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CEDAW & Woman's Right to Work in Islamic Law

ABSTRACT

Industrialization and globalization have revolutionized the way human beings use to live in the past. Inflation, the desire to have a better standard of living, and an increase in career opportunities have led both genders to aspire to high career goals. Muslims were also got affected by all these modern advancements. Muslim women are stepping out and achieving new heights of career success. Moreover, (CEDAW) and other legal instruments dealing with human rights represent the knowledge and experience of centuries in a few pages. Islam being the religion of human dignity firmly believes in human rights. All these rights must be analyzed according to the traditional Islamic law as expounded by our classical jurists. This change in society ignited a religious debate among scholars. Some scholars argue that this is against Islam. In their view, women should comply with the commandment of the Quran of staying home. On the other hand, others maintain that from Khadija (May Allah be pleased with her) as a businesswoman to 'Aa'ishah (may Allah be pleased to be here) as the first prominent Muslim female scholar and teacher, there are numerous shining examples of Muslim women in Islamic history who had careers alongside the performance of their duties as homemakers. Thus, the state for Muslim women is confusing. Therefore, the researcher has strived to scrutinize the provisions of (CEDAW) in light of Islamic law concerning women's right to work.

Keywords: CEDAW, Women's rights, right to work, career, gender equality, Islamic law

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Introduction

The issue of women's rights to work and gender equality have gained importance both at international and national levels in recent times. Various national and international legislations are promulgated to ensure equal representation of both males and females in the workplace. The Convention on The Elimination of All Forms of Discrimination against Women (CEDAW) and other international legal instruments strived to create a balance in providing opportunities for education and career. Islam being the religion of human dignity firmly believes in human rights. However, rights granted by Islamic Law have different contextualizations. All these rights must be analyzed according to the traditional Islamic law as expounded by our classical jurists (Nyazee, 2003).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on The Elimination of All Forms of Discrimination against Women (CEDAW) demanded the same opportunities for the careers of men and women and urged for the elimination of any stereotyped gender roles for men and women at all levels. Moreover, it called for the eradication of any kind of discrimination against women in the field of employment so that the equality of men and women is ensured and both genders enjoy equal rights concerning career and employment. This convention mandated that the states must ensure the equality on the ground that the right to work is an inalienable right of all human beings; The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction must be provided to the women.

Equality in *Sharī'ah*

Doctrines enshrined in International conventions are compatible with *Sharī'ah* or not? The answers to these queries are not in black or white.

Rather it needs some elucidation. *Sharī'ah* believes in the equality of all mankind based on their humanity and doesn't believe in the ranking of humanity based on caste, creed, race, nationality, or gender. "O mankind, indeed, we have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the noblest of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted" (Al-Qur'ān 17:70). Moreover, Islam weighs both genders on the same scale regarding their deeds on the Day of Judgment. Every gender will face the consequences of their actions. Allah, the most merciful says: "And their Lord has accepted of them and answered them: "Never will I suffer to be lost the work of any of you, be he/she male or female: you are members one of another..." (Al-Qur'ān 3:195)

"If any do deeds of righteousness, be they male or female, and have faith, they will enter paradise, and not the least injustice will be done to them" (Al-Qur'ān 4:124)

"For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise – for them has Allah prepared forgiveness and a great reward" (Al-Qur'ān 33:35)

Islam does prioritize certain people over others based on their roles and effort. For instance, Allah SWT has chosen women for 'motherhood'. For that purpose, a woman goes through a monthly cycle of menstruation and endures the painful period of pregnancy, delivery, and lactation. Allah SWT acknowledges this sacrifice on several occasions in the Glorious Qur'ān: "And We have enjoined on man [to be good] to his parents: in travail upon travail did his mother bear him and his weaning was over two years. Be thankful to Me and your parents, unto Me is the final destination." (Al-Qur'ān 31:14). Allah The Exalted is recognizing the sacrifice of the woman when she bears the pain of pregnancy, delivery, and then breastfeeding. On another occasion, Allah said: "And We have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] are thirty months..." (Al-Qur'ān 46:15)

For this reason, Prophet Muhammad (Peace Be Upon Him) gave precedence to the kind treatment of one's mother over the kind treatment of one's father. A man came to the Prophet and said: O Messenger of Allah! Who from amongst mankind warrants the best companionship from me? He

replied: "Your mother." The man asked: Then who? So he replied: "Your mother." The man then asked: Then who? So the Prophet replied again: "Your mother." The man then asked: Then who? So he replied: "Then your father. (Bukhārī, Ḥadīth no.5971) Moreover, he told 'Paradise lies at the feet of your mother. (Musnad Aḥmed, Ḥadīth no. 15538)

Thus, Islam gave the woman precedence thrice over the father because of the pain and hardship she bore during the pregnancy which can't be shared by anyone else. Mother alone has to bear all the stages of this difficult period. Likewise, Allah, The Exalted has made man responsible for some of the vital tasks of life on earth. One among just duties is the responsibility of man to earn a livelihood for his family and provide the necessities of life. For example, food, clothing and accommodation. Prophet (Peace Be Upon Him) said: "...A man is the guardian of his family (household) and is responsible for his subjects..." (Bukhārī, Ḥadīth no. 7138)

Allah says: *"but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis"* (Al-Qur'ān 2:233)

At another place, Qur'ān says: *"Let the rich man spend according to his means; and the man whose resources are restricted, let him spend according to what Allah has given him"* (Al-Qur'ān 65:7)

Likewise, several illustrations can be found in the *Sunnah* of the Prophet Muhammad (Peace be Upon Him) which indicates that women have the right to their husband's income and they must spend on them. It was narrated that 'Aa'ishah said: "Hind daughter of 'Utbah, the wife of Abū Sufyān, entered upon the Messenger of Allah (peace and blessings of Allah be upon him) and said, 'O Messenger of Allah, Abū Sufyān is a stingy man who does not spend enough on me and my children, except for what I take from his wealth without his knowledge. Is there any sin on me for doing that?' The Messenger of Allah (peace and blessings of Allah be upon him) said, take from his wealth on a reasonable basis, only what is sufficient for you and your children." (Bukhārī, Ḥadīth no. 3825)

Therefore, man must work to earn the livelihood of the family. Allah has absolved the women from this duty. It's not her duty to earn or provide for the family. Rather, it is her right that she must be provided with everything necessary for sustenance. Not only she is absolved from the duty of earning for her family, but she is also free from other outdoor religious duties as well which Allah made mandatory for males. For instance, she is not required to offer daily congregational prayers in mosques. Moreover, Friday prayer is not obligatory for her. The funeral prayer is also not expected from her. Allah didn't make *jihād* obligatory on her. Though she may opt for doing these tasks out of choice, keeping in view the limitations of *Sharī'ah* these are neither required nor expected from her. Likewise, doing jobs and having careers are neither required nor expected from her in ordinary circumstances. The commandment of the Glorious Qur'ān: *"Stay in your*

houses...” (Al-Qur’ān 33:32-33) points out that the most appropriate place for a woman is her home (Mawdūdī, 2003). Home management and raising kids are her prime responsibilities. Prophet Muhammad (Peace Be Upon Him) distributed the work between Syeda Fāṭimah and ‘Alī (may Allah be pleased with them) and made the household work duty of Syeda Fāṭimah while ‘Alī was made responsible for outdoor work. (may Allah be pleased with them) (al-Kāsānī, 1982).

Messenger of Allah (Peace Be Upon Him) said: “...a woman is the guardian of her husband’s home and his children and is responsible for them... (Bukhārī, Ḥadīth no.7138)”. This ḥadīth indicates that when Prophet (Peace Be Upon Him) discussed the guardianship of women, he not only mentioned ‘the house’ as he mentioned for husbands, but he added the responsibility of “his children” as well. This was not mentioned for husbands. It proves that child-rearing is her duty more than any other person, alongside the duty of contributing to homemaking and management. However, this doesn’t mandate that she must do all chores. Homemaking and management is her duty. Foster mothers, maids and nannies may be hired for home management. This is not “*idleness*”. Rather it is one of the greatest contributions to society i.e. to employ the best skills, time, and energy to raise the best human beings and give to society to make it a better place to live.

Jamal Badawi says in this regard: About the *woman’s right to seek employment*, it should be stated first that Islam regards her role in society as a mother and a wife as her most sacred and essential one. Neither maids nor baby-sitters can take the mother’s place as the educator of an upright, complex free, and carefully reared child. Such a noble and vital role, which largely shapes the future of nations, cannot be regarded as “*idleness*”. (Badawi, 2016)

Thus, Islam doesn’t believe in bringing all women out of the home and making them work in factories, shops, airplanes, washing areas, and restaurants to consider them empowered and contributing to society. It believes in empowerment by providing education and creating awareness, not to seek jobs and have careers but to understand the world better and become better human beings and Muslims. Moreover, Islam mandates her rights to Maher, maintenance, Inheritance, etc. to make her financially empowered.

Right to Work for Women in *Sharī’ah*

The next question is: Is it allowed for women to have careers? The answer is yes. It is *mubāḥ* (permissible) for a woman to do the job or have a career in Islam (al-Mansī, 2006). Rather when the necessity calls for it, it is recommended. Examples of these professions are nursing, teaching (especially children), and medicine, social and charitable work. Moreover, there is no restriction on benefitting from women’s talents in any field.

The general principle is that the wife doesn't need to work or earn but permissible according to the majority of scholars, however, there is a difference of opinion about going outside of the home for work as according to *Imām Abū Hanīfa* husband can restrict his wife from going out for work, he argues that Islam has exempted her from any financial obligation and responsibility. But some *Ḥanfī* scholars have allowed going out for work if there is not any harm or danger because it will restrict his right and compromise her status. (Al-Nawawi, 1392 AH)

According to *Imām mālik* and *Imām Shāfi* husband has the right to stop working with his wife if the nature work is insulting or necessitates her espouser and which affects the right of the husband (Al-Mudawwana al-kubrā, 2005). On the other hand, *Ḥanābilah* are of the view that a woman is not allowed to work without the permission of her walī (guardian) and when there is a dire need for it because she is not responsible to bear the financial burden. Women are not allowed to provide their services to anyone without the permission of walī (guardian). (Al-Nawawi, 1392 AH)

Women in the Society of Prophet (P.B.U.H)

To better understand this, one should have recourse to the era of Prophet Muhammad (Peace Be Upon Him) and his Companions. We deduce from *Sīrah Ṣaḥābīyāt* that some of them were multitasking i.e. being homemakers and career women simultaneously while some others only focused on raising children and home management. They used to do chores by themselves if they couldn't afford female slaves or maids. But if they could afford it, they would supervise them and make them work. This is not linked to their right to education. All of them used to come to the congregational prayers and listen to the sermons and lectures of the Prophet (Peace Be Upon Him), rather they had an exclusive day for learning from Prophet (Peace Be Upon Him). We find women having careers of almost all sorts during that era. From maids to teachers; nannies to merchants; midwives to doctors; women were everywhere. Many talented and brainy women excelled and contributed in diverse fields and they were never condemned. Rather, their efforts were appreciated. It's a well-known fact that *Khadija* (may Allah be pleased with her) was a businesswoman and her business venture led her to her marriage with the Messenger of Allah (Peace Be Upon Him). Many other women worked in the business sector. For instance, *Umm al-Munzar* used to sell dates while *Ḥawla* was the seller of perfumes (al-'Asqālāni, 1415 H). *Asmā* daughter of 'Umais used to tan the skin of animals to make it leather (*Dibāghah*). It is said that she used to tan 40 skins per day (Manī'al-Hāshimī, 1990). Handicraft was also an important source of income for many women. *Zainab* the wife of Prophet Muhammad (Peace Be Upon Him) and *Zainab* wife of 'Abdullah Ibn Mas'ūd both used to craft things and sell and used to earn (Ibn Mājah, Ḥadīth no. 1835)

Some women used to work as nurses, midwives and doctors during the time of Prophet Muhammad (Peace Be Upon Him) and companions. Umm Kalsūm daughter of 'Alī used to help women as a midwife. Rufaidah daughter of Sa'ad worked as a doctor. Her tent was built in the Mosque of the Prophet (Peace Be Upon Him) during the time of war of Aḥzāb. She treated the wounds of Sa'ad ibn Mu'adh and others (Bukhārī, Ḥadīth no. 1129).

Women were hired as foster mothers, nannies and maids. It is a very well-known fact that Ḥalīma Sa'adia (al-Mu'jam al-Kabīr Ḥadīth no. Ḥadīth no. 545) was the foster mother of the Prophet (Peace be Upon Him) while Um Aiman was the nanny (Bukhārī, Ḥadīth no. 3737). Women used to do the jobs of beauticians (*Māshṭah*) as well. Shifa daughter of 'Abdullah used to teach reading and writing during the time of Prophet Muhammad (Peace be Upon Him) (Bayhaqī., Ḥadīth no. 19597). It is narrated that she was later appointed officially for the matters of market supervision by 'Umar ibn Khaṭṭāb during his caliphate. (al-Barr, 1992). This list is not exhaustive rather these are a few examples from the early era of Islam. But these are enough to paint the picture clearer. It was not an alien concept for women to have careers during the time of the Prophet (Peace Be Upon Him). Women used to work in almost all permissible fields.

However, it was with certain terms and conditions. The same is applicable today as well. As mentioned earlier, her prime responsibility is of taking care of the kids and home. Her career must not hamper it. Moreover, after the revelation of Verses of *Hijāb*, it was mandatory for Muslim women to properly cover themselves wherever they are and whatever they are doing. Moreover, some scholars stipulate the permission of her walī too. Still, some scholars permit women to work, only in situations when it is her need or the need of society. (Fouzān, 1423). However, the examples from the lives of *Ṣaḥābīyāt* do not support this stance. There were *Ṣaḥābīyāt* who were working because they needed and there were who didn't need. Thus, the condition of 'need' doesn't seem appropriate.

Muslims need to have a balanced approach regarding this issue. Neither should we try to shun the concept altogether calling it the phenomenon of the 21st century nor should we try to ask every woman to leave homes and enter into workforce labor. The balanced approach entails that women's contribution to society, by raising the best human beings is the most contributing share in the well-being of the society. However, women may choose to work and benefit society from their talent and abilities if it doesn't hamper their responsibilities at home.

Critical Analysis of CEDAW in Islamic Law

A detailed and critical study of some relevant provisions of CEDAW from the perspectives of Islamic law is extremely crucial to understanding the topic of Woman's Right to Work in Islamic Law and CEDAW both. Islamic law treats

women and men equally based on spirituality, ethics, and humanity. Along with it, various Islamic rulings oblige the eradication of discrimination and emphasis respect for women by treating them with justice and kindness. Islamic law eradicates discrimination by stating that the best person among the people is one who behaves toward women in the best way. This hadith is reported from the Holy Prophet (PBUH)

“The most complete of the believers in faith is the one with the best character among them. And the best of you are those who are best to your women.” (Al-Tirmidhī, Hadith No. 1162) Allah’s Apostle (PBUH) also said: “Treat females kindly, for a woman is created from a rib, and the most curved portion of the rib is its upper portion, so, if you should try to straighten it, it will break, but if you leave it as it is, it will remain crooked. So, treat women nicely.” (Bukhārī, Ḥadīth no. 548).

Various Aḥādīth eradicate discrimination against women and provide more comprehensive literature related to the superior and special treatment of women and curb the discrimination against them. Islamic law not only supports the concept of this article, but it compels governments and rulers to establish right and forbid wrong in their respective jurisdictions. Islam considers the provision of rights to females is considered as a righteous act in Islamic law, whereas humiliating and insulting them in any form is a recognized wrong, which must be eradicated according to the injunction of the Holy Quran: “Those who, if We granted them power in the land, maintain the prayer, give the zakāt, and bid what is right (virtuous) and forbid what is wrong (evil). And with Allah rests the outcome of all matters.” (Al-Qurān, 22: 41)

Allah’s Apostle stated:

“Every one of you is a caretaker and is accountable for his charges. The ruler who has authority over people is a guardian and is responsible for them, a man is a guardian of his family and is responsible for them; a woman is a guardian of her husband's house and children and is responsible for them; a slave is a guardian of his master's property and is responsible for it; so, all of you are guardians and are responsible for your charges. (Bukhārī, Ḥadīth no. 853).”

The laws related to punishment are almost similar for men and women and no distinction in this regard is noticed; however, Islamic law prohibits women in some circumstances; for example, bans the execution of the death penalty on women during pregnancy and breastfeeding or weaning their child. (Muslim, Hadīth no. 35). Article 11 of the CEDAW requires the right to work for women must be fully protected. It is not considered sufficient only for the criminalization of unfair anti-women selection process but also demands similar rights, benefits, and service opportunities. This article also

ensures that every woman should have the right to choose his profession freely and get equal remuneration and benefits and she should be treated equally in the workplace.

Different conditions like pregnancy and matrimonial status must not be used as an obstacle or hurdle for the appointment or removal of women from employment, and the provision incentives attached to these conditions must be provided like maternity leave with pay, other allowances and day-care facilities for children at the workplace, etc. CEDAW also demands protection against harm and violence at workplaces must be assured. CEDAW recommended that every state must introduce a comprehensive legal framework for the protection of women against all kinds of discrimination and violence against women including harassment and all types of assault. For that purpose, every state must incorporate legal provisions containing civil remedies, compensation and penalties in the legal systems to ensure protection efficiently. (Shah, 2006)

Islamic law does not prohibit women from working according to the parameters set by the sharia ruling like forbidding the mixing up with males to refrain from indulging in any sin. Islam gives inheritance rights to women, the right to own property, utilize it and transfer it. Islamic law has forbidden men to hold the property of women. (Muslim, Hadīth no. 10).

It is not the responsibility of women to utilize their property to maintain the husband or children, Islam provides complete financial rights to women and imposes on the husband the responsibility of maintaining of wife and children. (Al-Qur'ān, 2:233) This extra privilege improves her status more than men. She has no financial burden and responsibilities no one can share her property. Consequently, in light above discussion, it is inferred that women are permitted to work with the condition that they avoid interaction with men in an inappropriate manner. Some intellectuals have interpreted the ayah: "To men belongs a share of what they have earned and to women a share of what they have earned..." (Al-Qurān, 4: 32) It is about financial shares i.e. women are permitted to work for themselves along with the right of inheritance.

Islam completely bans all kinds of violence against women at home or in the workplace. But Islam does not advocate the slogan of equal employment opportunities for men and women keeping in view that some jobs are men specific i.e. in which exposure, hard labor, physical strength, etc. are required are not permitted for women due to the obligation of pardah. (Al-Qurān, 24: 31) and by keeping in view their physical weakness. Allah does not overburden a person more than their capacity or strength. (Al-Qurān, 2: 286). Thus, Islam permits women to work by following the standards set by the shariah and refrain from indulging in works that affect their lives, health, or dignity. It is concluded that Islam grants far more

inclusive financial and employment rights to women than those enumerated by CEDAW.

Article 13 of the Convention emphasizes on every state for taking all necessary steps for curbing discrimination against women in financial and economic areas by enacting laws and enforcing them on the domestic level to protect their financial rights. Islamic law grants financial rights to women equally as men but in some cases provides greater rights to women than men. The husband is obliged to pay me to the wife as a gift of marriage and he is responsible to provide maintenance, residence, clothing, food, etc. Women are also granted rights of inheritance left by their parents and near relatives according to their respective shares. Islam does not distinguish the rights related to loans, benefits and mortgages. Islam provides all these rights generally to both men and women and the term 'Muslims' is inclusive of and denotes the equal rights of both in this regard. (Al-Qurān, 2: 282). Hazrat Khadija (R.A.) first wife of the Prophet (PBUH) was a businesswoman who dealt with all the financial and economic matters and enjoyed all financial rights. Islam did not object to this. Participation in cultural activities and sports is permissible for women in various aḥādīth, but she should stay within the domains of women-specific areas. (Bukhārī, Ḥadīth no. 103). Islam contemplates enjoyment with family is recommended. Allah's Apostle said that the best enjoyment is if the man plays with his wife. (Abī Dāwūd, Ḥadīth No. 37). Due to the prohibition of exposure and mingling with men, equal rights cannot be granted to women.

Conclusion

The convention on the Elimination of all forms of discrimination against women demanded the same conditions for the careers of men and women and urged for the elimination of any stereotyped concepts of roles of men and women at all levels. Islam regards the role of motherhood as a noble contribution to the family and society. Thus, she is not required to do any job outside the home to earn. Man is responsible for the fulfillment of all needs of women. However, it is permissible for her to choose any career that is permissible by *Shari'ah* and is suitable to the nature and abilities of the woman provided that her husband permits her and the responsibilities at home are not infringed by her engagements in the career. Islamic law in light of the above discussion provides wide and complete rights to women. In Islamic law, there are diverse roles for both genders and the different positions conferred upon women must not be considered the discriminatory practice against women. Islamic laws have granted more privileges and rights to women as compared to those granted by CEDAW.

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