because they share a universal human nature, but the important point is that human nature is also cultural relative as it is formed by culturally relative behavior.

An Na'im considers universalization of specific projects which seems to be as universal as culturally specific. According to him universalistic projects are artificial constructions because they claim to construct a universal consensus out of an inherently culturally diverse world. Therefore, the problem of implementation of human rights can be solved by actively engaging religious-cultural resources which have great influence on the belief systems and the behaviour of the people. He points out that there is need for reconciliation between universal and cultural sources while the

5 Ibid, 457.

6 Omar Siddiqui, 'Relativism vs. Universalism: Islam and the Human Rights Debate', *American Journal of Islamic Social Sciences* 18, no. 2 (Winter 2001), 78-80.no. 2.

7 Ibid.

8 Ivo Coelho, *Hermeneutics Method: The Universal Viewpoint in Bernard Lonergan* (Toronto: The University of Toronto Press Incorporated, 2001), 3.

9 Ibid, 4.

10 Azzizah al Hibri, 'Islam, Law and Custom: Redefining Muslim Women's Rights', *American University International Law Review* 12, no. 1 (1997), 3-4.

11 An Na'im, 'Human Rights, Religion, and the Contingency of Universalist Projects', 3.

paradox of polar extremes depicted in the universality of human rights and relativity of religion must be removed.<sup>12</sup> The importance of religious factors and their influence is different in each society, therefore the world must not be viewed through the prism of Western secular ideas only. Although other factors like economic, social, political factors must be taken into consideration, however for most people religion provides the base from which other values emanate. Thus, the relevant approach needs to be of conducive mediation between the polar extremes of universality and relativity through emphasizing common feature of human experience over difference in abstract theological terms.<sup>13</sup>

In contrast to the universal concepts, the relativist holds that there are certain moral and social rules which are exempted from legitimate criticism by those outside the cultural reality. This doctrine of cultural relativism is strongly supported by communal autonomy and self-determination.<sup>14</sup> According to Jack Donnelly, the two notions of radical relativism and radical universalism leads to deadlock and it is important to adopt a view that considers human rights as universal though recognizing culture as a limited source of exception and principle of interpretation. The cultural variability of human nature not only permits but requires significant allowance for cross-cultural variation in human rights.<sup>15</sup>

On the other hand, for M.J. Herkovits, judgments are based on experience and experience is interpreted by each individual in term of her/his own enculturation, that is, through socialization of the individual in accordance with the norms and values of his/her own culture.<sup>16</sup> He further elaborates that having a right to live by one's own code of life or culture does not mean that we should impose it on another and expect them to live by our codes. He suggests that the 'least common denominator to be extracted from the range of variations that all phenomenon of natural or cultural world manifest'<sup>17</sup>. Therefore, according to him, cultural relativism does not mean the setting of absolute criteria for judging the validity of values of other cultures.

#### 4. Rights of women in Islam

In Islam, although the inherent dignity of all human beings (which calls for worth and value of each human) has been respected, the concept of equality of sexes, and social and political equality of Muslim and non-Muslims as human beings enshrined in the UDHR is absent. Nevertheless, spiritual equality of sexes have been recognized in Islam. This is due to the recognition by classical Muslim jurisprudence of the essential inequality of men and women and division of rights of women into different categories as wife, mother and daughter instead of women's rights as a whole, while non-Muslim have been given the protected status of *Dhimmi*. In this regard, the Cairo Declaration of Islamic human rights, passed at the Organization of Islamic Conference (OIC) session in 1990, is an important document concerning the rights of Muslim women in contemporary times.

The Cairo Declaration states in Article 5 that:

- (a) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, color or nationality shall prevent them from enjoying this right.
- (b) Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

Article 6 states that:

- (a) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.
- (b) The husband is responsible for the support and welfare of the family.<sup>18</sup>

These articles are concerned with institution of family. Women are declared equal to men in human dignity, they have their own civil entity, and right to retain their name and lineage. The woman has her own set of rights and duties thus rejecting the concept of equality of all humans. Responsibility of family welfare is given to the husband making his

12 Abdullahi Ahmed An-Na'im, 'Islam and Human Rights: Beyond the Universality Debate', *Proceedings of the 94th Annual Meeting of the American Society of International Law* (2000), 95.

13 Ibid.

14 Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), 90.

15 Ibid., 90-91.

16 Melville J. Herskovits, ed. *Cultural Relativism Perspectives in Cultural Pluralism* (New York: Random House, 1972), 15.1972

17 Ibid.

18 'The Cairo declaration on Human Rights in Islam', <http://www.oic-oci.org/english/article/human.htm>.

position superior to the woman in marriage and family. Women's right to education has been recognized while at the same time declaring *Shariah* as the only source for the interpretation of these articles. These articles confine women's role within the institution of family and marriage, which is the domestic sphere while the public role of support and welfare is given to men in the society.

The Cairo declaration depicts the importance of *Shariah* or Islamic law for Muslims as this declaration was passed by the OIC representing 57 Muslim states. It affirms that in order to promote human rights values in the Muslim societies, there is a need for understanding and respect of importance of religion as a predominant factor for the Muslims. Nonetheless, it is incumbent upon Muslim thinkers to reform or reformulate the traditional concepts in order to bridge the gap for genuinely promoting value of human rights in Muslim societies, irrespective of debate of the origin of this concept.

Elaborating the traditional understanding of women rights in Islam, Sayyed Qutb, an Egyptian ideologue and proponent of the political role of Islam, in his book, *Social Justice in Islam*<sup>19</sup>, points that men and women have been created from a single *Nafs* (soul) which means that they share the same soul and nature. Men and women are equal before God and the difference between them is due to their different roles in life. Men have been given more rights in inheritance because Islam has given men the role of protector of women and the family. Moreover, he asserts that Islam gives equal rights to women in maintenance of property, right to consent at the time of marriage, party to the marriage contract, to maintain their name after marriage, limited divorce rights, right to education, work and economic rights. The position in case of testimony is half to men due to the weak memory and inherent shyness of women to come to the court for giving testimony. Muslim men have been given the right to marry women of the book (Jews and Christians), but this right has been denied to Muslim women because of their emotional nature. He points out that Islam is not based on idealism but is a practical religion and all its injunctions are according to the realities of the world and negates idealist and inconceivable notions.

Abu al Alaa Moududi belongs to the traditional conservative school of Muslim scholars whose work and thoughts has influenced Muslim all over the world. His major work concerning human rights is *Human Rights in Islam*.<sup>20</sup> According to him there are three basic principles of Islamic political system, that is, Tawhid (Oneness of God), Risala (Prophet hood) and Khalifa (caliphate).<sup>21</sup> On the issue of equality, he elaborates that Islam recognizes absolute equality between Muslim men irrespective of any distinction of color, race and nationality. Women are not considered equal to men in his human rights scheme and are not given right to be in public sphere, which is confined to men due to their inherent superiority over women. In short, his concept can be termed as the Rights of Men and Women on one hand and Muslims and non-Muslims on the other hand.<sup>22</sup> It cannot be termed as human rights as a whole because the concept of human rights, as generally understood, requires minimum level of equality based on gender and religion along with other factors. However, he does elaborate specific rights in Islam based on clear distinction from the universal concepts as enshrined in the UDHR whereas presenting an Islamic model of rights and duties and preserving the basic tenets of the traditional concept of *Shariah*.

Jamal Badawi point out that equity is a better term for dealing with the gender issue in Islam, rather than equality. Nevertheless, equity in Islam means justice and equality in rights and responsibilities of both genders, which allows the possibilities of variation on the question of rights in specific terms within the framework of balance and equality.<sup>23</sup> This will provide a better way of dealing with the question of women's right in public and private spheres in order to address the question whether in certain matters equity is a better option, or gender equality.

While examining the question of gender equality, it is observed that in Islam this matter has been raised mainly due to two issues: inheritance and testimony, which also affect their role in public and private sphere. Qura'n (4:7) says that,

From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large – a determinate share.

According to the Qura'n, women get half of the share of inheritance as compared to men but this is compensated by the fact that she gets full property rights before and after marriage, entitled to get marital gifts, to keep present and future property and income for her own security and in addition to that women are not required to spend their income on the household, they are entitled to full financial support in their father's house and after marriage by their husbands,

19 Sayyed Qutb, *Social Justice in Islam*, trans. John.B Hardie (New York: Islamic Publication International, 2000).

20 Abu Ala Moududi, *Human Rights in Islam* (London: Islamic Foundation, 1980), 7.

21 Ibid.

22 Ibid.

23 Jamal Badawi, *Gender Equity in Islam: Basic Principles* (USA: American Trust Publications, 1995).



during the waiting period (*iddah*) in case of a divorce; whereas God made men responsible for supporting their family and poor relatives.<sup>24</sup>

The question of testimony is discussed in the Qura'n 2:282

O you who believe! When you deal with each other in transactions involving future obligations in a fixed period of time reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as Allah has taught him so let him write. Let him who incurs the liability dictate but let him fear his Lord Allah and not diminish aught of what he owes. If the party liable is mentally deficient or weak or unable himself to dictate let his guardian dictate faithfully. And get two witnesses out of your own men and if there are not two men then a man and two women such as you choose for witnesses so that if one of them errs the other can remind her.

The content of this verse deals with the question of testimony in case of financial transaction and no reference of superiority of either gender is made; however on the question of witness, in the absence of one male witness two women as witness are required by law. While in serious criminal cases *Shariah* holds women as incompetent witnesses, regardless of knowledge of facts. The other kind of discrimination to be found in *Shariah* is related to *Diya* (monetary compensation to be paid to victims of violent crimes or to their surviving kin): it is less for female victims than it is for male victims.

Similarly on the question of marital rights, Muslim males have a right to marry up to four wives and right to marry non-Muslims from *Ahl-al Kitab* (people of the book i.e. Jews and Christians), while Muslim women are not allowed to marry non-Muslims. Similarly, men can divorce women at their will, without citing any reason while women have only limited divorce rights based on specific and limited grounds and then only through a judicial order. Another issue which is very thorny is the *Shariah* justification of domestic violence. Qura'n states in verse 4:34:

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 if they return to obedience, seek not against them means (of annoyance) for Allah is Most High, Great (above you all)'.

Riffat Hassan while critically examining the Surah explains the meanings to the verse as,

[T]he Arabic word that is generally translated as 'beating', when used in a legal context as it is here (in Surah al-Nisa 4:34), means 'holding in confinement', according to the authoritative lexicon of Taj al-Arus... I have analyzed sura 4 verse 34 in order to show how words of the Qur'an have been mistranslated in order to make men masters and women the slaves.<sup>25</sup>

In this regard, Hassan cites a Hadith in Abu Dawud: Book 11, Number 2139 and Sahih Al-Bukhari Book 8, Number 68,

'What do you say (command) about our wives?' He replied: 'Give them food what you have for yourself and clothe them by which you clothe yourself, and do not beat them, and do not revile them.' 'How does anyone of you beat his wife as he beats the stallion camel and then he may embrace (sleep with) her?' Do not beat the female servants of Allah; 'Some (women) visited my family complaining about their husbands (beating them). These (husbands) are not the best of you' and '[is it a shame that] one of you beats his wife like [an unscrupulous person] beats a slave and maybe sleeps with her at the end of the day'. (Riyadh Al-Saliheen).<sup>26</sup>

Classical jurist have allowed beating with *Miswak* (light natural tooth brush) if there is disloyalty on part of women in order to save the marriage otherwise Prophet has himself said in various *hadith* not to beat women and be kind to them<sup>27</sup>. According to Hassan, the inferior status of women in the society is due to three reasons,

- the assumption that women is created from the rib of man.
- woman (Eve) is responsible for man's(Adam) fall from heaven

24 Andreas Christmann, ed. *The Qur'an, Morality and Critical Reason: The Essential Muhammad Shahrur*, vol. 106, Social, Economic and Political Studies of the Middle East and Asia (S.E.P.S.M.E.A) (Leiden, Boston: BRILL, 2009), 234-53.

25 Riffat Hassan, 'Members, One of Another: Gender Equality and Justice in Islam' <http://www.religiousconsultation.org/hassan.htm>.

26 Ibid.

27 Ibid.

- woman is created for man and her existence is instrumental and not of fundamental nature.

She points that the story of creation of women from men's rib is in the Genesis 2 and not in the Qur'an, in which Adam is mentioned twenty five times and in twenty one instances refers to humanity. There is no mention of Eve in Qura'n. Secondly, in Islam both men and women are created to serve God's purpose and Qura'n does not mention that Eve was responsible for Adam's fall from heaven.

On the issue of polygamy, Mohahammad Shahrur explains this concept through his theory of Limits (*hudud*). Qura'n (4:2) says,

Give unto orphans (yatama) their wealth. Exchange not the good for bad, nor absorb your wealth into your wealth.

4:3 And if ye fear that ye will not deal fairly with the orphans, marry of the women, with complete good will, two three or four, and if ye fear that ye cannot do justice then one only... it is more likely that ye will do justice.

According to him these verses refer to two kind of limits; qualitative and quantitative. 'Quantitatively, the lower limit is marrying to a single wife and upper limit is to four wives.'<sup>28</sup> This is the general understanding prevailing among classical and traditionalist jurists as well as common people. He says that the qualitative aspect of these verses is as important as quantitative aspects. He further contends that concerning this verse one particular question was never asked as to what sort of woman is meant in these verses because these verses do not mean a whole class of women but only mothers of the orphans, as the verse clearly says 'if ye fear ye will not deal fairly with orphans' is, in Shahrur's view, connected to the marrying of women.<sup>29</sup>

Shahrur asserts that God in this context allows a man to marry second, a third and a fourth wife, but he did not mention qualitatively nor quantitatively the exclusion of first wife. The connection between first and second part of the verse is that of orphan and marrying second, third and fourth wives. As the mother is a widow and can be relatively young so the permission is to marry widow especially young wives who will bring young children with them. He points out that 'doing justice' means, justice between children from the first wife and the other wives and if they cannot do justice with orphan children than it is better to marry one women. He claims that the last words of the verse confirm the notion that it is difficult to do justice in economic sense or otherwise in case of having a lot of children within a single house.<sup>30</sup> This is a better method of providing care for the widows and their children and he argues that the Book (Qura'n) does not call for paying dowry to them if they are providing basic needs for their orphaned children (4:127).<sup>31</sup> Whereas the verse (4:129-130)<sup>32</sup> says it is impossible to do justice to them, nonetheless God does not insist on doing full justice to these widows and therefore it is not required at all because marrying widows is to do justice toward orphans.

## 5. Empowerment and public-private sphere for women's rights in Muslim societies

The project 'Women's Empowerment in Muslim Context' funded by the British government defines empowerment within the Muslim societies as 'the interplay of local development, polity formation and gender politics: the study of gender implications at the level of meso power and authority where we situate socio-political impasses and also transformative change'.<sup>33</sup> This challenges the patriarchal structures and increases the ability of women to question the gender power relations within Muslim societies for an equitable society through their own decision and actions. This will not only involve political and economic empowerment but also involves equal participation within the decision making process.

28 Andreas Christmann, ed. *The Qur'an, Morality and Critical Reason: The Essential Muhammad Shahrur, Morality and Critical Reason: The Essential Muhammad Shahrur*, 266-267.

29 Ibid, 261.

30 Ibid, 261-62.

31 4:127 And they request from you, [O Muhammad], a [legal] ruling concerning women. Say, 'Allah gives you a ruling about them and [about] what has been recited to you in the Book concerning the orphan girls to whom you do not give what is decreed for them - and [yet] you desire to marry them - and concerning the oppressed among children and that you maintain for orphans [their rights] in justice'. And whatever you do of good - indeed, Allah is ever Knowing of it.

32 4:129 And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever Forgiving and Merciful. 130: But if they separate [by divorce], Allah will enrich each [of them] from His abundance. And ever is Allah Encompassing and Wise.

33 'Women's Empowerment in Muslim Contexts: Gender, Poverty and Democratization from the Inside Out'. <http://users.ox.ac.uk/~qehwemc/welcoming%20message.html>

Structural and systematic empowerment of women is crucial to this end. While defining peace, Johan Galtung asserts that it is important to end 'structural violence' within the society in order to establish a positive concept of peace within the society. This concept of structural violence – which he defines as unequal social structures and institutions, which prevent people from meeting basic needs and eventually leads to violence within society<sup>34</sup> – if applied to the concept of women's empowerment within Muslim societies, ends the prevalence of structural violence against women in society.

This issue of 'structural violence' requires a gender-equality approach. The question of superiority of men over women has generated much debate. The reformist Muslim scholars have made efforts to reduce the level of inequality between sexes to promote women's empowerment. The Qura'nic text and traditions of the Prophet which are considered as source of this inequality is the verse 4:34 which says

men are the protector (qawwamun) of women, because God has given the one more (preference, or strength: *Fadilah*) than the other, and because men support women from their means.

The redefinition of the word 'qawaam or protector' is crucial to define the space for women in private and public realm in the society. According to Amina Wadud, the concept of male superiority is due to the fact that male–male experiences are looked upon as a norm while the female are looked upon in terms of their utility to men, which is primarily reproductive. Some classical jurists and at present traditional jurists use the verse 4:34, to justify inequality between sexes and superiority of men over women in domestic as well as public sphere.<sup>35</sup> Azizah al Hibri while discussing the issue of Qawaam gives an alternative interpretation of the verse 4:34 which states that

Men are [advisors/providers of guidance] to women [because/in circumstances where/in that which] God demands some of them different from some other and [because/in circumstances where/in that which] they spend of their own money.<sup>36</sup>

Asghar Ali Engineer points that the word *Qawwam* should be understood in the proper social context, as in Arab society men were responsible for earning livelihoods and women handled domestic duties.<sup>37</sup> Their particular social function in their own cultural contexts shows their functional superiority in that social order. He points out that in the verses revealed in Makkah, Allah has set a universal criteria of 'piety'<sup>38</sup> for superiority between men and women in the verse 49:13<sup>39</sup>. He further says that the meaning of word *Qawwam* should be taken into the social context in which it was revealed. It was not a normative meaning that would have made it binding for all women for all ages and circumstances. He concludes by saying that women enjoy all their rights as individuals not merely by virtue of being mothers, wives or daughters, though such status would only be considered for the purpose of their inheritance and other legal matters. He asserts that the verse only shows functional superiority of men in that social order of Arabian society otherwise Allah would not have set criteria of superiority in the Qura'n as being pious.<sup>40</sup>

Engineer considers that in contemporary times, scripture is not invoked to justify slavery so the question of women's rights or no rights is comparable to that of slavery.<sup>41</sup> He points that there is a tendency towards equality of sexes in the Qura'n, while biological otherness does not mean unequal status for either sex. Biological functions must be distinguished from social functions. When the Qura'n gives men preference over women it clarifies that it is not due to any inherent physical weakness of female sex, but due to the social context of the Arabian society.<sup>42</sup> In reply to a question in an interview taken by the author he remarked, the Qur'anic injunctions gives equal rights to women; it is the Muslim society which has suppressed these equal rights for women. We must give these Qur'anic rights to women. For reasons of strategy, gradual process needs to be adopted however the Qur'an has clearly given equal rights to women already which can play an important role in achieving the goal of empowerment.<sup>43</sup>

Louy S. Safi explains the concept of Qawwamun and considers that all limitation placed on women in public sphere are due to the faulty interpretation of classical jurists and limitations connected to the social and political

34 Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (London: Sage, 1996).

35 Amina Wadud, *Qur'an and Woman: Reading Sacred Text from a Women's Perspective* (New York: Oxford University Press, 1999).

36 Hibri, 'Islam, Law and Custom: Redefining Muslim Women's Rights', 29.

37 Asghar Ali Engineer, *The Rights of Women in Islam* (London: C. Hurst, 1992), 46.

38 Ibid.

39 49:13: O mankind! We created you from a single (pair) of male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of God is (he who is) the most righteous of you.

40 Ibid., 46-47.

41 Ibid.

42 Ibid., 44.

43 Interview taken by the Author from Asghar Ali Engineer, 2012.



structures operating within the historical society of seventh-century Arabia.<sup>44</sup> He maintains that Allah has given equal rights to women in maintaining public order as the Qur'an verse 9:71 says:

the believer men and women, are protectors of one another; they enjoin the right (ma'ruf) and forbid the intolerable (munkar); they observe regular prayers, practice regular charity and obey God and his messenger.

This verse gives equal responsibility to maintain public order and thus it can be deduced that both sexes have got equal political rights.<sup>45</sup>

According to Safi,

the word *qawwamun*, which connotes 'support' and 'protection' signify authority as well" It signify authority because the rest of the verse give men the right to discipline women guilty of mischief.

Safi claims that this authority is relevant within family but not in public sphere as the Qur'an does not intend to give authority to every single man over every single woman<sup>46</sup>.

Concerning the role of women in the public sphere, there is controversy about a hadith of the Prophet Mohammad, 'they shall never succeed, those who entrust their affairs to a women'.<sup>47</sup> According to Safi, these comments were made by the Prophet Muhammad when he heard the news of the accession of Buran, the daughter of King Anusherawan, to the Persian throne.<sup>48</sup> Safi scrutinizes the above *hadith* and asserts that we do not find any supporting Qur'anic text regarding this issue. He justifies that as it was just an opinion and not a directive which has to be understood in the cultural and historical context of Arabia as in the political society of that time women had no role in the political life and, hereditary principle was the rule.

Secondly, it contradicts the principle of moral and political equality of the sexes as given in Qur'an, and lastly this *hadith* is '*Khabar Ahad*', that is, a single narration and of a lesser degree of certainty than *Khabar Mutawatar*, having a chain of narration so it cannot overrule established principle of the Qur'an. This tradition of the Prophet Muhammad is attributed to an ex-slave and companion of Prophet Mohammad Abu Bakra. He told Ali bin Abi Talib (the fourth Caliph of Islam) about this *hadith* at the time of battle of Camel that he has reminded Aisha (Prophet Muhammad's wife) about this *hadith* to make her surrender before the decisive battle. While judging the authenticity of this *hadith* in *Fateh-al-Bari*, the chain of narrator and complete analysis of *hadith*, it was found that he was once flogged for bearing false witness in an adultery case so most of the scholars did not considered him as a reliable source. Secondly, the Qur'an mentions in Surah Nimal chapter 27, the leadership of Bilqis, the Queen of Saba for her qualities as a good leader. It was not the holding of the office of leader but her sound judgment and political skills which are appreciated in Qur'an.

Safi considers all issues of gender inequality, question of polygamy, unequal inheritance rights and inter-religious marriage to be found in the private or domestic sphere and not in the public life. The question of dressing of women and forcing them to wear a special kind of dress is also considered against the notion of freedom in public sphere.

Qur'an in 24:31 says:

And say to the believing women that they should lower their gaze and guard their modesty, that they should not display their beauty and their ornaments except what (ordinarily) appear, that they should draw their veils over their bosoms and not display their beauty except to their husbands, to their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers or their brothers' sons, or their sisters' sons, or their women, or the slaves whom their right hands possess, or male attendants free of sexual desires, or small children who have no carnal knowledge of women, and they should not strike feet in order to draw attention to their hidden ornaments, And O ye believers! Turn ye all together towards Allah in repentance that ye Maybe successful.

Verse 59 sura 33 says:

O Prophet, tell thy wives and daughters and the believing women that they should cast their outer garments over their persons (when out of doors) that is most convenient, that they should be known (as such) and not molested, and Allah is forgiving and most merciful.

<sup>44</sup> Louay M. Safi, 'Towards an Islamic Tradition of Human Rights', *American Journal of Islamic Social Sciences* 18, no. 1 (Winter 2000), 34. no. 1.

<sup>45</sup> *Ibid.*, 35.

<sup>46</sup> *Ibid.*, 36-37.

<sup>47</sup> Bukhari, Maghazi, 82, Fitan, 18; Tirmidhi, Fitan, 75; cited in Safi, 37.

<sup>48</sup> Safi, 'Towards an Islamic Tradition of Human Rights'.

Shahrur gives upper and lower limit in this case also and contends that indecency and prostitution are outside God's limits. Shahrur points that verse 31 chapter 24 gives the lower limit of women dress while a tradition of the Prophet Mohammad calls for exposing face and hands, which is the outer limit of dress. The verse 59 chapter 33 gives the directive of how to move in between limits for the realization of message of the Qur'an. Verses 59 and 33 set the limit of how women should dress which is socially accepted. He points that nudity is outside God's limit, while covering all the body, including the face, is outside the Prophet's upper limit hence women should dress between these limits.<sup>49</sup>

According to Abdul Aziz Sachedina, the Qur'an inherited a system in the tribal culture of the seventh century, where the status of woman had to be revolutionized. It also inherited the institution of slavery. In both situations, the Qur'an proposed reforms: it controlled the limitless abuse of women. It provided a framework for the society to liberate those who were unfortunate in the slave-master relationship. However, the history of Muslim conquest and the turn towards excessive materialisms led to the stagnation of rights of women, slaves and minorities within the Muslim schema of rights. The Qur'an at no time endorsed the manipulation of the weak. It also legislated for the protection of women within its tribal cultural framework, expecting Muslims to use these directives as templates for further improvement rather than the final ruling with fixed meanings. Thus, the only way to understand Qur'an today is to rediscover its ethical emphasis which has been overwhelmed by its legal directives. In his view, Muslim scholars have lost touch with the universal dimensions of the Qur'anic ethics and have somehow limited the entire message to hairsplitting jurisprudence.<sup>50</sup>

## 6. Conclusion

Elisabeth Porter emphasizes the need for structural and political development in order to bring transformative changes for ending oppression and coercive power relations within society. In this regard, it is important to have the gender equality concept locally-driven and context-driven.<sup>51</sup> To this end, the argument in the paper on the question of hermeneutics or interpretation firstly reveals the dialectical nature of the Qur'anic text and its interpretations according to cultural contexts using reformist methodological approaches. It was found that the interpretations of the classical jurist concerning women are influenced by their own historical and cultural experiences. Yet there are some of the Qur'anic text limiting the rights of women as compared to men, which can be dealt by emphasizing a context-driven interpretation of the Qur'an and also by the bringing to the forefront those verses of the Qur'an and traditions, which calls for equality and respect of women both in the public and private sphere.

Secondly, it is found that mostly women are excluded from right of interpretation of Qur'anic text, although some women in the past have tried and now present women scholars such as Azzizah Al Hibri, Riffat Hassan, Laila Ahmed, Asma Barlas and many others are trying to deal with issues concerning women. Therefore, it is very important to allow women to debate about their sphere of activity in order to dispel the feeling of discrimination and lack of respect to women within Islamic society.

To conclude, the paper has discussed issues concerning Muslim women in public and private sphere which pertains to question of equality, marriage rights, inheritance, polygamy, testimony etc. The discussion clearly showed that there is an inherent difference of interpretation of text concerning the public and private spheres of rights and duties of women according to Islam. Moreover, in the public sphere, the Qur'an calls for human dignity and piety as the central principle governing the relationship between men and women in society. Responsibility of organizing the public sphere is jointly given to both genders on the basis of promoting values of forbidding evil and promoting righteousness in society. Giving slight authority over women in private sphere of family does not give authority and superiority to all men over all women in society. It was the social context of Arabian society which gave the present form of interpretation of women rights. The interpretation given by the reformist scholars are depicting the cultural context within the twenty first century Muslim societies as well as their understanding of Qur'an and Hadith according to new conditions. It is, therefore, imperative for Muslim societies to reform women's rights through hermeneutic-relativist approach representing changing time and cultural context to give women a sense of empowerment within Muslim societies.

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49 Andreas Christmann, *The Qur'an, Morality and Critical Reason: The Essential Muhammad Shahrur*, 292-312.

50 Interview taken by the Author from Abdul Aziz Sachedina.

51 Elisabeth Porter 'Rethinking Women's Empowerment', *Journal of Peacebuilding and Development*, 2013. 8:1.