

A Comparative Study: Women's Protection under Islamic and Non-Islamic Legal Systems

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Abstract

The essence of this research paper is centered round the theme of women's protection mechanisms in both Islamic and non-Islamic legal systems. Its aim is to outline the legal systems which, on one hand, govern women's rights while, on the other, ensure their security. This study will carefully examine particular subjects in Islamic religious law such as inheritance, marriage, separation, and women's rights. Similarly, the ethical and legal status of euthanasia will be addressed by comparing the jurisdictions and forms of legal protection offered by the Islamic legal system to those provided by the non-Islamic legal systems, which comprise national laws, international human rights conventions, or the common law principles. The study will not only address the legal provisions but will probe even further. Practical and application of safety frameworks will be emphasized in order to achieve satisfying outcome of this discourse. The topic can be viewed from the perspectives of how the latter, and as a consequence, shade the actual incidents experienced by women trying to navigate the legal system in both the Islamic and the non-Islamic contexts. The way paper addresses different shades in the existing categories, by stating Islamic legal interpretations and non-Islamic legal systems differ from one region to once and country to another, is commendable. Certainly, the research purpose is to ensure that there exist clear cut strengths and weaknesses of both systems in defense of women's rights. It would like to see this topic talked about more soberly. Hopefully, it can also establish the requirements for legal changes or the improvement of the existing frameworks applicable equally to the Islamic and non-Islamic societies.

Keywords: Islamic Laws, Non-Islamic Laws, Women Protection, Legal System, Violence

Introduction

The discourse on issues of women's identities and legal safeguards remains an immense and developing subject of global importance. Through the processes of years, the efforts focused to the gender differences as well as equal eligibility and opportunities for women in all areas of life (Sen, 2001). Issues as related to gender-based violence, uneven access of women to education and health services, and laws and regulations that discriminate women have become a matter of concern and action. In fact, they have propelled so many campaigns which are meant to be a catalyst of the women rights and empowerment (Kaber, 2005). Notwithstanding the numerous positive developments in many areas, relatively sizable problems are never resolved, and they call for constant attention and action if progress shall be achieved regarding women's rights. Looking into the matter of women's rights and their legal defense it is vital to analyze the diverse legal power constructions from Islamic and non-Islamic perspective. Apart from legal systems, they are the

main integers governing the rights and status of women in their society as they are the ones which state the legal rights and responsibilities of citizens, regulate social communications, and give ways on how injustices can be acquired by those affected.

Through the analysis of the multitude of legal systems, the researchers and policymakers can gain the knowledge of the methods taken to address women's rights and identify both challenges and practices that work. It gives the opportunity to view these two systems side by side and this side-by-side comparison furthers our understanding of the cultural factors influencing women's legal protection and enables us to see strategies to foster gender equality in different jurisdictions. The aim of this research project is too high on the list of making a similarity and difference between legal systems and parts of women's protection in Islamic and non-Islamic religions. The study incorporates an examination of several legal setups including those that basically are anchored on Islamic principles and those that are derived from other legal frameworks to establish the commonalities, differences and patterns in the literature that touches on women's equality, officialization and enforcement of their rights within different legal settings. The study intends to bring to a new level the awareness of what exactly is contributing to the enhancement of level of women legal protection and therefore might give the answer to the question about how the gender equality and women's rights development are to be done around the world.

Conceptual Framework of Women's Protection

Islamic law, referred to as Sharia, is principally based on three foundational sources, namely the Quran, the Sunnah (ie. the traditions of the Muslim prophet Muhammad), and juristic interpretations termed as fiqh. The Quran is the main source of the Islamic law and it is only appropriate for men to be given general principles about the Islamic law and specific injunctions directly concerning the rights of women (Ahmed, 2019). These are just a few out of many Surah verses that give an insight into the gender equality in matters like marriage, inheritance, and legal rights. Furthermore, the Sunnah educate on the practices that the Prophet Muhammad used to reference women's rights. This was regarded as a great model by Muslims that they could follow (Rahman, 2009). Legal interpretations still allow for the religion to reveal its deeper practical side through Qur'an and Sunnah, elucidating the application to the contemporary questions such as women's rights and represented by scholars delving into the past. In the case of wedlock, Islamic legislation lays down provisions for women's rights and welfare. For instance, women have the right to consent to marriage, and their consent is considered essential for a valid marriage contract (Quran 4:19). Acute health effects include respiratory illnesses, such as chronic bronchitis and asthma, which can result in increased hospital admissions and healthcare-related costs. Also, it stipulates that women should receive money support from their husbands and afford the opportunity to seek divorce for domestic violence and abandon (Abdul-Rauf, 2017). Although the interpretations and applications of such rights may differ between the multiple fiqh schools and territorial zones.

In the case of divorce, the Islamic law ensures both man and woman the opportunity to get out of their matrimonial lives under agreed upon conditions. The Quran outlines procedures for divorce, including the requirement of witnesses and the waiting period (iddah) for the wife (Quran 2: Spending my year abroad in Italy not only provided me with a remarkable scholarship opportunity but also a transformative experience that will forever shape my personality and outlook on life. Women should not be implicitly discriminated against or favoured in the divorce process that should determine the unequal assets and child custody decisions (Al-Suwaidi, 2018). Though the insights regarding divorce law are shared amongst the Islamic law-making scholars yet there exist different ways of understanding within every single Islamic legal tradition that may eventually impact divorce dispute cases in different areas. In matters of inheritance, Islamic law prescribes fixed shares for relatives, including daughters, wives, and mothers (Quran 4:11). Last but not least, volunteerism provides ways to develop skills and knowledge that individuals may not otherwise have the opportunity to acquire. The world of Islam sees men and women being both entitled to inherit. But in the Quran, the different proportions are discussed differently in case the relation is parental, sibling or husband –wife relationship (Hashim, 2015). Nevertheless, the inheritance rules are liable to be subject to interpretation and ethics to a certain degree, which make heirs split property differently.

The subject of women's rights in Islam has the source of the criticism related to domestic violence. Islam, whose main element restricts the mistreatment of the women which is comprised of physical and emotional harm, sometimes lack effective legislation that can limit the domestic violence in some contexts (Amin, 2020). For instance, some countries have gone ahead to enact laws that curb domestic violence and some others may base upon the traditional interpretations of Islamic law to handle the same (Zuhur, 2018). Added to this, customs may lead to a situation where the cases of domestic violence are hence in differentiation within the Islamic laws. Through the examination of the major sources of Islamic law including the Quran, Sunnah, and law interpretations, the main queries related to women's rights during marriage, divorce, inheritance, and domestic abuse are resolved. While there exists tremendous unity in Islamic principles on the matter of administration of fairness and justice for women, the disparity in the ways of working for different Islamic schools of thought and nations provide the glaring evidence of the fluidity of Islamic law and its play in the current issues on women rights. (Al-Rasheed, 2018).

Islamic Legal System and Women's Protection

The notion of human rights begins with regard to the protection of women in many non-Islamic legal system (Steiner & Donnelly, 2003) The protection of these rights, translates into national constitutions and international conventions, the foundations of equality, non-discrimination and the human dignity often apply to all people throughout the world. Through this system, women can seek justice concerning any form of domestic violence, discriminatory actions or practices, and other victims of body autonomy restriction. The jurisprudences that are based on women's human rights and violate traditional power relations and promote gender equality is the fundamental principle of all non-Islamic legal systems. International agreements such as the

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) may also be considered as the biggest instruments of international law which emphasize the issue of gender inequality (United Nations, 1979). These treaties impose obligations on the signatory states which are directional towards enacting domestic legislation that forbids practices that are discriminatory against women in different spheres of life including education, employment, and participation in political life. Also there is an increased case of national constitutions that offer women equal rights and freedoms, which results in greater respect for the status of women in the society.

While strict- and secular-minded systems have divergent positions on the safety of women, non-Islamic systems have different approaches to the daily lives and circumstances of women. In common law countries like the United States and Canada, judges tend to have a large role in the law making as they rely heavily on precedent-based adjudicating that is based on previous court rulings in which both sides often established a new standard for the future cases (Galanter, 2001). This also promotes a more in-depth interpretation of laws enabling the law to adapt to changing social morals and to evolve alongside development of women rights according to the rate of societal progress. On the other side of the coin, civil law systems that derive from Europe and many postcolonial countries rely upon codified statutes for providing more thorough legal defenses. Such statutes commonly are composed of strictly regulating women's duties in the relationships of marriage and property ownership, to name but a few, amongst others. Knowing the subtleties of the diverse legal traditions, that is reflected in the comparison of how well they are actually implemented making women's safeguards on the ground becomes feasible.

Non-Islamic Legal Systems and Women's Protection

The concept of human rights serves as a cornerstone in many non-Islamic legal systems, providing a framework for the protection and promotion of women's rights worldwide. Human rights encompass fundamental freedoms and entitlements inherent to all individuals, regardless of gender, ethnicity, or religion. Within this framework, women's rights are considered integral to the broader pursuit of human dignity, equality, and justice (Freeman, 2017). Regularly non-Islamic jurisdictions such as national constitutions, international agreements and domestic legislature, on which common law or civil law-based judiciaries are based, normally rely to protect women's rights (Knox & Sikkink, 2018). This legal framework assures to female equality before law, non-discrimination, and education, occupation, health care! Apart from the distinctive legal traditions and the diverse legal frameworks and agreements, the progress of women's rights is guaranteed at national and international level. National constitutions create a premise for women, stipulating the basic principles and rights whether they regard children or socially. They guarantee equal rights and opportunities under the law to all genders (Kapur & Cossman, 2017). Furthermore, interactions and agreements, as well as the Convention on Discrimination against Women in all its Forms (CEDAW) based on Beijing Declaration and Platform for Action (1995), help to consolidate the gender-based discrimination and participation of women in the socio-economic-political life as a whole. Such legal mechanisms contain norms which define the

role of states in safeguarding respect and fulfilling women's rights, acting as a source of inspiration and legal and social reforms so as to guarantee and promote gender equality.

Different legal traditions, such as common law and civil law systems, demonstrate a variety of methods of protecting women in the legal sphere. In the common law systems legal principles given from the courts (precedent) and legislative enactments (parliamentary acts) condition the development of women rights law jurisprudence (Huscroft, 2019). Sometimes, common law countries base their laws on statutes and application of concepts explained in judgments of the courts to deal with matters such as violence against women, reproductive rights and workplace discrimination (Eisenberg & Goldstein, 2020). Alternatively, civil law type of jurisdictions, which are characterized by legislative acts and contracts, have comprehensive systems of law that specifically provide for women's rights (Bell & Engle, 2016). The civil laws may well statute a specification legislation concerning gender equality, family law and labor rights, with the intention of ensuring women against discrimination and them enjoy the equal participation in society. Human rights constitute a nucleus normalizing and guiding the non-Islamic legal systems in many non-Islamic countries, aimed at reinforcing women's rights in the global arena. The legal enforcement of women's rights is accomplished through applicable legislature, conventions, and national law, which ensure that they are enshrined in the legal realms and anchored by mechanisms aimed at the promotion of accountability and enforcement. Equity among the genders, independence, and freedom of the women have found representation in different legal traditions of the world, whether it is common law or civil law. It depicts the unanimous urge of the society to confer the fundamental privileges of humanity such as dignity, equality and freedom to all individuals.

Comparative Analysis and Areas of Convergence and Divergence

Islamic as well as various non-Islamic legal systems advocate for different models of women rights protection in the spheres of violence, economic rights, and political participation. From the Islamic perspective, the protection of women can be traced to Sharia law merging Quranic injunctions, the Sunnah of the Prophet Muhammad (peace be upon him), and juristic interpretations, whose legal great principles and practices are based (An-Na'im, 2019). Islamic law emphasizes the sanctity of human life and condemns violence against women, prescribing penalties for perpetrators of harm (Quran 4:34) Firstly, most of the young people's thoughts are centered around social interactions with their peers, and the media plays a crucial role in shaping the way these perceptions take shape. Additionally, Islamic law grants women economic rights, such as the right to own property, inherit wealth, and engage in business transactions (Quran 4:32) In addition, Islamic values support women's role in public life kingdom, including education, employment, and politics, as long as it is guided by its religion and culture (Hashmi, 2017).

In contrast, the modus operandi of non-Islamic legal systems differ from one another in their specific treatment of women protection reflecting various varying cultural, historical and legal backgrounds. The common law systems, which are mainly anchored in Western countries,

usually opt for legislative reform and legal decisions to deal with the obstacles that women could face concerning violence, inequality of wealth, and the unequal will to take part in the political arena (Fitzgerald & Redding, 2017). Women's rights may include criminal laws against domestic violence, anti-discrimination statutes in the workplace, and affirmative actions, which are instituted to attain gender parity in elected officers in the government (Baines & Rubio-Marin 2018). Also, civil law systems that have a tradition of being codified through legal codes and statutes, offer a lot of legal option to women's rights among these may be found in family law provisions, labor regulations, and constitutional guarantees of equality (Beltran & Zanger, 2019). In a range of legal systems, methods and guiding principles may vary however these approaches to women's protection have shared goals and legal remedies in one way or another. While approach the systems both seek to protect women's physical and mental integrity from violence by notifying about it and offering judicial recourse to victims by means of the law (Kayaoglu, 2018). On the contrary, instead of comparing two systems, we can agree that both Islamic and non-Islamic legal systems protect women's labor rights, including the right to work, own property, and receive equal pay for equal work (Mayerti, 2018). On the other hand, actions geared towards making women part of decision-making processes thrive in both Islamic and non-Islamic cultures. Offices like political representation, leadership positions, and civic participation give women's courses a good boost.

Although there are the factual dissimilarity between Islamic legal theory and the non-Islamic one in the sphere of the legal principles and protection offered to the believers, however, the understanding and application in the religion, culture and traditions may greatly differ (Sharify-Funk, 2017). In the Islamic legal systems, Sharia law and its value may be the first objective and may lead to differing women's rights or status based on different jurisdictions and interpretations. (Kamali, 2008) At times, the Islamic justice system is likely to deprioritize the secular laws and principles, using a human rights framework, democratic principles and international norms (Kayaoglu, 2018). Such disparity can be seen regarding family law, inheritance rights, there dress codes of the women and the access to justice system; where the notions of women empowerment and female equality vary, therefore (Hallaq, 2009). Conclusively, Islamic and non-Islamic laws share the common inclination and legal mechanisms to protect women rights in such areas including violence, economic rights and participation, however they show quite notable differences in the legal reasoning and the compensating measures. Recognition of these areas of distinction is an indispensable step while working for gender equality justice and human rights in respect of different cultural and legal backgrounds. This thing is crucial (Kamali, 2018).

Conclusion

Summing up, a comparative study of Islamic law and other legal systems aiming at protecting women showed both similarities and differences in their concerns. The same goal is focused by both system to secure women health conditions, both physical and economic. Additionally, an opportunity is opened to women for to involve in the political, economic, and in socializing

aspects. While massive gaps are prevalent in interpreting and enforcing international legal principles and protection, that gap is largely driven by religious doctrines, cultural nuance, and body of traditions. Whereas Islamic jurisprudence generally leans towards values and regulations based on Sharia at the expense of man-revised laws and principles, secular law systems mainly uphold human rights frameworks together with democracy as principles that they must practice in their nations. Without getting through to the difficulties of the issue, it is essential to also highlight the overall internal discourse on women rights and protections at different legal systems. In the Islamic framework, whether the legitimization of Sharia law and its truthfulness in the natural justice and human rights altogether as a matter of opinion and interpretation go on. For instance, also, the non-Islamic nation's courts have problems in issues like overcoming systemic discrimination, guaranteeing access to justice to everyone, and fighting the gender based violence. Such discussions illustrate the dynamic nature of due to legal procedures and the requirement for the almost permanent dialogue and discussion to promote women's rights worldwide. In this regard, non-stop conversation and collaboration between Islamic and non-Islamic legal systems would be of utmost importance to talk about the security of women thoroughly. This embraces practices to be culturally and religiously tolerant, to host cross-cultural unity gatherings, and to facilitate legal development and reform as required. With the aim of establishing mutual respect, tolerance and cooperation, both Islamic and non-Islamic versions of legal systems can work together to create and establish legal frameworks that would embrace these principles beyond the borders of their nations and promote human rights, dignity and equality of women.

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