

Religious Rights of Women in Marriage - A Social Work Paradigm

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ABSTRACT

The rights-based advocacy method has been used in multiple settings in India, whether it is the basic educational rights of children or the accessibility rights of physically handicapped people. As we embark on a rights-based approach in social work, in multicultural societies, we need to ensure that the social work strategies are context specific. Religion is a very important social institution that binds communities and disciplines people. The Indian Constitution has part III detailing the Fundamental Rights of a citizen and Article 51A that talks of fundamental duties. Likewise, the religion Islam also has certain sanctions for women, in particular, to their rights and certain duties/obligations towards the Almighty and their husband and children. This paper details the rights of women within the realm of marriage from an Islamic perspective; in terms of issues related to their maintenance, treatment and inheritance that are common causes of marital disharmony. These religious sanctions could be used as a strong reference point in advocating for women's rights. Since marriage holds a sanctioned place in religion as well as society, a collaborative approach in social work can be adopted to address the denial of women's rights. The paper is particularly relevant in the context of women in Kashmir as it is a Muslim majority state. Religion-based rights' advocacy can be developed as a viable paradigm for social work practice towards restoring the harmony in marital relations.

Keywords: *Religious Rights, Muslim Women, Social Work Practice, Rights-based Advocacy, Marital Discord*

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SOCIAL WORK AND RIGHTS-BASED APPROACH

A right is a claim based on legal or moral grounds. According to Joel Feinberg, *“To have a right is to claim to something against someone, the recognition of which is called for by legal rules or in the case of moral rights, by the principles of an enlightened conscience”* (Renteln, 1988). Human rights are those fundamental rights that are inherent in the mere fact of being human. These rights correspond to civil, political, economic, social and cultural freedoms. Social Work interventions are aimed at individual, group and community harmony and developments. The Social Work practitioner takes the references of the justiciable rights in order to ensure harmony and peaceful co existences. Hence, rights-based advocacy forms both a basis and direction for social work practice (see Fig. 1).

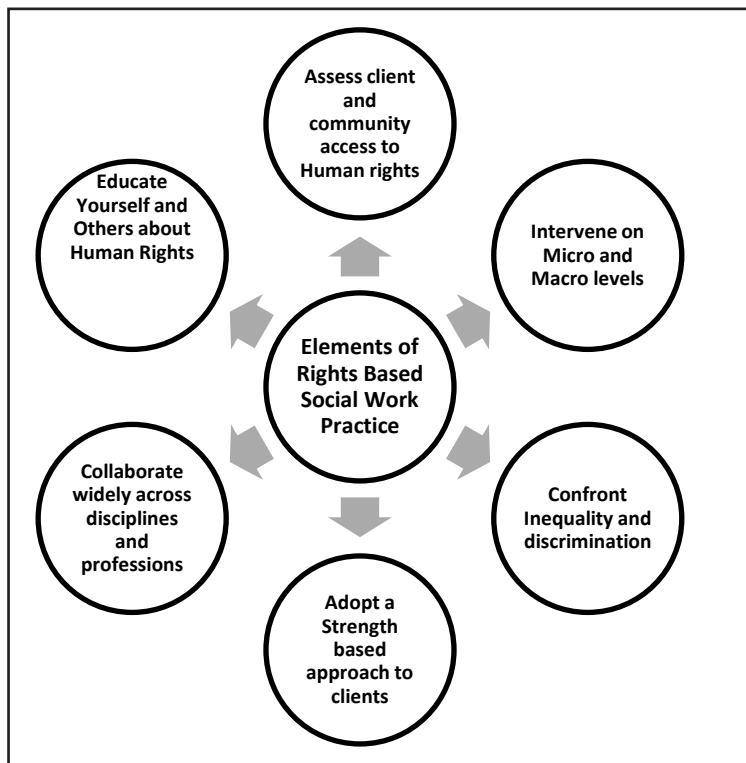


Fig. 1: Compiled from Mc Pherson, 2015

ISLAMIC RIGHTS AND SOCIAL WORK ADVOCACY

Rights-based advocacy is an important part of social work practice and the bases are charters and written documents that are authored by humans. As per Fig. 1, the Social Workers are also directed to be inter-disciplinary and collaborative practitioners. Additionally, the emphasis is to educate oneself and make others aware about rights. So, in order to be multi-disciplinary, holistic practitioners, religious prescriptions could be an added dimension. Religious prescriptions have a devout, unquestionable and widespread acceptability. This could be used to ensure the rights are not denied. Strong convergences have been found between the Social Work philosophy and the Islamic ideals (Wali, A. and Manzoor, S. 2016). The beauty here is that the religious rights are prescribed by divinity and, thus, have no chances of anomalies or unreasonable deductions! Such attempts have been made extensively by the last Prophet of Islam PBUH, by whose (PBUH) example the Muslims are encouraged to conduct their lives. Historian John Esposito said that Prophet Mohammad PBUH incorporated Arabic and Mosaic laws of that time to his divine revelations and condemned female infanticide, exploitation of poor, usury, murder, theft, etc. In fact, the Charter of Madina, i.e., the constitution of Madina, established the security of community, freedom of religion and security of women among other things.

Islam prescribes a way of life encompassing almost every aspect of human existence at the micro and macro levels. Islam is a way of life and Social Workers have to be aware of the religious bindings in dealing with Muslim populations (see Fig. 2). The social workers have to be well versed with the Islamic sanctions regarding gender roles, sexuality, marriage and child rearing while working with Muslim women and children (Warden, 2013).

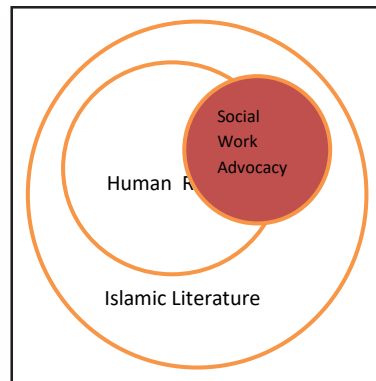


Fig. 2: Islam and Social Work

The Islamic jurisprudence also sets the punishments for not adhering to the prescriptions and specifies the rewards for adherence to them in the hereafter. In fact, in the instances of punishments and rewards in afterlife reason indicates that there should be minimum human deviance from these prescriptions. Unfortunately, that is not the case in our society. Reasons could be that people are not sufficiently educated about the consequences, or they enjoy being in an advantageous position since the people who are denied their rights are not aware of their entitlements. Fear of capital punishment might deviate a criminal from offensive behaviour; likewise, the punishing effects of afterlife also will knock his conscience. The strategy here is to educate the victim and the perpetrator of the consequences.

Today, our society is plagued by social problems like late marriages, denied maintenance and inheritances, unfulfilling relationships, extramarital affairs, domestic violence, harassment and irreconcilable differences. Marital discord in particular is a rising concern (Mohidin, 2016). Around 2500 cases were registered with the State Women's Commission (SWC), with 1900 alone from Kashmir valley¹. This is detrimental to the social fabric. Here, the role of Social Work practitioner is of paramount importance. Kashmiris are mostly Muslims and rights-based advocacy adhering to Islamic sanctions is an acceptable idea here. The intervention procedure in marital discords starts with marital counselling and a befitting addition to it would be throwing light on the Islamic perspective on marriage. This type of counselling would first require education about the Islamic rights.

MARRIAGE IN ISLAMIC SOCIETY AND THE WOMAN'S RIGHTS

Marriage in Islam is a civil and legal contract drawn between a man and a woman, in the presence of witnesses. The man and woman, thus, become husband and wife and have been given certain sanctions and responsibilities towards each other. This relationship is based on warmth and compassion and Islam has commanded them kindness towards each other.

¹ <http://u4uvoice.com/marital-discord-divorce-rate-rising-kashmir-valley-record-2500-cases-registered-swc/>

And live with them in kindness. For if you dislike them – perhaps you dislike a thing and Allah makes there in much good (4:19)²

Both the husband and wife have rights and duties towards each other. Here, we will discuss the rights of Muslim women over their husbands in terms of their maintenance, treatment, wealth inheritances and decisions regarding dissolution of marriages.

Right to Maintenance

In Islam, providence for wife and children are predominantly the husband's responsibility and this is required to be done in a cheerful manner without showing any remorse or high handedness about it. The wife has a right of maintenance from her husband irrespective of her religion, status of wealth or poverty, age, or health.

The wife has an incontestable right to food, lodging, clothing and general care. The husband must lodge her where he himself resides, as per his means (65: 5–6), without causing her to suffer.

The same goes for clothing, food and general sustenance and care. The right of the wife entitles her to reasonable look after regarding all these forms of maintenance. The husband has to exercise this without extravagance or miserliness (17:29).

Allah, the Exalted says

“But he who is greedy miser and thinks himself self-sufficient. We will make smooth for him the path for evil. And what will his wealth avail him when he goes down (in destruction)?” (92:8–11)

“And whosoever is saved from his own covetousness, then they are the successful ones.” (64:16). (pp. 495, Yahya and Yousuf, 1999)

There is a common trend in the Asian subcontinent that a wife leaves her home to stay at her in-laws place. More often than not, the lodging is shared in a joint family setting. Though, this setting is allowed in Islam, it should not harm the wife's privacy or comfort and independence. If there continue to be irreconcilable conflicts between the couple concerning the lodging, the husband's decision will be upheld, provided it does not prove to be contrary to the wife's welfare. None of the husband's relatives may share the lodging unless he has the agreement of his wife on it. The husband cannot impose his decisions on his wife regarding lodging if she is not in agreement with the setting.

² The Holy Quran

Another common bone of contention in marriages is the excessive burden on the wife on account of household work. In this case, the Islamic ruling is that the wife has to be provided with a helper if she has been accustomed to it at her parent's home or because of some reasons she is not able to tend to the household, within the affordability limits of her husband (Al Ati, 1977 pp148–150).

Allah, the Exalted, says,

“The father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis.” (2:233)

“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. Allah puts no burden on any person beyond what He has given him.” (65:7).

“And whatsoever you spend of anything (in Allah’s cause), He will replace it.” (34:39) in (Yahya and Yousuf, 1999 pp 277).

When a marriage takes place, it is taken for granted that a wife (whether earning or not) will take care of the household chores, though from the Islamic perspective she is actually not under obligation to do so. Reason being that such work is not incorporated in the marriage contract and is not one of the purposes of marriage (Al Ati, 1977). Though there is nothing wrong with taking over house hold responsibilities, it is not mandatory on the wife. Problems arise when the burden is manifold. A husband, within his means, should ensure help and not take her for granted. These acts have negative repercussions on the marital relationship and the wife's mental and physical health.

Right to Respectful Treatment and Care

In Islam, marriage is a sanctioned means of emotional and physical gratification apart from a legal way of furthering the family and *ummah* (Islamic population after Prophet Mohammad PBUH). The Prophet PBUH endorsed kind treatment towards the wives. A husband is forbidden to be angry with his wife and till he remains in the state of anger, his prayers are not answered and good deeds not rewarded (Al Ati, 1977 pp 151). Treating each other with respect and care fosters a harmonious relationship between two people who are bonded in marriage. A husband cannot be rude with his wife or harm her with a mala fide intent. Conversely, in order to maintain harmony in the marital accord, a wife is obligated to be obedient to the husband. We come across cases where the husband does

not like his wife and harms her to marry someone else and vice versa. Even if a husband does not like his wife, he does not have to be unkind to her. And if he cannot bring himself to like her, there are Islamic ways of dissolving the marriage. This is a better approach than harming a person physically or mentally.

Allah, the exalted, says,

“Men are the protectors and maintainers of women, because Allah has made one of them to Excel the other, and because they spend (to support them) from their means. Therefore, the righteous women are devoutly obedient (to Allah and to their Husbands) (4:34) (Yahya and Yousuf, 1999, pp 273).

If the wife has erred, the husband is not supposed to rebuke her, ridicule or humiliate her in front of others. This causes emotional injury to the partner.

“They are your garments and you are their garments” (2:187).

Partners in marriage are thought of garments for each other in Islam because like garments, they beautify each other and conceal each other's flaws. Hence, the ruling is that the husband and wife are supposed to support each other, bring peace in their lives and restrain from high lighting each other's mistakes.

The Right of a Marriage Gift (Mahr)

A relation in its inception needs focused care and nurturing and Islam makes it mandatory for a husband to provide his wife with a marriage gift called *Mahr*. The amount of value of *Mahr* is fixed when the marriage (*Nikkah*) is solemnized. The dower is an entitlement simply by the virtue of being a wife. The dower may be given right away at the time of marriage or deferred (due in case of widowhood or divorce). The wife may remit the dower wholly or partially if she so desires (Al Ati, 1977 p. 165). Though the practice of *Mahr* should set a good precedent for a newly wed couple, problems arise when the amount is not discussed between the bride and groom (the wife has the permission to quote the value she deems fit for her *Mahr*), or it is not given in full or is later taken back to acquire property or for some other purpose. This discounts the real purpose of *Mahr* and leads to distrust. The families of the bride and groom should give the space to the husband and wife so that they reach a decision regarding *Mahr*, as is Islamically ordained and ensure that the *Mahr* due on the husband is paid in full to the wife. The wife remains to be the exclusive mistress of the dower and she has a right to decide what has to be done with the money.

Fourteen hundred years ago, Islam gave women the rights to ownership of wealth in the form of dower, among other things.

The Right of Dissolution of Marriage

Contrary to the common belief that a Muslim wife is subjected to *Talaq* (divorce) and is at the receiving end in matters regarding dissolution of marriage, Islam gives the wife also, in some instances, the right to dissolution of the marriage. This can be done without any judicial process or even the husband's consent. The marriage contract (*Nikkah naama*) can have a clause where a husband transfers his right of divorce to the wife (delegated divorce), in case she does not want to continue with the marriage. Another clause of conditional divorce is also permitted that gives the wife the right to divorce her husband if he does something contrary to the wife's wishes. Though this practice is not so common, it can be used to put the wife in a decisive position. There are certain instances where a wife needs such powers to free herself of the marriage bond, for example, if her husband has a large debt and the wife was unaware of it and decides not to put up with his poverty, or if he wants to remarry and his first wife does not want that, or if the wife feels suffering on account of a loveless marriage. If the man misrepresents his financial status in front of his wife or deliberately refuses to support her, the latter has a right to seek separation from him. If the husband has no love or sympathy for her, the wife has a right to be freed from the marital bond. Here, it is the husband's duty not to hinder her that freedom and inflict harm by getting in the way of her new life.

Though such strong contracts are not in vogue in our society, in this era of pre-nuptials, they can be used to strengthen the position of women. Again, it is not the absence of such clauses that make a woman empowered. If circumstances warrant, the wife may actually obtain a divorce through proper judicial processes and if her reasons are found valid, her husband's consent is immaterial. These circumstances can be opting out of the marriage contracted by a lawful guardian at the time of puberty, desertion of wife by husband, ill treatment, sterility of husband or his financial inability.

The Right of Inheritance

The Islamic law on inheritance clearly specifies the share of the wife and daughters. The wife's share in inheritance is one half of what the husband

would inherit from her if he were the survivor. This must be seen in light of the fact that the husband and wife hold their properties and possessions independently of each other. Though some might argue that the wife's share is unequal, the husband's varied functional duties of providence, the demographic facts of him dying before the wife and the non-community of property should be considered. Also, in the capacity of a daughter, the *Qur'an* accords her as much as one half of the entire property when she inherits jointly with the father of the deceased, who is allocated only one sixth of the property. In some cases, the female heirs receive half the shares of the male counterparts. So, basically, the wife is accruing inheritances from two sides, that is, if this right is not denied to her.

Also, as per Islamic prescriptions, the burden of economic responsibility does not fall on women, themselves included. They are to be maintained by their fully able male relatives. Even in case of a wealthy wife, her maintenance is the responsibility of her husband, the needy sister of the brother, the mother of the son and the daughter of the father. Every living person needs sustenance and every able male is held responsible for this, but every deceased person does not leave property for his heirs. This in turn suggests that the male is more likely to carry the liability of providence rather than being a beneficiary of wealth. Consequently, larger share in inheritance is recognition of this manifold obligation and a partial compensation, therefore (Al Ati, 1977 pp 267–269). Inheritances are strongly endorsed by the Prophetic traditions (*Sunnah*).

8.728:

Narrated Huzail bin Shirahbil: Abu Musa was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister. He said, "The daughter will take one-half and the sister will take one-half. If you go to Ibn Mas'ud, he will tell you the same." Ibn Mas'ud was asked and was told of Abu Musa's verdict. Ibn Mas'ud then said, "If I give the same verdict, I would stray and would not be of the rightly-guided. The verdict I will give in this case, will be the same as the

*Prophet did, i.e. one-half is for daughter, and one-sixth for the son's daughter, i.e. both shares make two-thirds of the total property; and the rest is for the sister."*³

The wife should be aware that in case of denial of inheritance, she can claim the same under Islamic laws. This would empower her mentally and financially.

³ Sahih Bukhari, Vol 8, <http://www.iqra.co.in/download/book/Al-Jaami8.pdf>

Islamic Prescriptions and Right-based Advocacy in Social Work Practice

It follows that there are clear Islamic directions regarding the maintenance, treatment, dissolution and inheritance rights of Muslim married women. Again, these are the common aspects in marital life where disagreements and arguments arise in the instances of denial of these rights. In most cases, the women are not even aware of what is due to them. What can be done here as a social work intervention is self-knowledge and awareness about these rights, per se on the part of the Social Worker and Islamic rights based advocacy in order to help these women get their lawful dues. Proper credit of *Mahr* and wealth in the form of inheritance is a justified claim and should be duly paid in order to ensure harmony in marriage. Our society erroneously views them as boldness on the part of women, though these form the legal rights sanctioned by religion. Marriage as an institution is an important pillar on which the society stands. It should be preserved and propagated. In this direction, Social Work and Islamic guidelines can be a collaborative effective intervention.

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