

Research Article

THE STUDY OF WOMEN RIGHTS IN IMAMIEH JURISPRUDENCE AND DECLARATION OF HUMAN RIGHTS

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ABSTRACT

The present study aims to consider the issue that which human legal systems and shiie religious system could have a more comprehensive and fair view on women's statues, roles, responsibilities, duties and rights. First, the researcher provides an overview of research and review of literature. Then he provides a limited amount of information on declaration of human rights and Islamic declaration of human rights, as well as common principles of the human rights' enact and codification incentives thoughts arising from it. Furthermore, he considers the contemporary scholars' stance on this declaration. This research includes three main hypotheses. The researcher concludes that women's rights in this jurisprudence (fiqh), due to monotheism, being responsible view, strong execution, high quantitative and qualitative content, and very broad classification, cannot be parallel to a declaration in which men and women are considered equal without any differences and just from the aspect of "Human as Human" viewpoint. In Imamieh Jurisprudence, in some cases the researcher has considered essential the comparison between men and women rights. But Humanism and materialism view, lack of attention to abilities and needs, and an emphasis to reject and rule out any differences which is known as equal to discrimination causes an unfair comprehensive set on women's individual and social rights. Specific categorization and the combination of jurisprudence and legal contents based on the so called "jewelry jurisprudence" is compatible with the views of the researcher which might be considered as the innovation of this thesis.

Keywords: *Imami Jurisprudence, Women's Rights, Universal Declaration of Human Rights*

INTRODUCTION

Nowadays, the Human Rights Declaration is considered as the most essential laws and the most substantial constitution in the eyes of different countries and is considered as a measuring criterion of a society's value and cultural and social level. This has been so influential to the point that some of its fans are trying to use the content to question religions.

Human rights is in fact a late shouting of the mankind that after renaissance, in the search for mankind and the return to it occurred, without knowing that it was set to come back to the lost embrace of religion seeking and authenticity (AlameJaafari, 2006). But as AlameJaafari mentions, until a correct education based on supreme principles of humans does not turn down the fire in selfish hearts, profit-seeking and pleasure-seeking people and do not turn their existence to cultivable land for humans legal principles, it is impossible for legal systems and even more higher than them to be able to enter the human societies to the age of rational livelihood (AlameJaafari, 2006).

The growth of humanism resulted the women to be looked at as an oppressed human. A creature that was under the cruelty and exploitation of societies over the ages. Once women didn't have any ownership rights and were treated as a product. The other time societies were after equalizing women with men and in the future they will probably state their preference of women over men. There has been some actions toward reaching this matter.

Equalizing the men and women's rights is the result of unrealistic views on women's rights and adaptation of these rights with biological facts, social and necessary needs. But while the Islamic jurisprudence and religion basis is based on unlimited divine knowledge which is immune of any mistakes and on the other hand, with correct recognition of the needs has declared the applicatory rights, which has a very high level of accuracy.

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Theoretical Literature

The word jurisprudence means knowledge and understanding of something (EbnManzour,). And in term knowing the secondary juridical laws based on the exploration of the Quran proofs or justifiability (Abu Al Basl51). Also the intention of Islamic jurisprudence, “Jaafari jurisprudence “or the jurisprudence related to AsniAshari Shia is one of the faiths of Islamic jurisprudences. Resources of Shia jurisprudence are: Quran, tradition, consensus and reason. And the most important books of the Islamic jurisprudence are “AlKafi “from Mohammad Ben YaghoubKalini”from Mohammd Ali Ben BaboyeQomi (SheykhSandoq) and etc.

Between these one of the most comprehensive books that can still be used in scientific and research societies is “The system of women’s rights in ShaheedMotahari’s Islam” (Motahari, 1986).

The unjustified views of other societies and religions in comparison to Islam and the debates on matters such as marriage, alimony, ownership rights and financial independence of women, judgment, dissension, and the number of couples are the matters this book mostly focuses on.

This research studies the following hypotheses:

- 1- Women’s rights in Islamic jurisprudence and human right laws have classifications.
- 2- It seems that the assurances of executing the laws in support of women’s rights are not the same in the declaration of human rights and Islamic jurisprudence.
- 3- Islamic jurisprudence focuses on rights, responsibilities and roles, but the declaration emphasizes on women’s personal and social rights.

Common intentions behind the declaration of human rights (West and Islam’s human rights)

Principles or five-step rights are:

- 1- In both legal systems immunity of livelihood against any molesting factors are recognized as necessary. The government and society are responsible for the strict execution of this principle or fundamental right.
- 2- In both legal systems munificence and respect of humans are as important as any other vital needs and humans are recognized as worthy of munificence.
- 3- In both legal systems the right of having the proper education is recognized as a legal principle. The government and society are responsible do deliver this right.
- 4- In both legal systems freedom is a fundamental right of humans. The government and the society are responsible to provide the living atmosphere in which everyone can have this fundamental right with the difference that in Islamic law this right is with the condition that it won’t interfere with personal and social responsibilities. No human is allowed by relying on the right to freedom take or destroy other people’s dignity and the right to live.
- 5- Equal rights against the laws (AlameJaafari, 2006)

Women in Islamic human rights declaration

- 1- In human dignity men and women are equal, and equal to their rights they have responsibilities to carry out (Clause 7)
- 2- Women have social identity and are independent in their financial affairs and responsibilities. Women have the right to keep their name and origin. (Clause 7)
- 3- Men are required to be responsible for the women’s and family’s livelihood. (Clause 7)
- 4- Women have the right to marry any race, skin color or nationality. (Clause 10)
- 5- Murdering the women and children at the time of war is not allowed and if captured, they have the right to food, clothes and shelter. (Clause 3)
- 6- Men are required to support both mother and the fetus. (Clause 8)
- 7- Seeking knowledge for anyone who is able to do so is a must. (Clause 12)
- 8- Everyone is equal against the law and Sharia. (Clause 28)
- 9- All of the established rights and freedoms are conditioned to Islamic Sharia principles. (Clause 30)
- 10- Pregnant women have the right to receive payment from their employer during pregnancy. (Clause 22)

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11- In Islam positions and references that can practice the women's rights are recognized as jurists with comprehensive conditions and law experts. (Clause 18)

12- The countries which are not Muslim are not forced by Islam to accept the beliefs, laws, principles and freedoms of its own with the condition that they will not interfere with Muslim societies and believers. (Clause 30)

13- Women have the right to work. (Clause 21 and 22)

14- Women have the right to what they have earned. (Clause 24)

15- Child abortion is forbidden and only allowed by Sharia urgency. (Clause 1)

16- Spiritual rights are recognized and included. (Clause 6)

Women's Place and Values as Humans in Quran

Some of the verses related to the subject are cited here from Quran. Quran being the biggest reference for Shia jurisprudence.

And [mention] when the angels said, "O Mary, indeed Allah has chosen you and purified you and chosen you above the women of the worlds (Surat 'Āli `Imrān – 42).

Indeed, we have granted you, [O Muhammad], al-Kawthar (Surat Al-Kawthar – 1).

And abide in your houses and do not display yourselves as [was] the display of the former times of ignorance. And establish prayer and give Zakah and obey Allah and His Messenger. Allah intends only to remove from you the impurity [of sin], O people of the [Prophet's] household, and to purify you with [extensive] purification (Surat Al-'Aḥzāb – 33).

It has been made permissible for you the night preceding fasting to go to your wives [for sexual relations]. They are clothing for you and you are clothing for them. Allah knows that you used to deceive yourselves, so He accepted your repentance and forgave you. So now, have relations with them and seek that which Allah has decreed for you. And eat and drink until the white thread of dawn becomes distinct to you from the black thread [of night]. Then complete the fast until the sunset. And do not have relations with them as long as you are staying for worship in the mosques. These are the limits [set by] Allah, so do not approach them. Thus does Allah make clear His ordinances to the people that they may become righteous? (Surat Al-Baqarah – 187)

Indeed, the Muslim men and Muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the patient men and patient women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women, the men who guard their private parts and the women who do so, and the men who remember Allah often and the women who do so - for them Allah has prepared forgiveness and a great reward (Surat Al-'Aḥzāb – 35).

Indeed, those who have tortured the believing men and believing women and then have not repented will have the punishment of Hell, and they will have the punishment of the Burning Fire. (Surat Al-Burūj – 10)

Women's Social Place and Rights in Islam

Between men and women, Islam have equalized between their ability of measurement, social dignity and the part of choice meaning that they both can be decision makers of their own destiny. Act and be the owner of the result. As holy Quran says: Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned. "Our Lord, do not impose blame upon us if we have forgotten or erred. Our Lord, and lay not upon us a burden like that which you laid upon those before us. Our Lord, and burden us not with that which we have no ability to bear. And pardon us; and forgive us; and have mercy upon us. You are our protector, so give us victory over the disbelieving people" (Surat Al-Baqarah – 286). But the mighty god have two characteristics in women that by them, they have special privilege, first of all the women is like the land to recreate the humans. The survivals of humans are tied to women's existent. Second of all in creation of women there is tenderness. Sense and feelings has made women tender and by these two characteristics that one is in the body and another is in their soul, equal to them there are responsibilities on their shoulder.

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As a result the position and social place of women are effected by their role in the creation system. With this the position and the social place of men also becomes clear and the complexity and problems that are in the same principles for both and different principles for each as presented by Islam resolves.

And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing (Surat An-Nisā' – 32).

Some similarities and differences between Islamic Jurisprudence and Human Rights Declaration

A) Due to the limitations of the study, and similar issues related to the legal system in this study include:

Verify the legal personality of women, confirming justice, seeking peace, declares the spirit of equality and non-discrimination because of gender or any other personal need to see and hear the complaints to the competent court, the presumption of innocence of guilt, lack of privacy, denounced slavery, migration law, the importance of the family as the most important pillar of the community, the right to employment, the right to physical and emotional support, rights of learning, respect for human dignity, the right to political, economic, child support even an illegitimate child, the right to marriage.

B) Some are obvious, such as coverage and hijab in Islamic Jurisprudence, privacy of confidants and unconfident, temporary marriage and polygamy, religious, sexual relationship in marriage, and women's rights and responsibilities, to keep the foundation of the family, the number of death, divorce and termination of temporary marriage, dowry, example wages, alimony, child's right to breast-feeding, types of divorces, men and women, right of lien, the families of the parties in resolving the dispute couples (fissures), classified in different classes, inheritance, punishment Islamic legal rulings declaring the existence of legal rules (rule denying mustache, regulation distress and constriction) prohibition of abortion, respect for human dignity, the province's father and grandfather and their impact on various religious rights of women, rights for minorities or other religions with their marriage, lack of citizenship in the selection of source of emulation, to determine the terms of the contract, in addition, religious education, permit underage marriage before the age of eighteen, permission of her husband to leave the house, to obey, worship, and employment rights of women given the age difference between Sharia and religious duty and obligation of marriage and motherhood and child-rearing offspring.

C) Some women's rights in Islamic Jurisprudence and approved by the text of the declaration can be seen, like a marriage with a heretic or believer of an infidel book, lack of outbursts against the oppression the domineering in the implementation of the declaration for all nations and their colonies, unilateral rights and without any liability, to any possible employment of women, sexual freedom, the right to leave the house without permission of her husband, kinds education of art and professions, the similarity of women and men, apostasy and declared it as freedom of expression, and freedom of the infinite is not defined allowing all kinds of immoral acts and sexual perversion in the name of freedom, the right to marry without any restrictions.

Some of the results of the comparison of both systems

1- Looking at the human-centered Islamic Jurisprudence to women but with the intention of bringing her to perfection in the teachings of the Prophet and the Imams (AS), so woman's duty is considered because the composition of rights in Islamic Jurisprudence is Allah's government.

2- In this jurisprudence's view there's the equality of values between men and women and the path to growth and raising the humanity is equal for both but taking into account the capabilities of each the path to improvement is evaluated in a way that in some cases could be seemed as unjustified and partial.

3. Human Rights in Islamic Jurisprudence is both negative and positive contrast Declaration of Human Rights, which is the only negative.

4. Religions and minority rights are respected, unless the Imami community would come in malicious activities.

5. Demotion like marriage ban in the state of Ihram promise to marry women and infidels and apostates, the veil and the control group included men's and women's special look.

6. In terms of types of marriage contracts and dowries as determined by women.

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RESULTS AND DISCUSSION

Results

Based on the researcher's studies some of the items of the declaration have been adapted and compared with Islamic laws and their high and low points have been under critical view.

This research did not have the intention of denying or rejecting any of the items of this declaration but we have to accept that a declaration based on existentialism but also recognition of equal rights for all humans and praising the unconditional freedom cannot cope with religious principles, laws and rights. Because religion and divine laws specifies the borders of humans in their relation with god, themselves and the nature's system, as a result the declaration with a general review in the boundaries of this research has the following problems:

- 1- It is not comprehensive because it lacks attention to genders and their needs.
- 2- The holy religions are recognized as faith minorities.
- 3- The declaration does not represent legal content but more as an opinion.
- 4- Only the rights are emphasized and there is only a few items regarding the responsibilities.
- 5- According to the declaration any difference in legal rights between men and women is considered as discrimination.
- 6- There is no citation of women's importance in a family's holiness.

Results Obtained in Other Studies

-1-1- The results of researches has shown that in a Islamic law system, women have an independent identity and all their fundamental and social rights are considered and there are many evidences to this in verses from Quran, but in today's western world with the feminist slogans, a women's identity is completely known as equal to men, without regard to their physiological differences. In the humanist vision of the West, "family" has lost its importance and responsibilities of motherhood and married women that are emphasized in Islam, are no longer emphasized. (AzimZade -Comparative study of women's rights from the perspective of Islam and the West 85-86)

-1-2- The social role of women is determined in direct communication with the system. In this system emphasizes on the quantities and the study of women's rights based on quantity, does not reflect the true value, whereas the relation of their impact to the development of society as well as individuals; Both women and men can attribute their impact in terms of raising their own place. In the scene of retrieving women's rights, the international community's efforts are toward more involvement of women in social and economic activities and as a final result increasing their effect in raising the GDP and economic development. Even politically sensitive positions occupied by women in the political scene are just a step toward the equality of women and men in terms of the quantity and outward. (Latent, paper and compare it with the perspective of women's rights in Islam and international human rights).

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