

WOMEN'S RIGHTS IN ISLAM AND THE CONTENT OF CEDAW*

*By Mohammed Tay
Translated and Abridged by Ghena Ismail*

The paper sheds light on the positive role religions have played in advocating freedom. Religion liberated man from all forms of oppression, slavery and dominion, and then left to him (the man) the power to act within a general framework based on freedom. However, human beings did not remain committed to this principle, and the strong man has imposed his will over the weak. One of the expressions of such authority was man's oppression of woman. Apparently, women's rights have been subject to most ambiguity especially in relation to the issue of equality.

There are contradictory stands among scholars of Islam regarding the issue of equality. While some deny the existence of such a principle, others emphasize its presence. There is a consensus among scholars of Islam regarding women's equality to men in a number of areas such as those related to the value system and the moral and ritual duties. There is also a general consensus in relation to sovereignty, and economic and civil matters. In such areas, the Islamic positions can be considered compatible with the first and second paragraphs of article 13 of CEDAW and with the general goals set by the International Conferences for Population, Development and Women's Problems.

Controversy among scholars of Islam becomes apparent, however, when family matters are dealt with. Some scholars account for the difference in heritage and family relationships by assuming that women are inferior. Other scholars reject this assumption and hold that women are equal to men. Equality suggested by the latter does not imply sameness, but rather balance and equivalence. The Islamic analysis of the problem as proposed by thinkers of the Iranian Revolution is that differences between men and women entail that certain rights and duties will not be the same for both of them. The rights subject to controversy can be classified into three main categories: social and political rights; issues related to choice of spouse, inheritance, indemnity and testimony, and relationships within the family.

Regarding the first category of rights, it is important to distinguish between social rights and political ones. While some Islamic jurists agree that

women and men have equal economic rights, they disagree over the issue of work. Those who advocate woman's right to work state that women can take precautions by including this right in the marriage contract. They also note that woman's work does not hold her financially responsible for the family. Thus, Islam conforms with CEDAW in this respect. Regarding other measures related to employers, Islam obliges the employer to give an equal pay to men and women, but does not bind him to give women paid leaves. This problem can be solved by establishing special funds that can be nourished through ways suggested by Islamic jurists.

Although jurists who support woman's work advocate her right to participate in political activities, they tend to disagree over the extent/limits of this right. The majority of jurists do not see the woman as qualified to rule. The justification given by Sheikh Mustafa al-Sibai is that women are unable to perform certain duties especially in times of war and during prayers. Some others disagree on the grounds that the ruler is no longer required to lead the army in wartime. Moreover, they argue that a woman can lead prayers because the use of a woman's voice unless seductive is not forbidden.

Apparently this stand conforms with articles 7 and 8 of CEDAW which demand the provision of security for women in order to enable them to vote, participate in policy making and execution and join governmental and non-governmental organizations.

Concerning the choice of spouse, there is a liberal trend in Islam that encourages free and independent choice of spouse, restricting the guardian's role to expressing his opinion. An unresolved problem, however, is related to woman's right to marry someone from a different religion.

Regarding woman's inheritance and indemnity, it is half the man's. Most jurists attribute this

The need for two testimonies is attributed to women's emotionality an lack of interest in certain areas

Woman's disobedience means her obstinacy and hostility towards her husband

difference to economic factors though certain Islamic sects overlook the rules related to inheritance and allow the writing of a will. Concerning the difference in indemnity, it is attributed to economic factors related to the more serious financial loss experienced by the family when losing the man who he is usually the main provider.

With respect to testimony, it is stated in the Koran that in general the testimony should be given by

two men or by one man against two women suggesting, perhaps that women are less credible than men. However, scholars reject this suggestion; they attribute the need for two testimonies to woman's emotionality and lack of interest in certain areas. Dr. Sibai says that although Islam allows the woman free reign over her financial matters, it considers her basic mission in taking care of her family. Since this entails that the woman stays home most often, it is assumed that she rarely has the opportunity to witness financial deals. Even when she does, it is not likely that she will give the matter the needed attention which may lead her to forget some details. Based on the same logic, scholars argue that there are cases when man's testimony is not as valid as the woman's. The testimony of only one woman compared to that of at least two men is needed when speaking of matters related to birth, kinship, heritage, virginity and sexual disability.

When dealing with family matters, the concept of man's superiority is highlighted. In order to explain this concept which is referred to in the Koran, the individualistic and collective rights and duties imposed on men and women must be discussed. Jurists believe that men's duties are classified into two categories: materialistic and spiritual. Whereas materialistic duties are related to providing for the woman and the family, spiritual duties are related to protecting the wife, family and land. Concerning man's rights, they include sexual pleasure, cohabitation, obedience, disciplining, polygamy and divorce. All scholars agree that sexual pleasure is man's basic right, and they urge the woman to respond to her husband. This is stressed by Sheikh Mohammed Mehdi Shams el-Dine, a Shiite scholar who sees that the criterion of sexual intercourse should be courtesy which implies that the man should respect woman's physical and mental state. The Koranic verse that states that women are entitled to enjoy what they owe in order to show that sexual pleasure is woman's right too is a good example. The reason for the absence of a direct mention of such a right may be the fact that the woman is usually capable of seducing and attracting her husband whenever she wants to. Concerning man's right of cohabitation, it is subject to controversy. While some scholars think that the man has the right to forbid his wife from leaving the house, others think that the woman is free to leave the house as long as it does not affect her duties towards the family. The same debate applies when speaking of the right of obedience. While some scholars think that the woman is obliged to obey her husband in strictly any matter as long as it does not contradict with her religious faith, others think that

woman's obedience is restricted to family matters. Thus, they argue that the woman is not obliged to obey her husband in relation to her personal, financial, and economic matters. As a follow up to the right of obedience, emerges the right of disciplining. Jurists see that sometimes the man has to discipline his wife. The process of discipline starts with advising the woman, then abandoning her, and eventually beating her. Concerning this,



scholars agree that it should be very slight as not to hurt her; however, they disagree over the factors that may allow the man to beat his wife. The most moderate jurists restrict beating to cases when the woman becomes disobedient. Woman's disobedience means obstinacy and hostility towards her husband. However, beating is detested in general and this is reflected in the prophet's own words, "The better men among you will not beat their wives." One reason for this reference to beating a wife is that perhaps the woman in the past would not come back to her senses unless admonished because of her ignorance of her rights or duties. However, today a different solution such as divorce can be reached. Moreover, woman can include in the marriage contract a condition that prevents her husband from beating her.

Regarding man's right to polygamy, Dr. Tay explains that women can take precaution against this "injustice" either through including in the marriage contract a condition that prevents the man from marrying another woman while he is married to her or through demanding that she has the right to divorce.

In addition to man's rights in Islam, there is another important factor and that is woman's rights. The first right he mentions is the dowry, and financial support. Man is obliged to give his wife a dowry before marriage and to provide for her financially during marriage.

GUARDIANSHIP

The father is the children's guardian in Islam and the woman is not given guardianship unless the father is absent.

NATIONALITY

In principle, Islam rules that the children take their father's nationality. However, there is no objection to agreeing differently in the marriage contract. Concerning the family name, Islam calls for naming the children after their fathers.

A woman is not expected to be a housewife in the traditional sense

SERVITUDE

It is common in Islamic countries that the woman performs domestic chores such as cooking, scrubbing, and cleaning. The majority of scholars, however, state that there is no evidence either in the Koran or in the *hadith* that

holds the woman exclusively responsible for these chores. They even think that if a man was financially capable, he should secure a maid to help his wife. Thus, a woman is not expected to be a housewife in the traditional sense.

MAN'S BRUTALITY

If the man neglected his duties towards his wife and the family, he is considered brutal. If the woman cannot get her husband to change, she may resort to the judge who may ask her to abandon him sexually. If sexual abandonment did not yield any positive results, the judge may reprimand him. Reprimanding the man in case he did not attend to his family duties may reach the extent of whipping him forty flogs.

MAN'S RIGHT OF DIVORCE OR POLYGAMY

Woman can take precaution against this by stating specific conditions in the marriage contract.

BIRTH CONTROL

This presents an international problem because of the widely different averages of economic development and population growth. While some Islamic jurists are firmly against birth control, others allow it within certain conditions.

The society has certain duties towards the woman. These duties are related to protecting her rights within the family and society. This entails that the society should punish the husband, father or brother if they violate woman's rights, and should also take the necessary measures to promote awareness among women regarding their rights. Finally the society should protect the woman from any form of aggression, such as prostitution.

Islam has given women very important rights, and therefore, one could say that there is no contradiction between the practical measures imposed by CEDAW and those measures imposed by Islam in order to eliminate all forms of discrimination against women.

* Paper presented at the Regional Workshop on the Incorporation of CRC and CEDAW into the Curriculum of Law Schools October 1997.

Society should punish the husband, father or brother if they violate woman's rights