

The Perspective of Islam and International Law on Women and Feminism

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Abstract

This article examines the perspective of Islam and international law on women and feminism using a descriptive-analytical method and library tools. Gender, despite its importance in the international order, has not been much of an issue. The claim of legal feminists is based on the premise that international law has been created based on paradigms that privilege the male perspective. As a result, women's experiences and lives are ignored. This is despite the fact that the main norms of international law universally claim to be neutral, impartial and objective. Hence, feminist critical approaches in various branches of international law seek to reform and revise legal norms and processes so that these laws also include women. One of the important theoretical tools among feminists since the beginning of the first feminist movements and thoughts, which international lawyers have also used in the field of feminist criticism, is the critique of the duality existing in the public and private spheres of life. Their main claim is that the appeal to the values of liberalism theory in the formation of international law has led to the emergence of the duality of public and private. And these dualities operate in a gendered manner, and the reflection of this gendered functioning is clearly seen in the body of international law. These dichotomies have been used in some cases, and each of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Responsibility of States for Internationally Wrongful Acts, and the Declaration on the Right to Development, adopted as part of the World Bank's economic policies, are criticized from a feminist perspective.

Keywords: Woman, Feminism, Law, International Law, Islam.

Introduction and Statement of the Problem

One of the main issues and key questions that legal feminists are generally concerned with is the relationship between gender and rights and law, and more specifically the importance of gender in the field of international law. Sometimes, at first glance, it seems, or it is deliberately assumed, that there is little connection between these two categories; Because international law is primarily a set of rules and regulations governing the relationship between states and international organizations and the relationship between each of these two and does not directly affect individuals except in limited cases. The reason for this type of exposure to international law stems from the philosophy of international law's view of international legal norms as being relevant to individuals within states.

These norms claim to be universally neutral and impartial. This is where the possibility of these principles affecting women and men differently is no longer considered. Women's experiences and differences are generally not a relevant issue for international law, international legislation and other actions in the international arena. While women's experiences of the implementation of these laws have been silenced by these laws or ignored by international law, the main question we face here is why "gender" has not been an issue in international law.

Many legal feminists argue that international law is based on paradigms that privilege the male perspective. The main issue of the following article is to examine the various claims that feminist lawyers have made to international law.

The Feminist Lawyers' Perspective and the Islamic Perspective

Legal scholars argue that international law is based on paradigms that privilege the male perspective. The main issue of the following article is to examine the various claims that feminist lawyers have made to international law. Feminist lawyers in international law seek to examine how legal norms and processes reflect male dominance and strive to revise and reform these norms and processes to include women. This approach pays particular attention to shortcomings in international protection of women's rights. But it has also confronted international law with deeper structural challenges and has criticized the way in which law is formed and applied, especially from the perspective that insufficient attention has been paid to the role of women. Therefore, feminist methods, as one of the methodologies proposed in international law, seek to explain and question the limited foundations of international law's claim to objectivity and impartiality.

After the establishment of the United Nations as the most important institution of the international community and the formulation of the United Nations Charter as the founding document of this organization, the preamble of which begins with a reference to the equal rights of men and women, numerous organizations and conventions, each of which in some way includes the word "women" in their names, were formulated one after another.

And were ratified and joined by members of the international community, the most important of which is the Convention on the Elimination of All Forms of Discrimination against Women. This indicated that the issue of women is an important issue in international law.

And it has led to the creation of a rich set of conventions related to women and the formation of international human rights for women, and the subsequent progress in their status to this

day. Although the League of Nations, adopted on April 28, 1919, also called on countries to pay very limited attention to women's rights in two cases: One is to provide fair and humane conditions, and the other is to conclude agreements to prohibit the sale and purchase of women and children. However, more than half a century after the establishment of these organizations and their efforts to achieve equal rights, we are still faced with gross violations of women's fundamental human rights and all kinds of discrimination and violence against women, both in times of peace and armed conflict.

Authors in the field of women in international law claim that the structure of international law is a male-centered structure and that women have been marginalized both in the historical process of formation of international law and in its implementation, although they state that women are not completely absent from the international legal order. For example, a specific area of women's human rights has been created, and women have a specific role in other areas of international law. However, when women are generally considered in the spotlight in international law as a whole, they are generally viewed in a limited way, often as victims or as potential mothers in need of help.

The above-mentioned issues include the main claims and concerns of international law feminists, which indicate their approach to the presence of women in the field of international law. An extensive discussion of this approach will lead to a more comprehensive understanding of their approach in general, and will also answer the question of what understanding feminist theories have of international law.

Feminist theories have a critical view of international law and attempt to expose the shortcomings of international law. This article was written in 1991 by three legal authors and was first published in the American Journal of International Law, and thus entered the mainstream of international law.

The authors of this prominent article first question the immunity of international law to feminist analysis. They seek to show why gender in international law is not a major issue that occupies attention and has no place as a factor of analysis in the male-dominated academic order.

They well outline the main lines of the masculine normative and organizational structure of the international legal system and show that the structures existing in international law reflect masculine perspectives and perspectives and guarantee the continuation of male superiority and domination over women. By norms in international law, they mean common concepts and values on which almost all members of the international community agree. And they consider them mandatory rules. In line with the normative critique of international law, legal feminists in this article use the critique of the dualities existing in the public and private spheres in various fields.

Also, in the section criticizing the structure of international organizations, they discuss the shortcomings in international texts such as the Charter of the United Nations or the Statute of the International Court of Justice, and the presence or absence of women in international organizations. The authors, like many of their peers, each of whom belongs to different feminist schools, believe That the mechanisms of international law claim to be objective, impartial, and universal, false and empty, and that international law has in no way fulfilled the commitments it has promised in various ways in its founding documents. They discuss

the abstract institutions of states that have influenced the formation of the principles and rules of international law.

For example, they show that the use of force and coercion in the United Nations Charter and its successors in international law is a patriarchal method that resorts to violence and coercion to solve problems. They claim that women's voices, despite their diversity throughout the world, have been silenced and marginalized by international law.

They also show that the feminist understanding of international law suggests that we live in a world in which men of all nations have used the state system to establish economic and national priorities and in the service of a select group of men, while the evidence is that we live in a world in which In that all men, nations have used the state system to establish economic and national priorities and in the service of a select few men, while we witness that the basic human, social and economic needs of individual people within the international order are not met. International institutions are now the auxiliary arms of member states, reflecting these same priorities. By taking women seriously and describing the silences and fundamentally distorted nature of international law, feminist theory can identify possibilities for change.

They also discuss the complexity of the relationship between Western women and the echo and dominance of their voices over those who, according to conventional and traditional literatures of women, are considered Third World.

They raise this fundamental question and seek to answer it by asking whether the voices of women from developing and developed countries have anything in common. They also try to show how many concepts in international law, such as the right to development, are based on Western models and Western capitalist economies. And through this, not only has it not brought about fundamental changes for women in non-Western countries, but it has also led to their double exploitation.

We live in a world where men of all nations have used the state system to establish economic and national priorities and serve a select few men, while we witness the fact that the basic human, social and economic needs of each individual within the international order are not met.

International institutions now serve as auxiliary arms of member states, reflecting these same priorities. By taking women seriously and describing the silences and fundamentally distorted nature of international law, feminist theory can identify possibilities for change.

They also discuss the complexity of the relationship between Western women and the reflection and dominance of their voices over those who, according to the common and traditional literature of women in the Third World, are considered to be women. They raise the fundamental question of whether the voices of women from developing and developed countries have anything in common.

They also try to show how many concepts in international law, such as the concept of the right to development, are based on Western models and Western capitalist economies, and thus not only have they not brought about fundamental changes for women in non-Western countries, but have also led to their double exploitation.

The book *A Glimpse into the Methodology of International Law* is a translation by Dr. Alireza Ebrahim Gol from a symposium held with the same name in 1999. This collection is

the written form of lectures that were published in 1999 in the American Journal of International Law on the methodology of international law and their responses to human rights issues and humanitarian law protections.

The section on Feminist Methods in International Law is based on a lecture and later writing by the prominent Australian feminist jurist Hilary Charlesworth. In this article, she argues for the need for methodologies that serve as tools for producing feminist knowledge in international law and for questioning the objectivity and impartiality of international law.

In this regard, he cites blind spots in international human rights and humanitarian law as examples of the neglect and marginalization of women in international law, and considers these examples as evidence for the claim of male-centeredness and male supremacy in international law.

In this article, he describes a series of methodologies proposed by feminists, from the method he himself named "In Search of Silence" to methods such as the global journey of the idea of an imaginary society, which has been proposed by various feminists around the world in the legal field.

As in their other works, these authors address their fundamental issue of the relationship between gender and sex in the development and formation of international law. They argue that the absence of women in the development of international law has produced an inadequate and narrow legal theory.

Rather than challenging the unequal position of women, these theories legitimize their position. This book attempts to examine the role that sex and gender play in the international legal system, and discusses how feminist concepts of law relate to established international theories.

They argue that the law is concerned with how women's participation, or more importantly, their absence, affects international lawmaking, and that they seek to demonstrate how feminist analysis can be used to understand fundamental doctrinal concepts. Including law, treaties, ideas, the state, human rights, the use of force, and the peaceful resolution of disputes. The goal of all this research, they believe, is to make feminist analysis more part of mainstream analysis and less of an optional method.

The basics of Islam in its attitude towards women's personality

From the perspective of Islam, man can reach the highest level of perfection, can become God's successor on earth, and reach the point where God says, "I have placed all of existence at the disposal of man." In all of this, gender is not a consideration. In the Islamic system, creation is purposeful and the world is based on a purposeful plan.

Also, the differences and variations that exist in creation are purposeful, directional, and wise, and are intended towards the ultimate goal of man. Men and women have a developmental difference that leads to differences in rights and duties, he said: "One of the foundations of Islam in its attitude towards women's personality is that creation is purposeful and the difference between men and women has a purpose. There is a proportion between creation and laws, and the laws that God, who created this universe, has established are proportionate to God's creation.

One of the foundations of feminists in their approach to women's personality is humanism, which considers the material and earthly human as worthy of thought, and the spiritual and spiritual dimension of the individual is not considered at all. As a result, hedonism is the mainstay, which is why they move towards love and nudity.

The second feminist basis is the basis of secularism, which means the separation of religion from politics and society, which removes religion from the family and community; the third basis is relativism, which is the main consequence of liberalism and does not have absolute value and moral stability, and is oriented towards self-interest and desires. The fourth feminist basis is individualism, which is an evolved humanist or human-centered approach.

The first issue that Islam emphasizes is that men and women share humanity, that humanity has developmental data that allows it to progress towards growth and excellence, and in this position, men and women are not different from each other. In the Holy Quran, God Almighty gives the example of Pharaoh's wife to all those who believe, which shows the position of women in Islam. Men and women are completely equal in two aspects: their creation is equal, and secondly, they are equal in terms of values and personality.

From an Islamic perspective, creation and legislation are wise in the first stage. What we arrive at in Islam is that there is a proportion between right and duty. Every right has a duty that is proportionate to it. Therefore, this rule applies to men and women: women's rights are proportionate to their duties. Feminists sometimes say that we should not pay attention to developmental differences, while some also believe in differences but say that these differences should not affect the enactment of laws and rights. In feminism, there is similarity and equality of rights between men and women in all areas of individual, social, political, cultural, etc., but in Islam, there is a proportionality of rights and duties between men and women.

Islam places great emphasis on marriage, and in Islamic society, strong spiritual and social pressure compels men and women to marry. Celibacy is extremely rare in Islamic society, and individuals, both men and women, are so integrated into the extended family structure through marriage that it has prevented society from becoming fragmented and individuals from achieving absolute independence within it.

Islam has also been a pioneer in terms of women's political participation. The call for Muslim men to fulfill their duty towards women and protect their dignity and rights, the political, military and social participation of women from the beginning of Islam onwards (invasions, migrations, Friday and congregational prayers, attendance at the mosque and cultural and educational participation), and the independent raising of the issue of "women's allegiance" to the Prophet, etc., all indicate this.

That Islam, much more comprehensive and at a time much earlier and farther away than liberalism and socialism, has considered women and their political and social rights and has implemented this issue in a progressive and valuable way. The list of numerous books that have recorded the names of women scientists, researchers, poets, and fighters in the political arena, etc., leaves no room for concern about women's weakness.

A woman has the duty to build herself based on Islamic duties, rules, and excellence, to develop the qualities and characteristics desired by Islam, to act in the edification of others through enjoining good and forbidding evil, and preaching and warning, and to proceed in

political and social affairs based on Islamic rules, and to have the right to intervene and have an opinion in financial and economic affairs.

If she is competent in performing her duties as a wife, she can be considered a miracle worker, and in Islamic interpretations, a competent woman is introduced as the good of this world and the hereafter, she is called the agent of God, and in some narrations, she is considered one of the divine traditions. Her duty can be summarized in two phrases:

A woman should strive to be a model and perfect mother and raise her children in her loving embrace. An informed Muslim woman knows that she is more influential than her husband in building or destroying the moral structure of the child, and that happiness and misery are largely related to mothers.

The woman is the manager and the center of the home and is responsible for its management and warmth. Behaviors in the home should be subordinate to the woman, not to the wishes of others. The management of the family's economic affairs, the management of the family's moral affairs regarding the wife and children, the teacher of the lessons of humanity and morality, piety and purity, the protection of the family environment from the influence of corrupt elements, and finally the management of the domestic life of the home are the responsibility of the woman.

Islam has not asked women to play an economic role, but it wants them to play a constructive and positive role in this regard. As soon as a woman reaches the factory and the children, it is a heavy duty and a difficult job, at the same time, the aspect of a woman's sacrifice and self-sacrifice, her dedication to maintaining the warmth of the hearth, demands a man who asks her to engage in manual labor or income-generating service in her free time. This will not only bring prosperity to the family, but will also provide the basis for creating diversity in her life.

It is true that men are obligated to provide for the family and women are not legally responsible for this, but women should also have a job. Idleness and idleness are condemned in Islam.

A woman's work is a kind of sacrifice: Research shows that it is not a woman's selfishness that causes trouble for herself, it is her benevolence and sacrifice that causes her to accept thousands of harms to her life and life. The root of a woman's work is not in seeking adventure or proving her superiority over her husband. The root of a woman's work outside is not to seek adventure or to prove her superiority over her husband, although men who take advantage of their wives' efforts have practically proven their weakness and are legally indebted to the woman for everything she has spent.

One Islamic tradition that will influence the way Muslim women respond to feminist theories is Islamic culture's defense of the non-nuclear family. Some non-nuclear Muslim families are residential, meaning that their members live communally with three or more generations of relatives, including grandparents, parents, uncles, aunts, and their children, in the same building or courtyard.

Effective mutual assistance and responsibilities to these relatively large groups are not only desirable but also legally obligatory under Islamic law. The Holy Quran encourages people to have non-nuclear family solidarity. Furthermore, it specifies the limits of such responsibilities

and provides rulings on inheritance, support, and other close relationships within the non-nuclear family.

Our Islamic traditions prescribe strong family involvement in establishing and maintaining marriages, while most Western feminists condemn family involvement or arranged marriages as negative influences and clear restrictions on freedom. As Muslims, we must argue that these interventions are beneficial to both individuals and groups.

Family ties not only ensure a marriage based on principles more valid than physical and sexual attraction, but also provide strong safeguards for the successful continuation of the marriage. Family members offer various assistance to young couples as they adjust to each other.

And they are considered a source of advice and a thinker, and one party to the marriage cannot easily follow an unconventional method to the detriment of the other. In non-nuclear families, the children of working parents do not have the problem of neglect and lack of affection because the house of a non-nuclear family is never empty. Therefore, the feeling of guilt that most working parents have in a nuclear family or single-parent organization does not exist. Disaster, even divorce, is not so debilitating for the elders or their children because the extended social unit absorbs the survivors much more easily than the nuclear family organization could have anticipated.

The move away from the close family ties that Western society previously enjoyed, the spread of the small family system and self-centeredness that most feminists advocate or at least adhere to in their lives, is incompatible with deep-rooted Islamic customs and traditions. If feminists in the Muslim world support the Western family model, they will undoubtedly face serious opposition from Muslims, especially Muslim women.

Muslim men and women maintain an independent identity from the cradle to the grave. This legal personality has the right to trade and own property. Marriage does not affect the legal personality, property rights, or even the name of the individual, and if a woman commits a civil crime, her punishment is no less or more severe than that of a man.

Conclusion:

In addition to being active in scientific and research fields, women have also worked in social fields and gained social status and have been able to fulfill some of their desires.

The most basic right that women demanded for themselves was the right to vote and participate in elections, through which they could achieve a kind of social identity. This began with the granting of the right to vote to women in New Zealand in 1893 and continues to this day. Although in some countries of the world, women are still deprived of these basic rights.

To create a healthy society free from discrimination, it is essential, above all, to recognize the strategic and gender needs of women and men, because taking a stand against women's needs does not always benefit men.

Although the struggle for equal rights between women and men began centuries ago, the contemporary women's movement in its active and living sense only took shape about thirty years ago. Until 1960, women were only able to acquire an identity when they were

objectified through their relationships with men as wives, mothers, children, and homemakers.

And when the war ended and the men returned to their jobs, they returned home and continued their previous social life. With the emergence of different ideas, opinions, and thoughts on human rights and freedoms, women also entered the social arena by creating women's movements and various activities in the field of ideas that were mainly related to their issues and their relationships with men.

There is no common consensus regarding the idea of feminism, and interpretations and theories in this field range widely. Unlike political ideology, feminism lacks a coherent worldview and any fixed principles and values.

And simply because of the existence of discrimination and sexual injustice in Western civil societies, spontaneous women's movements have emerged one after another and have begun to fight for their rights. Muslim women or women in Eastern societies have also revived these struggles, following and imitating them.

In Western societies, with the slogan of independence, freedom and women's empowerment in the form of feminism, the foundation of the family has collapsed, and informal marriages and frequent and abundant divorces have shaken the foundation of Western culture and civilization. This constitutes the greatest intellectual concern of Western thinkers today.

Although feminism is actually about feminism and the fight against the humiliation of women, this movement today itself deals with the humiliation of women. Marriage, motherhood, childbearing, and breastfeeding, which were considered women's perfections and honors, are now being severely attacked by feminists.

Although the main goal of the feminist movement was to fight discrimination and the devaluing of women by men, today they themselves have taken on the role of discrediting and degrading women.

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