

Violence Against Women in Islam and State Legal Mechanisms to Combat It

Abstract

In the modern world, while humanity is at the peak of development, it is inappropriate to use violence in the name of religion to protect such values, which representatives of different faiths establish with the motive of calling for peace. Various religious movements, which have themselves been the object of persecution in the past, after gaining strength, often resort to violence against people. The reason for this can be the struggle for secular power, which is governed by the ambitions of people speaking in the name of different religions and is proclaimed as "the voice of God", and religion - as a doctrine, which is often not at all clear, needs explanation, and, not so rarely, these explanations are also separate and asks for an explanation.¹

The religion discussed in the article is Islam. Like other religions, Islam, during the period of preaching, repeatedly suffered psychological, physical, and material pressure from the religious-cultural-political background existing at that time. And, to tolerate all this, God in the "Qur'an" sometimes warns the believers with the punishment that will happen to the pagans, sometimes comforts them who have come to heaven as a reward for enduring hardships, and sometimes demands appropriate physical resistance from them in response to unjust treatment.²

When we talk about violence in Islam, we cannot fail to emphasize the fact that this religion is largely characterized by gender-based violence. Mostly this is manifested in violence against women. In Islam, women have always been and unfortunately are still the object of

¹ Kazumov, O. (2004). "Violence in the Name of Religion and the Importance of Interpretation," p. 15.

² Ibid, p. 18.

discrimination. She is the husband's "property" and most of her fundamental rights are violated.³

The question is: Is Islam really discriminatory towards women and does it justify violence against women or is it all a misinterpretation and a crime covered by religion?!

"All human beings are born free and equal in dignity and rights."⁴ That is why in the article we talk about those fundamental human rights that are violated against women in Islam and the violation of which is a clear manifestation of violence.

Today, human rights and freedoms are recognized and guaranteed by various international conventions and declarations, including the "UN Universal Declaration of Human Rights", European Convention on Human Rights, the Social Charter of the Council of Europe of February 26, 1961; "Civil and Political Rights" and "Economic, Social and Cultural Rights". The article also talks about the positive obligation of the states to protect the rights provided by these acts.

Keywords: woman rights, Islam.

Introduction

Many individuals who have either not read the Qur'an or have misunderstood it believe that the revelations received by the Prophet Muhammad between 610-632 mandate women to wear the Chadra and cover their faces entirely. This perspective necessitates consideration of the Arabian Peninsula's geographical context and the mentality of its inhabitants at the time. In an era where the birth of a girl was so undervalued that infanticide was practiced, Islam emerged as a progressive force by granting rights to women that were both recognized and religiously sanctioned. Thus, Islam significantly elevated the status of women, recognizing them as fully-fledged beings.⁵

However, it's evident that the stipulations of the Quran are not entirely aligned with the fundamental principles of modern law, particularly from a gender perspective. The rights of women as outlined in the Qur'an are often perceived as limited, with a pronounced superiority accorded to men, fostering a sense of inequality.

³ Harvest, M. (2021). "Gender Discrimination for Religious Reasons in Islamic Countries and International Human Rights Treatises," Volume 204.

⁴ United Nations (1948). "Universal Declaration of Human Rights," Article 1, December 10.

⁵ Rukhadze, O. (2004). "Islam Does Not Captivate Women," Tbilisi, p. 12.

1. The Situation of Women's Rights in Islam

At the onset of the twentieth century, the evolution of Islam was observed across various Muslim countries. This period marked the beginning of significant changes within the traditional Islamic societies, spurred by the emergence of socio-political movements, the influence of the West, and the economic underdevelopment of Eastern countries. The Islamic Republic of Iran, with its strong state traditions and the uniqueness of Shia Islam, was no exception, playing a significant role in the Islamic world's developments.⁶

The Islamic Republic of Iran is a nation where, even in the twenty-first century, democracy, human rights, and particularly women's rights, are severely compromised, presenting a critical issue. The fight for women's rights in Iran can be traced back to the nineteenth century, showcasing notable figures such as Khurat Al Aoun. As the eldest daughter of a distinguished Shia theologian, she advocated for the abolition of the Chadra and spoke out against polygamy. Another significant figure in the women's rights movement was Princess Taj as Saltan, who, having been educated at the Royal Court and proficient in Persian and French literature, deeply understood the disparities between the lives of Western and Eastern women. Through her writings, she highlighted these differences, contributing significantly to the constitutional revolution in Iran, which saw active participation from Muslim women.⁷

Despite ongoing efforts, the continuous struggle of women, and various initiatives by the state, the clerical establishment in Iran has consistently ensured that women remain unequal to men.⁸ This raises a crucial question: Is Islam inherently discriminatory towards gender, or are these issues the result of misinterpretations?

1.1. Violence Against Women in the Name of Religion

To understand the true essence of Islam and avoid falling prey to its misinterpretation, it is essential to consult the Quran. The Quran explicitly states that killing a person is not permissible. Moreover, it reassures believers, specifically Muslim believers, that adherence to its teachings does not condone violence.⁹ If the Quran advocates against taking a life, then it

⁶ Sanikidze, G. (2005). "Shiism and the State in Iran," *Intelligence*, p. 8.

⁷ *Ibid.*, p. 12.

⁸ *Ibid.*, p. 11.

⁹ "The Holy Qur'an," (2007). Translated by Maulawi Sher' Ali, Islam International Publications Limited, Sura 47:4, June.

logically cannot condone femicide, which, within the Muslim community, is often perpetrated by husbands.

However, Muslim apologists frequently paint an idealized picture of how women are treated in Islam, which does not always align with reality. While the Quran prohibits believers from killing, it paradoxically permits a husband to discipline his wife physically. It states, "Husbands are the protectors of their wives because Allah has given the one more strength than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in [the husband's] absence what Allah would have them guard. As for those from whom you fear disobedience, admonish them, forsake them in beds apart, and beat them lightly."¹⁰

The picture is further exacerbated by the fact that books with Islamic labels have appeared in Saudi Arabia since 2010. These books report what kind of wife "needs" to be beaten, what her husband should beat her with, where to inflict blows and what to tell him during the beating. For example one such textbook, "the obedience of women in Islam" reports that the husband is entitled to physically punish his wife in various cases. Such cases are: if he does not fulfill the desires of the husband; if he does not meet the sexual needs of the husband; If she leaves the house without her husband's permission or does not perform religious duties. The weapon of punishment, and the stick, must be in a prominent place so that the wife can always see him.¹¹

Violence against women, as well as all kinds of violence, is a crime, although, to some extent, unfortunately, it still happens in different parts of the world and in societies, but it is unequivocally condemned almost everywhere. In Islam, the severity of the problem lies in the fact that all this is religiously legalized and allowed.¹²

As an example, we can consider the story of Bibi Aisha, an 18-year-old Afghan girl. The girl was punished for trying to escape from her family. She was constantly beaten by her husband and forced to do heavy physical work. The Islamic court sentenced him to cut his ears and nose with a house of punishment.¹³

A 13-year-old Somali girl Aisha Ibrahim Duhulov was the victim of similar inhumane treatment. In 2008, he was buried to the waist of thousands of Muslims in the ground and

¹⁰ Ibid., 4:34.

¹¹ Asha, H. (2010). "The Obedience of Women in Islam," Intellect, p. 24.

¹² Küng, H. (2005). "Religion, Violence, and 'Holy Wars'," p. 7.

¹³ Ravitz, J. (2012). "For Aesha, Healing Comes in Many Forms," [Online]. Available at: <https://edition.cnn.com/2012/12/16/us/aesha-surgery-healing/index.html>. [Last verified February 5, 2024].

about fifty men stoned him. Aisha was accused of adultery. And as an adulterer, he was thought to have been raped by three men.¹⁴

1.2. Child Marriage as a Form of Violence Against Women in Islam

In the context of Islam, child marriage is permitted. Daily, over 30,000 young girls in the Islamic world enter into marriage with older men.¹⁵ The Qur'an states: "For your women who have desisted from menstruation, if you have doubts [about their periods], their prescribed period shall be three months, and [also for] those who have not menstruated. As for those who are pregnant, their term is until they give birth."¹⁶ This passage refers to wives who have yet to experience menstruation, indicating that they are, in fact, very young children.

Child marriage represents a violation of human rights that, even in the 21st century, remains a pressing issue across many countries worldwide. Various legal frameworks aim to prevent child marriage, including the Convention on the Rights of the Child. Although ratified by numerous Muslim countries, the implementation of this convention often appears to be merely ceremonial in nature.¹⁷

The Convention encompasses civil, political, social, cultural, and economic rights for children. While it does not explicitly mention child marriage, it contains several clauses that safeguard children against early marriage.¹⁸ According to Article 1 of the convention, a child is defined as any individual under the age of 18, unless the laws of a particular country set the age of majority lower. This definition underscores the global commitment to protecting children, highlighting the importance of international efforts to combat the challenge of child marriage.¹⁹

Primarily, the victims of early marriage are girls, as they are often deemed less valuable to their parents compared to boys, with the parents viewing them as an economic liability.

¹⁴ Miller, T. (2008). "Stoning Victim Begged for Mercy," [Online]. Available at: <http://news.bbc.co.uk/2/hi/7708169.stm>. [Last verified February 5, 2024].

¹⁵ Ullah, N. (2021). "Child Marriages: International Laws and Islamic Laws Perspective," School of Law, University of Gujrat, Pakistan, p. 4.

¹⁶ "The Holy Qur'an," (2007). Translated by Maulawi Sher' Ali, Islam International Publications Limited, Sura 65:4, June.

¹⁷ Chata, M. (2016). "Basic Profile of Child Marriage in Pakistan," p. 6.

¹⁸ Arfat, S.H. (2013). "Protection of Children's Rights in Islam: Special Reference to Orphans," Paperback.

¹⁹ "Convention on the Rights of the Child," (1989). Adopted and opened for signature, ratification, and access by General Assembly resolution 44/25, November 20.

Consequently, parents marry off their daughters at a young age to alleviate their financial burden.²⁰ Such practices directly contravene Article 2(2) of the Convention, which mandates state parties to adopt all appropriate measures, including legislation, to outlaw and eliminate such discriminatory practices.²¹

Despite these provisions, it is often the very states that have ratified the Convention that breach its stipulations. A notable example is the Islamic Republic of Pakistan. The Pakistan Child Marriage Restraint Act of 1929 stipulates the legal age of marriage at under 18 for boys and under 16 for girls. In a significant development, the Sindh Assembly passed the Sindh Child Marriage Restraint Act in April 2014, setting the minimum age for marriage at 18 for both genders.²² However, in a conflicting move, a Pakistani court decreed that under Sharia law, men are permitted to marry underage girls following the onset of their menstrual cycle, a ruling that starkly opposes the Child Marriage Restraint Act. Sharia laws, which are the religious laws of Islam derived from the Quran's teachings, serve as a guiding principle in Islamic society.²³

The decision in question was rendered by a provincial court in Sindh during the case hearing of Huma Yunus, a 14-year-old Catholic girl who was abducted, forcibly converted to Islam, and subsequently forced into marriage. To demonstrate that Yunus was underage and hence the marriage unlawful, her parents submitted her baptismal certificate from the school during the court proceedings. Despite Sindh's prevailing child marriage law, which forbids the marriage of anyone under 18, the court decreed that under Sharia law, the marriage between Yunus and her abductor Abdul Jabbar was legitimate, citing that the girl had begun menstruating.²⁴

This ruling came in spite of Sindh's legislation against child marriage, indicating a lack of effective enforcement by the government to uphold the law. In Pakistan, a legislative proposal

²⁰ Harvest, M. (2021). "Gender Discrimination for Religious Reasons in Islamic Countries and International Human Rights Treatises," Volume 124.

²¹ "Convention on the Rights of the Child," (1989). Adopted and opened for signature, ratification, and access by General Assembly resolution 44/25, November 20.

²² "Child Marriage Restraint Act," (1929), Article 2.

²³ Gralki, P. (2022). "Pakistan Law Allows Men to Marry Girls After Their First Period," [Online]. Available at: <https://www.globalcitizen.org/en/content/pakistan-court-allows-men-to-marry-underage-girls/>. [Last verified February 5, 2024].

²⁴ High Court of Sindh (2019). "The Case of Huma Younus: Christian Pakistani Girl who was Kidnapped".

to outlaw child marriage has been introduced at the highest level of government, yet its adoption remains indefinitely delayed.²⁵

2. State-Legal Mechanisms for Combating Violence Against Women

"All men are born free and equal, endowed with dignity and rights."²⁶ In contemporary times, human rights and freedoms are upheld and protected by various international declarations and conventions. Among the most significant of these are the Universal Declaration of Human Rights by the United Nations on December 10, 1948; the European Convention on Human Rights by the Council of Europe on November 4, 1950; and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, also known as the Istanbul Convention.

The European Convention on Human Rights guarantees numerous rights aimed at protecting human rights and fundamental freedoms. Prominent among these is the right to life, a right that is frequently compromised in several Islamic States including Pakistan, Bangladesh, Saudi Arabia, Egypt, and Iran, with a noticeable bias against women.²⁷

Additionally, the convention strictly prohibits torture, inhuman or degrading treatment. There are numerous instances of such treatment towards women in Islamic countries, where virtually any act deemed "disobedient" by a woman results in punishment and often inhumane treatment. In many cases, the religious laws themselves sanction men's authority to administer such treatments.²⁸

The Convention safeguards the freedom of thought, conscience, and religion as outlined in Article 9.²⁹ This freedom is paramount for the development of a democratic society and the personal growth of each individual. However, it acknowledges the possibility of certain limitations. In specific instances, states are authorized, and indeed required, to intervene in the realm of belief to protect the rights of others and uphold the legitimate interests of society. Regrettably, in many Islamic countries, the populace is not afforded the right known as

²⁵ Ullah, N. (2021). "Child Marriages: International Laws and Islamic Laws Perspective," School of Law, University of Gujrat, Pakistan, p. 8.

²⁶ United Nations (1948). "Universal Declaration of Human Rights," Article 1, December 10.

²⁷ Sentumbwe, Y. (2024). "Abolition in Africa - 77th Ordinary Session of the African Commission on Human and Peoples' Rights," [Online]. Available at: <https://worldcoalition.org/2024/01/12/abolition-in-africa-achpr-77th-ordinary-session/>. [Last verified February 5, 2024].

²⁸ Badawi, N. (2009). "Introduction to Islamic Law," p. 9.

²⁹ European Convention on Human Rights (1950), Article 9, November 4.

freedom of religion, nor does the state undertake effective measures to prevent violations of fundamental human rights in the exercise of these rights.³⁰

States bear the responsibility to strike a balance between private and public interests in the protection and assurance of rights. The complex nature of the freedom of belief should not pose an insurmountable challenge; rather, it ought to be appropriately balanced to safeguard relevant public interests.

Using the Kingdom of Bahrain as an illustration, its Constitution establishes Islam as the state religion and Sharia law as the primary source of legislation. The Constitution guarantees freedom of conscience and the freedom to practice religious rites in accordance with the country's observed norms. Nevertheless, the government has imposed certain restrictions on the exercise of this right, which are deemed appropriate given the numerous instances where women were subjected to torture, enslavement, and inhumane treatment under the guise of religious customs.³¹ In such scenarios, the state's intervention in the sphere of constitutionally guaranteed human rights is essential, ensuring that any limitations adhere to the principles established by the European Convention on Human Rights. This intervention must have a legitimate aim, such as the protection of human health or morality, which is indispensable for a democratic society.

Article 5 of the Convention on the Protection of Human Rights and Fundamental Freedoms enshrines the right to freedom and security.³² This right inherently includes the freedom to choose one's spouse freely and to found a family willingly. Research indicates that in Islamic countries, the practice of coercing girls into marriage is lamentably common. Often, young girls are forced into marriages arranged by the groom's parents, contrary to the girl's wishes, and the state fails to take action to safeguard women's rights in these matters.

Conclusion

Crimes perpetrated on religious bases remain a critical issue in Islamic countries today, with violence against women particularly rooted in religious justifications. As highlighted, the infringement of one fundamental right, such as the freedom of religion, precipitates the breach of numerous other rights. Within the context of Islam, individuals are often deprived from

³⁰ Rahman, A. (2008). "Women in Quran and the Sunnah," p. 9.

³¹ Bahrain's Constitution (2002), Article 22.

³² European Convention on Human Rights (1950), Article 5, November 4.

birth of the liberty to choose their religion freely, becoming ensnared not only by Islamic customs but also by various forms of coercion as a consequence of their interpretation.

Gender-based violence is a worldwide concern, yet evidence suggests it is especially prevalent in the Islamic realm, where effective measures to combat it are notably lacking. Despite the protection of religious freedom by numerous international treaties and national laws, third parties frequently infringe upon this right, leading to further rights violations. In such instances, it is imperative for states to intervene proactively, implementing measures to prevent unlawful restrictions on these freedoms. To achieve this, the development of robust mechanisms is essential to significantly curtail illegal encroachments on the right to freedom of religion, thereby addressing the broader issue of gender-based violence.

In this context, it is crucial for investigative agencies within these countries to diligently document crimes that seek to undermine the freedom of religion. Equally important is the swift response to such offenses, to deter any sense of impunity among perpetrators. Moreover, the measures implemented by the state should not only aim at crime prevention but also embody a preventative approach.

Promoting women's education is imperative for states, particularly as it remains a significant challenge in Islamic countries. Violence against women often manifests through the denial of educational and employment opportunities. This restriction not only marginalizes women further but also deprives them of the knowledge regarding their rights, making them more susceptible to violence due to a lack of awareness about what constitutes violent acts.

It is vital that state justice systems are not governed by religious laws. The judiciary should operate as an independent entity, adhering to humane and international laws rather than religious doctrines, which should not be compulsorily imposed on everyone.

Femicide represents an extreme manifestation of violence against women and, regrettably, remains one of the most prevalent crimes within the Islamic world. In the 21st century, it is untenable to permit the killing of individuals simply because they are women. It falls upon the state to rectify this issue. This necessitates a comprehensive review and revision of existing legislation, informed by international best practices, the acknowledgment of past errors, the fulfillment of international obligations, and a thorough understanding of the stipulations of international treaties.

