

## **Islam and Human Rights: Oppressive or Misunderstood?**

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### **Abstract**

*The international community has portrayed Islam as an oppressive religion that is incompatible with human rights. However, this is not true according to the Quran. It is fundamentalist interpretations and governments that cause Islam to be incompatible with human rights. This paper will examine human rights concerns related to Islam and show that Islam itself is not repressive. It will also show that the way to battle fundamentalism is through education and ijihad.*

The relationship between Islam and international human rights has been a controversial and hotly contested topic. Many people view Islam as repressive to women and religious minorities. These critics also believe that Islam can never be compatible with human rights and democracy. However, this paper argues that Islam does not deny human rights Quranically. Rather, Islamic fundamentalists paint an unfair picture of an oppressive religion. Central to this debate about Islam's ability to coexist with human rights is Sharia law. The word *sharia* comes from Arabic and means "the path to the water," which means the path that one must travel towards Allah. There is no single, authoritative interpretation of sharia, and different versions can be found in various countries and even vary between mosques (Brechin, 2013).

Despite current concerns about its impact on human rights, Sharia law was actually very progressive for its time when it was first created. The Prophet Mohammed granted rights to women at

time when they had none. Nonetheless, many people view Sharia as discriminatory, oppressive, and barbaric as the result of the Sharia they have witnessed from countries such as Saudi Arabia and Afghanistan. However, it is important to note that not all countries have such extreme versions of Sharia. Sharia is free to be interpreted and changed by religious scholars known as *ulama*. Sharia law is drawn from very specific sources. For Sunnis, the authority of Shari'ah Law is drawn from four sources: the *Qur'an* (canonical text), *sunnah*, *qiyas* (analogical reasoning) and *ijma* (consensus of the community). Sharia law addresses many parts of the Muslim community's lives and is divided into three sections: faith, ethics, and the acts of Muslims. The acts of Muslims are divided into two sections; the first section is the acts of worship, which are also known as the five pillars of Islam (belief in one god Allah, prayers, fasts, charities, and pilgrimage to Mecca). The second section addresses human interaction and is comprised of financial transactions, endowments, laws of inheritance, marriage and divorce and child care, food and drinks (including ritual slaughtering and hunting), penal punishments, warfare and peace, and judicial matters (including witnesses and forms of evidence) (Chowdhury, 2008). It is with this second section that issues of human rights abuses arise.

A major reason why people view Islam as incompatible with human rights is perceived violations of women's rights. Many critics believe that Islam forces women to be covered head to toe and sit at home obeying men. They think that all women in Islamic countries are oppressed and have no rights, and that Islam is the cause of this. Areas of concern in the women's rights arena include: marriage, divorce, child custody, and inheritance. Yet, it's important to recognize that historically Islam has had a place for women at a time when many other societies did not. Before Mohammad's birth in 570 AD, much of the Middle East was "an egalitarian society in which women and men worked, learned, and lived side by side. The women in Mohammad's life, such as his wife Aisha, played a significant role in recounting his religious teachings, which then were written down as the scriptures of Islam" (Polisi, 2004, p. 44).

One of the issues regarding women's rights in Islam is polygamy. Most Islamic legal codes allow a man to marry up to four wives. People view this practice as confirming the idea that Muslim men think they are superior to women and want to acquire women like property. The Quran states:

If ye fear ye shall not be able to deal justly with the orphans, marry women of your choice, two or three or four, but if ye fear that ye shall not be able to deal (with them equitably), then only one, or (a captive) that your right hand possess. That will be more suitable and, to prevent you from doing injustice (Sura 4:3).

However, it's important to keep the historical time period of this Sura in mind. It was written to protect women and orphans after war. "Orphans and captive women were usually exploited in that society; the Koran allowed polygamy so that every woman could enjoy her right to marriage" (Shah, 2006, p. 890). It was also an indirect restriction on unlimited wives, which was a common practice at the time. It was not intended that Muslim men were allowed to take up to four wives for any reason. Rather, it was used as a protective measure in the context of war, especially if the conquerors could not insure they would treat the orphans fairly (Shah, 2006).

Another major area of concern within the women's rights debate is divorce (*talaq*). In most conservative Islamic societies, a man can divorce his wife for any reason. In contrast, women have three different options to divorce their husband. The first is *mubarah* (mutual release), which means that the husband must consent and therefore he has leverage. The second course open to a wife is that of *khul* (buying release), whereby a woman buys her release by returning her dowry. The third option, *talaq-e-tafwaz* (delegated power of divorce), confers the right to divorce upon the wife if the husband delegates that power to her. Yet these rules are not based on Quranic text, but are interpretations from Muslim judges. The Quran makes no specific reference to a women divorcing her husband. This does not mean that women do not have the right to divorce their husband (Shah, 2006). A 2004 case in the Federal Shariat Court of Pakistan addressed this issue. It ruled that "if women had the power to repudiate marriage in pre-Islamic Arab society, and the Koran has not explicitly taken away that power or is silent

on it, then in Islamic law women should not be barred from repudiating marriage” (Shah, 2006, p. 895). Divorce initiated by a woman is left completely up to interpretation by Islamic jurists, which varies.

According to Quranic verses, women inherit half the value of what a man inherits. Many point to this as a reason that Islam views women as subservient. However, when looking at this area one has to consider the historical period in which the verse was written. At the time, men were the breadwinners and financial providers for the family. Shah (2006) writes: “If women contribute equally to family expenses or men do not discharge their economic responsibility then women are entitled to an equal share in all inherited estates by the Koran. The Koran also allows for bequests to women in order to prevent economic injustice” (p. 898). Historical context may give the appearance that women are treated unfairly in this issue, but in actuality there are many cases of women receiving equal inheritance.

A woman’s testimony in court is also an issue since people have the misconception that the testimony of two women equals that of one man. In many Sharia courts this is true, however this is a distortion of a Quranic verse. The section of the Quran that mentions women as witnesses involves financial transactions. The Quran says that “if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her” (Sura 2:282). This Sura does not say that the testimony of two women is equal to one man. It says that there are two women witnesses in case one forgets. Many would point to this and say that this shows that Islam thinks that women are forgetful because they are inferior. Once again, historical context has to be taken into account. Shah (2006) states:

First, in seventh century Arab society, commercial transactions were considered man’s domain, and women, having little or no experience, were less equipped than men for testimony in commercial transactions. Second, women could be easily coerced in that society; if one witness was female, she would be easy prey for some male who wanted to force her to disclaim her testimony (p. 900-901).

Many people in the international community point to apostasy as a reason why Islam can never be compatible with human rights. The common belief is that if you are an apostate, or a person who renounces their religious beliefs, the Quran orders you to be killed. The Sura used to uphold this view is: “The only punishment of those who wage war against Allah and his messenger and strive to make mischief (*fasad*) in the land is only this, that they should be put to death or crucified, or their hands and feet cut off, or they should be imprisoned...This shall be as a disgrace for them in this world and in the Hereafter, they shall have a grievous chastisement” (Sura 5:33). Thus, many have the view that Islam does not allow people to convert to other religions and is opposed to religious freedom. However, is this true Islam, or a perverted practice put in place by ultra-conservative states? Islam advocates religious freedom. Historically Islam has always allowed freedom of religion even in areas that were conquered. Saeed (2011) writes that, with few exceptions, “the religious communities under Muslim political rule experienced a high degree of religious freedom” relative to historical standards (p. 31). In fact, religious freedom was a fundamental principle of classical Islamic law and theology, particularly regarding non-Muslims (Saeed, 2011).

Historically, conquerors who had practiced a different religion than the conquered area made the inhabitants convert. However, Islamic conquerors were more than tolerant and advocated religious freedom. There are different categories of apostasy under Islamic law: explicit expressions of unbelief (*kufr*), blasphemy (*sabb Allah wa sabb al rasul*), heresy (*zandaqa*), and conversion from Islam (*iridad*). As Islamic law is not universal, different schools and Islamic jurists have different definitions of exactly these terms mean. Shafi'i jurist al-Qalyubi's definition of apostasy is: “Riddah is severing one's ties with Islam, with the intention of converting to disbelief (*kufr*), by words or acts that are indicative of *kufr*, regardless of whether they emanate from contempt, hostility, or just disbelief” (Longva, 2002, p. 260). He also believes, “abandonment of faith can take place without any contemptuous attack or sacrilege being committed, in which conversion and unbelief should not only be looked upon as less serious

offense than blasphemy..." (Longva, 2002, p. 260). In many Islamic countries today, the punishment for apostasy is death and almost certain ostracism from society.

If a closer look is taken at the Quran, however, it can be seen that there is freedom of religion. The Quran states, "Let there be no compulsion in religion" (Sura 2:256). This verse shows that Allah does not want people to be forced or pressured in the area of religion. Religion should be a free choice of the individual. The Quran also states: "The truth is from your Lord, so whoever wills-let him believe; and whoever wills-let him disbelieve. Indeed, we have prepared for the wrongdoers a fire whose walls will surround them. And if they call for relief, they will be relieved with water like murky oil, which scalds [their] faces" (Sura 18:29). This verse shows that Allah allows either belief or disbelief in Islam.

Punishment for not believing only occurs in the afterlife, in hell. As punishment occurs in the afterlife, it is reserved for Allah and not for men or governments to carry out. An interesting note about this verse is that the Islamic version of hell is more lenient than the Christian version. In Christianity, once a person goes to hell they stay there for eternity. However, in Islam there is an allowance for repentance in hell. Shah (2005) writes: "When the Prophet Muhammad could not convince delegates of non-Muslim tribes to embrace Islam, God commanded him to tell them that 'to you be your way [din, religion] and to me my way' (109:6)" (p. 72). The Prophet Muhammad allowed the choice of religion and did not force anyone to convert. Sura 10:99 reads: "If it had been the Lord's Will, they would all have believed – all who are on earth!" This Sura reiterates that Allah does not wish all men to believe in Islam, and does not encourage people to be forced to believe. Sura 10:108 further states: "Say: O ye men! Now truth hath reached you from your Lord! Those who receive Guidance, do so for the good of their own souls; those who stray, do so to their own souls: and I am not (set) over you to arrange your affairs." This verse specifically mentions apostasy when it mentions straying from the religion. There is no commandment for death or harm to the individual. The only harm in straying from Islam is to the person's soul.

According to the Quranic verses above, punishment for apostasy is reserved for Allah. Shah (2005) writes: "Stoning apostatizes to death is breaking the commands of raw Koran and arrogates to oneself the right of punishment, which God has reserved for Himself, and is therefore a transgression of the limits set by God" (p. 73). Nowhere in the Quran does it command the death of a person who turns from Islam. It is in the Hadith (traditions of the Prophet) that Sharia law draws the command for death from apostasy. There are two hadiths that are drawn from; one that contends that the Prophet Muhammad said that the blood of a fellow Muslim should never be shed except in cases of the adulterer, the murderer, and those who forsake Islam, and another where the Prophet Muhammed said "whosoever change his religion, kill him" ( Shah, 2005, p. 76). However, it is disputed how accurate and/or relevant this Sura is. "The hadith on which current apostasy laws appear to be based is in the first place weak, and secondly its origins during Muhammad's time are seriously disputed," writes Shah (2005, p. 78). Hadiths were based on the traditions and sayings of the Prophet and were written by others; they are not the expressed word of Allah.

The fact that many Islamic states take punishing apostasy into their own hands is incorrect, according to the Quran. Many Islamic states only apply Sharia law to personal and family matters. Only more conservative states, such as Iran and Saudi Arabia, use Sharia law for criminal and civil law. In societies where conversion away from Islam is still considered a crime, apostates are no longer executed but instead are deprived of the right to remain married to their Muslim spouse(s). They are often also denied guardianship over Muslim-born children, the rights to inherit, and their right to dispose of property pending their repentance (Longva, 2002). However, deprivation of these rights does not have a Quranic basis. Some argue that modern laws have been shaped to suppress not only freedom of religion, but of people's rights in general. Saeed (2011) argues that apostasy laws work as tools of suppression, especially when certain conditions are present. These conditions include when laws are worded ambiguously and easily applied to a wide range of causes, when local orthodoxy and an

overbearing religious establishment oversees legal implementation, and where there is a political elite willing to support the religious establishment (Saeed, 2011). Islam itself is not repressive of the freedom of religion, or the freedom to change one's religion. Rather, it is governments, religious leaders, or other individuals twisting Islam to promote their own goals that make it appear that Islam is not compatible with the right to choose religion.

An important event related to this discussion came in 1990, when member states of the Organization of the Islamic Conference adopted the Cairo Declaration on Human Rights (CDHRI) at a meeting in Cairo, Egypt. It was a move by the Muslim world to respond to the 1948 United Nations Universal Declaration of Human Rights (UDHR). Muslims have argued that Islam does not need a human rights charter because the religion itself already contains human rights. Also, some Muslims believe that the UDHR does not address the religious and cultural concerns of non-Western societies. "Perhaps, the most fundamental difference between an Islamic and an internationalist point of view of human rights lies in the concept itself," writes Hayatli (2009). "While UDHR stresses the universality of human rights, Islam recognizes two types of rights: rights that humans are obliged, by virtue of God, to fulfill and obey; and rights that they are entitled to expect from their fellow human beings" (p. 1) For instance, Article One of the CDHRI states:

All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity (Forced Migration Review, 2009).

Many people question the validity of Article One and the reasoning behind it. Carle (2005) astutely points out that "equal in dignity, however, does not afford the protections conferred by equal in rights" (p.132). The CDHRI states that no person will be discriminated against based on sex and religion. However, in many Islamic countries women do not have the same rights as men, especially in the area of Sharia law. Article One notes that men are free from discrimination based on religion, but it



does not state that men have the freedom of religion. In Islam, apostasy can be punished with death. The CDHRI also does not address freedom from discrimination based on sexual orientation. Article Two of the Declaration states: “Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies, and states to safeguard this right against any violation, and it is prohibited to take away life except for a *shari’ah* prescribed reason” (Forced Migration Review, 2009). The issue with this article is clearly that there could be a Sharia-prescribed reason to violate a person’s human rights. For example, it is lawful for a person to be killed for apostasy. Article Six states: “Woman is equal to man in human dignity and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage” (Forced Migration Review, 2009). This article does not truly address the rights of women; it only places a woman’s equality to man in terms of human dignity. It does not state that women have the same social, political, and economic rights as men. It also states that women have their own duties to perform. However, it does not expand upon what these duties are and implies they are forced duties. If a woman does not fulfill these duties, what will the consequence be?

The Declaration addresses religion in Article 10 where it states: “Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism” (Forced Migration Review, 2009). This article does not give religious freedom to individuals. Rather, it limits the ability of one to change their religion or for an individual to evangelize to others. Article 22 of the Declaration further states: “Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Sharia” (Forced Migration Review, 2009). This guarantees a person’s right to opinion, but only if it does not contradict with Islam. Article 25 contends: “The Islamic Shari’ah is the only source of reference for the explanation or clarification of any article of this Declaration” (Forced Migration Review, 2009). Some critics may question this article, however the Cairo Declaration is based

on Islamic rights and Sharia is the law of Islam. Interestingly, the article does not use the Quran or Sunna as a reference for the Declaration.

With these debates and declarations in mind, one should recognize that often Sharia law is perverted or given an extreme interpretation based on the government of a state. In a research study of 23 Islamic countries and 23 non-Islamic developing countries, data showed that Islamic political culture was not a determining factor in “the appraisal of human rights practices and the poor human rights records of many Islamic countries are a result of authoritarian government rather than Islamic political culture” (Chowdhury, 2008, p. 5). It can be argued that Sharia itself is not bad, but rather the extreme forms of it are. One issue where the international community has failed Muslims is the right to have Sharia. Sharia advocates have argued that Muslims have a right to have Sharia law. The international community does not take into account whether the people of the state want to live under Sharia law. If the people of the state want to live under Sharia law, does the international community have the right to say that they should not? This statement is not talking about extreme forms of Sharia (such as those in Iran or Afghanistan), but the general principle of Sharia.

While there are many states where a large portion of the population practices Islam, not all of them list Islam as the state religion. Twenty-two countries list Islam as the official religion. Bangladesh, Iraq, Pakistan, and Palestine institute a non-denominational form of Islam. Afghanistan, Algeria, Egypt, Jordan, Libya, Malaysia, Mauritania, Morocco, Qatar, Saudi Arabia, Somalia, Tunisia, and the United Arab Emirates list Sunni Islam as the state religion. Iran is the only country that lists Shia Islam as the state religion. Oman is the only country to list Ibadi Islam as the state religion. Kuwait, Yemen, and Bahrain have a mixed Sunni and Shia religion system. While all of these countries have human rights issues, some of them have issues that pertain directly the relationship between Islam and human rights. According to reports from Human Rights Watch (2014) and Amnesty International (2013), 17 countries had issues with women’s rights. However, only six countries (Bangladesh, Pakistan, Afghanistan, Jordan,

Qatar, and Palestine) had discrimination/violence against women and girls. Egypt, Libya, Saudi Arabia, and Iran had issues with freedom of religion/religious discrimination. Another issue noted on the reports was discrimination of the LGBT community in Iran and Malaysia. In the reports, most violations of women's rights were in issues of divorce, child custody, and marital rape. The only country with no violations related to Islam were Somalia and Mauritania.

It is important to note that it is governments who institute a fundamentalist view of Islam that violates human rights. The majority of Islamic states do not rule on fundamentalist beliefs. Countries such as Iran and Afghanistan are examples of Islamic countries that violate human rights. However, it is the governments of these countries that are the problem. Before the Taliban came to power in Afghanistan, for instance, women were a significant part of the workforce. They were somewhat free under the previous rule, with many of them becoming teachers, nurses, and doctors. After the Taliban came into power, women were not allowed to be a part of the workforce, even if there was a need for them. Islam was a part of Afghanistan long before the Taliban came into power. It was the Taliban that violated women's rights and not Islam. In Afghanistan, as well as Saudi Arabia, women are often banned from obtaining an education (Webber, 2003). Saudi Arabia also bans women from driving. Both of these countries have forced women to wear hijab, and in some cases the more conservative burka. Hijab is not something that is supposed to be forced, and is a traditional choice for Muslim women to adopt. Most women do not see hijab as a form of oppression, but rather as an expression of faith and a form of modesty. However, when the practice is forced or when women are forced to wear more conservative coverings, the practice becomes oppressive. This is a result of a select group practicing a more fundamentalist view of Islam, and does not portray Islam as a whole.

The challenge of oppression in certain Islamic countries can be overcome. Islamic law is open to interpretation according to the principle of *ijtihad*. "Ijtihad allows a qualified individual to make a legal determination when there is not consensus as to what the Qur'an and the sunna require," writes Hursh

(2012, p. 44). Ijtihad can be used to transform traditional law to better align with modern society. It can also be used as a tool to combat oppressive fundamentalists. In 2004, Morocco refined *Mudawana* (Code of Personal Status) using ijtihad. Morocco combined civil and Sharia law and expanded the rights of women throughout the country. In Iraq, the country's personal-status laws provide women with some of the broadest legal rights in the region (Coleman, 2006). Islamic law, just like laws in any other country or religion, can lose their relevance to current times. Ijtihad provides a way to evolve Islamic law to fit the current era. Polisi (2004) writes: "The education of women and men in Islamic culture is needed to expose Muslims to the true teachings of Mohammad and his original intentions when uttering his sacred phrases" (p. 45). If people are educated, it will not be easy to violate their rights. Women need to be educated more in Islam to understand that the Quran does not take away their rights. Through education and ijtihad the Muslim community can begin to conquer fundamentalism and oppression within Islam.

Fundamentalist and oppressive governments have caused people to think that Islam is not compatible with human rights. However, this is not the case. When examining the Quran, one can see that Islam was never meant to deny rights. Concerns such as apostasy and a woman's right to divorce have been twisted from their original meaning. There are many Islamic countries, yet only a few of them have been cited for severe human rights violations. The countries with these violations are usually under a fundamentalist government. Through education and ijtihad, the Muslim community can battle fundamentalism and show the world that Islam is compatible with human rights.

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