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The Legal Status of Women in Islam

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Abstract: The gender difference fueled throughout our history as a species a series of inequalities that were transposed into society in the form of a hierarchical system in which political, economic and religious power was under the auspices of male gender representatives, and social and family relationships were outlined around the concept of subjugation of women, the so-called „patriarchal society" in which roles in society were clearly defined, and deviations from archaic norms were sanctioned with public opprobrium. The role of women in society is a topic that has been intensely debated in the last century, especially in the West, where the cultural model of the obedient housewife has been supplanted by the feminist view that men and women are intellectually and spiritually equal. and are in equal positions in society, and the archaic roles are no longer admissible in a context where a unitary evolution of society is desired, an evolution that cannot be achieved by maintaining a discriminatory system, inconsistent with the fundamental principles of human rights. On the other hand, in certain areas of the East, archaic social and family models dominated by men are still preserved. The issue of women's rights in Islamic society is a current topic, the Islamic feminist movement catching echoes in most Muslim states, but also in the West, where equality activists have brought to the attention of international public opinion the situation of respect for women's rights.

Keywords: *marriage; women; legal status; Islam.*

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I. Introduction

Muslim patriarchal values, although intensely contested in recent years, represent fundamental principles, but which vary according to the degree of economic and social development of Muslim-majority states. The status of women in Islam varies from country to country, depending on tradition, custom, and different interpretations of Quranic texts and Islamic doctrine. Islamic legal texts present different interpretations regarding the application of religious norms regarding the legal status of women. While Islamic feminism, Muslim liberalism, and other groups support egalitarian interpretations, conservatives argue that the legislative differentiation between women and men is due to the specific roles and responsibilities they have in society.

There are numerous passages in the Qur'an that refer to the status of women in society and in the family. The interpretations of certain verses have led to the appearance of divergent opinions ranging from the assertion of the total supremacy of men over women, to progressive interpretations of a socio-legal nature (Iov et al., 2018), aimed at improving the situation of women in the Islamic space. Therefore, the legal status of women differs from one Muslim state to another. At opposite poles are Pakistan and Saudi Arabia, predominantly Muslim states, but with diametrically opposed social and political visions. Thus, while in Pakistan the position of prime minister was occupied, for two terms between 1988 and 1990 and between 1993 and 1996, by a woman, Benazir Bhutto, in Saudi Arabia women had the right to vote, for the first time given in history, only in 2015.

The Qur'an provides for the spiritual equality of women and men, but this concept is not extended to all social spheres, so that in many spheres of social and political life, women are clearly disadvantaged or excluded.

The second sura of the Qur'an, one of the fundamental sources of Islamic law in the matter of testimony in criminal proceedings, states: „when you contract debts with each other for a fixed period of time, reduce them to writing. The scribe shall write faithfully between the parties; let not the scribe refuse to write: as Allah hath taught him, let him write. Let him who takes responsibility dictate, but fear his Lord Allah and diminish nothing of what he owes. If the liable party be deficient in mind, or weak, or himself unable to dictate, let his guardian faithfully dictate, and take two witnesses, from among your men, and if there are not two men, then one man and two women, as you choose, for witnesses, so that if one of them errs, the other can remind him. Witnesses must not refuse when they are called (For evidence)" (Isopescu, 2010), which shows one of the fundamental principles

on which the Islamic judicial system is based, namely the inequality of value between the testimony of a man and the testimony of a woman, the statement of a man being equal to the statement of two women.

Regarding the economic status of Muslim women, verse 4:32 of the Qur'an states that both women and men have an independent economic status, as is evident from the wording „For men is a portion of what they earn, and for women is part of what he earns". As a result, women have the freedom to sell, buy, mortgage, lend or rent and have the right to sign legal documents and contracts. They also have the right to establish firms and enterprises and to manage commercial companies. However, due to the interpretation of the Koranic texts by corroborating them with traditionalist patriarchal principles, the economic status of women is not uniform in all Muslim states, it varies depending on the custom of the place and the degree of development and awareness of the importance of financial independence in a developed society (Jawad, 1998).

In traditional Islamic jurisprudence, illicit sexual acts are called „zina". Zina includes adultery, prostitution, bestiality and, according to some authors, rape, therefore belonging to the class of hadd crimes, having specific punishments in the Qur'an. Although the Qur'an does not explicitly punish zina offenses by stoning, traditional schools have determined that the death penalty by stoning applies in all cases where the perpetrator is a free, adult person and has acted of his own free will (Peters, 2012). According to traditional jurisprudence, the crimes of zina must be proven by the testimony of four men who have reached the age of majority and who have the quality of eyewitnesses. Thus, this requirement significantly affects the ability of a female victim of a rape crime to prove the commission of the act, considering that, in general, such acts are committed without the existence of witnesses. Rape is defined in the Islamic legal system as: „Forced illegal sexual intercourse by a man with a woman who is not legally married to him, without her free will and consent" (Noor, 2010).

II. The historical evolution of women's rights in Islamic states

The historical evolution of women's rights (Apostu et al., 2017, Barbu, 2015; Barbu & Niculae, 2019; Huidu, 2018; Florea et al., 2019) in Islamic states is a problem that requires a differentiated approach depending on the state we are referring to, because the legal, social and economic status of women has not had a uniform evolution in all Islamic states. Regarding the evolution of Arab society, we distinguish two major stages, namely the „jahiliyya" or „age of ignorance", the period before the revelation of the Qur'an, and the Muslim period. In pre-Islamic Arab tradition and society,

the status of women varied according to the traditions and norms of the tribe they belonged to. For example, in places like the city of Mecca and in nomadic Bedouin tribes, women's rights were dictated by tribal law. According to the tribal law existing in the Arab space until the advent of Islam, as a rule, women did not benefit from a legal status. The patriarchal tribal model dictated that inheritance be taken through the male line. Also, the woman was considered part of the deceased's inheritance, so the heir could either marry her or force her to marry a third party, or keep her in a state of semi-slavery in his house. Another practice specific to this period, but not limited to it, is female infanticide. Having as justification the economic burden represented by an excessive number of female heirs, the Arabs of the pre-Islamic period buried their daughters alive (Azam, 2005).

Muslim traditionalists argue that with the advent of Islam and the development of Sharia Law based on the Qur'an and Hadith, the situation of Arab women has improved significantly. Unlike the jahiliyya period, Islam guaranteed women the right to inheritance, as is evident from verse 7 where it is specified that "Men are entitled to a share of what their fathers and relatives have left, just as women are entitled to a share of what their parents and relatives have left, whether it is much or little, the portion is determined" (Isopescu, 2010), and covered a large part of the other factual situations that may arise in the material of inheritance, verses 11 and 12 supporting that „As for your children, God commands you to give one boy as many as two girls. If there are more than two daughters, two-thirds of the inheritance is theirs, and if there is only one, half is hers. If he had a child, one-sixth of the inheritance belongs to each of his parents. If he has no children, his parents will inherit him: a third is his mother's. If he has brothers, one-sixth is his mother's, after his commandments have been fulfilled and his debts paid. You do not know which of the fathers or sons will be closer to help you" and that „If your wives had no children, half of what they left you is yours". „If they have a child, a quarter of what they left you is yours, after their commandments have been fulfilled and their debts paid. If you have no children, one-fourth of what you left shall belong to your wives. If you have a child, one-eighth of what you left is theirs, after your commandments have been fulfilled and your debts paid. If a man or a woman has neither parents nor children, and leaves an inheritance, then if he has a brother or a sister, one-sixth shall belong to each of them. If he has more than one, they will divide the third part of the inheritance between them, after his commands are fulfilled and his debts are paid without anyone being harmed" (Isopescu, 2010). Although the Qur'anic text clearly disadvantages women from an economic point of view by giving a small

percentage of the inheritance to male heirs, it presents a number of advantages compared to the tribal law specific to the pre-Islamic period, which not only it did not provide for the woman's right to inheritance, but considered her as part of the inheritance mass, assimilating her to the other assets (Azam, 2005).

Marriages in the pre-Islamic period consisted of the agreement between the future husband and the wife's family, agreements that took place either between families of the same tribe or between families from two different tribes, and women did not have the right to ask for the dissolution of the marriage. As part of the deal, the man would offer goods such as horses or camels in exchange for the woman. Polygamy was not allowed in pre-Islamic society, but marriages by capture or abduction were practiced. The practice of arranged marriages was also common in Islam, and polygamy, although permitted, was limited and expressly regulated in the Qur'an (Azam, 2005).

Unlike the pre-Islamic period, Sharia recognizes the right of women to divorce under certain conditions, such as financial instability and impossibility of maintenance, impotence of the husband, apostasy or a dangerous disease that makes it impossible to continue the marriage under normal conditions. A Muslim woman has two options for dissolution of marriage and separation from her husband: tafriq or khul. Tafriq is divorce pronounced by a religious judge if certain conditions expressly stipulated by Sharia, such as those listed above, are met. The second method of divorce, the most common in recent centuries, is the khul. This represents the unconditional divorce of the existence of a situation that prevents the continuation of the marriage and consists in the expression of the double consent of the spouses regarding the dissolution of the marriage (Najmabadi, 2003). Although they have the possibility to ask for the dissolution of the marriage through divorce, Muslim women are at a great disadvantage compared to men because, while divorce at the request of the wife can only be granted with the cumulative fulfillment of several conditions, in the case of the husband, the divorce can be pronounced only by expressing his consent.

Another innovation introduced by Muslim law is the regulation of polygamy and the limitation of the number of wives a man can take to four, provided he treats them equally and has financial resources to support them.

III. The status of women according to the Qur'an/Koran

Sharia represents the legal system of Islam, being derived from Islam's holy book, the Qur'an, as well as the deeds and sayings of the Prophet, the Sunnah and the Hadith. Sharia covers both the sphere of public relations, such as the government of the country or territory and the organization of communities, and the sphere of private relations, such as the intimate life of the individual and family relationships. Initially, Sharia represented the only source of law of all Muslim states, dating back more than a millennium, but with the political, historical and technological evolution, the need to implement different laws from Sharia appeared. Religious jurists from Al Azhar Islamic University in Cairo, together with representatives of the Islamic school in Iran, have made considerable efforts to adapt the Sharia to the modern world, transforming it into a tool of political and ideological struggle against secularization, but keeping the conceptions of for which the woman is inferior to the man (Fadel, 1997).

The crimes provided by Sharia law are divided into two categories, „had" crimes, which are serious crimes, with punishments established by law, such as theft and adultery, crimes for which the law prescribes the amputation of the hand, respectively the death penalty by stoning. The second category is „tazir" crimes, in which the punishment is determined by the judge. In the case of women, Sharia law imposes a series of strict rules aimed at highlighting and maintaining the inferior position of women in society.

The Cairo Declaration, adopted by the Organization of the Islamic Confederation in 1990, represents the common position of the majority of Muslim states on the globe, regarding fundamental human rights, which is one of rejection. In these respects, Article 24 of the Declaration specifies that „All the rights and freedoms stipulated in this Declaration are subject to Islamic Sharia law" (The Organization of Islamic Cooperation, 1990), and Article 25 states that „Sharia is the only source of reference for the interpretation or clarification of any article of this Declaration" (The Organization of Islamic Cooperation, 1990), for which the Cairo Declaration is incompatible with the provisions of the Universal Declaration of Human Rights, which stipulates, among other statements contrary to Sharia law, equality between all believers regardless of religion, the right to believe or not believes in a divine entity as well as equal rights between believers and non-believers and equality between men and women.

Regarding equality between women and men in Islamic states, Article 6 of the Declaration states that "woman is equal to man in terms of

human dignity", but in conjunction with verse 34 of the Qur'an, which states that women are obliged to submit to their men, and they have the right, if they do not listen to them, to beat them, it follows that the text of Article 6 provides that equality in dignity does not mean equality in rights. This explains the fact that in civilizations where religion substantially inspires legislation, the Universal Declaration of Human Rights cannot be correctly applied (Fadel, 1997).

According to the Qur'an, women and men are equal, at least in terms of equality before God, with women having the same obligations when it comes to practicing religious rituals and prayer as men. Despite this fact, the equality between women and men existing on the religious level is not recognized in the sphere of civil and political rights (Grami, 2013).

IV. Conclusions

As a result of the existence of an important number of socio-cultural and religious spheres at the global level, the analysis of the legal status of women in general is difficult. Initially, in the West, the status of women was dictated by religious provisions, with the Catholic Church having a significant role in establishing the position of women in society. Later, with the reduction of the political influence of the church, the emergence of feminist movements and the evolution of international law and cooperation between states, the social, economic, family and legal status of women has been greatly improved, even if even today there are divergences regarding the role women in society, and to solve these issues a change in the collective mentality is necessary. In the Oriental space, especially in the Muslim world, the entire sphere of social, economic, family and legal relations is governed by the religious system established by the Qur'an. When we talk about the rights of Muslim women, it should be noted that discrimination between men and women in the Islamic world does not have a uniform character in all Muslim countries. Thus, regardless of whether we are talking about discrimination at the theoretical-religious level or at the socio-political level, we must specify the state we are referring to and the specific level of discrimination. In the predominantly traditionalist states aiming for the full introduction of Sharia Law, where the rules of the Koran are interpreted and applied rigidly, the status of women is significantly affected, their rights being greatly reduced compared to the rights of men. The Qur'an places women and men on equal positions in terms of spirituality, and also establishes a number of rights for women, such as the right to seek dissolution of marriage through divorce if certain conditions are met, the right to inherit and to owns properties. Therefore, the

precarious condition of women from the social, economic and political point of view or the denial of fundamental rights in practice, in certain Muslim states, is solely due to the restrictive interpretation of the Qur'anic norms and the abuse exercised by men.

References

Apostu, I., Iacob, C. A., & Iordache, M. A. (2017). *Stabilitate și conflict în cuplul contemporan* [Stability and conflict in the contemporary couple]. Lumen.

Azam, H. (2005). Terrorism: A return to Jahiliyya. https://web.archive.org/web/20060320235314/http://www.altmuslim.com/perm.php?id=1535_0_25_0_C

Barbu, D. (2015). *Răspunderea persoanei fizice în dreptul internațional penal* [Liability of the natural person in international criminal law]. Lumen.

Barbu, D., & Niculae, G. M. (2019). *Competența judecătorului de cameră preliminară* [The competence of the judge of the preliminary chamber]. Lumen.

Fadel, M. (1997). Two women, one man: Knowledge, power, and gender in Medieval Sunni legal thought. *International Journal of Middle East Studies*. https://www.cambridge.org/core/journals/international-journal-of-middle-east-studies/article/abs/two-women-one-man-knowledge-power-and-gender-in-medieval-sunni-legal-thought/5664DA9378F88DD374E1BB056B47106B

Florea, D., Gales, N., & Terec-Vlad, L. (2019). The premise of the Establishment of the International Criminal Court. *European Journal of Law and Public Administration, 6*(2), 213-222. Retrieved from https://lumenpublishing.com/journals/index.php/ejlpa/article/view/2344

Grami, A. (2013). Islamic feminism: A new feminist movement or a strategy by women for acquiring rights? *Contemporary Arab Affairs*. https://www.jstor.org/stable/48600673

Huidu, A. (2018). The ethics of embrionic stem cells research. The human being in the early stages of development: A "medicine" or an end in itself? În A. Sandu, A. Funză & E. Unguru (Coords.), *Ethics in research practice and innovation*. Hershey, SUA: IGI Global. https://doi.org/10.4018/978-1-5225-6310-5.ch013

Iov, T., Timofte, D., Damian, S. I., Knieling, A., Scripcaru, C., & Iliescu, D. B. (2018). Non-traumatic cervical hemorrhagic infiltration. *Romanian Journal of Legal Medicine, 26*(2),141-144. https://dx.doi.org/10.4323/rjlm.2018.141

Isopescu, S. O. (Trans.). (2010). *The Koran*. Ştefan.

Jawad, H. (1998). *The rights of women in Islam: An authentic approach*. Palgrave Macmillan.

Najmabadi, J. A. (2003). *Encyclopedy of women and Islamic cultures: Family, law and politics*. Leiden Brill.

Noor, A. M. (2010). Rape: A problem of crime classification in Islamic law. *Arab Law Quarterly*, pp. 417-438. https://doi.org/10.1163/157302510X526724

Peters, R. (2012). Zinā or Zināʾ. In P. Bearman, T. Bianquis, C .E. Bosworth, E. van Donzel, W. P. Heinrichs (Eds.), *Encyclopaedia of Islam* (2nd ed.). Brill.

The Organization of Islamic Cooperation. (1990). Cairo Declaration on Human Rights in Islam. https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf