

LEGAL SITUATION AND SOCIAL STATUS OF WOMEN WITHIN THE CONTEXT OF ISLAM

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ABSTRACT

Rationale In the Kyrgyz society, women were endowed with particular rights, and had relative freedom of action. Nonetheless, these rights, in large part, were restricted by the moral and ethical standards, and social and psychological barriers that existed in the Kyrgyz society. Islam sets specific requirements upon women; and yet at the same time it gives specific opportunities in the legal and jural spheres.

The aim of research is to provide insights into specifics of the influence of Islam onto the legal and social status of women in Kyrgyzstan. After the disintegration of the Soviet Union, Kyrgyzstan took the course of secularization and development of the democratic society. Still as part of the Central Asia region within the context of Islam, Kyrgyzstan maintained the centuries-long cultural, economic and political connections, which were totally broken only in the Soviet period. For seventy years of the Soviet regime, the religion of Islam, representing the worldview and integrated social and cultural system, was subject to suppression. Consequently, following the proclamation of independence, Islam, as part of the mindset of the population, revived and began to play a crucial part in Kyrgyzstan, with vigorous propaganda of Islam being carried out. This is considered to be the return to the true values, and restoration of the lost moral principles of the society.

Methodology. At the outcome of historical and legal analyses, as well as employing specific sociological and comparative law research, particular aspects of the legal situation of women in household and society were determined in accordance with the instructions of the Qur'an; and the social significance of traditions and customs of the Kyrgyz people linked with the rules of the Qur'anic law was revealed.

The research results prove that alongside the ongoing Islamization of the population, various scenarios associated with the shift towards gender equality arise and claim that the Qur'anic law (the Sharia) guarantees gender equality, and Prophet Muhammad is elevated up to the rank of the first genderist. The supporters of Islam assert that this is the only religion in which a woman is given the rights equal to those of a man. In addition, in Islam, a man is regarded as God's deputy on earth. Therefore, a woman shares his destiny as she is also a human being. A woman is a man's partner when it comes to land development and serving God. Side by side with a man, she bears equal responsibility towards God for all the good and evil that she does.

The integrated and comprehensive study into the rights of women throughout various spheres of life within the context of Islam generates **the conclusions** as follows: Islam grants women equal rights in view of education, participation in public life, signing contracts, running entrepreneurial activities, making money and owning property independently of men. Her life, property and honor are as sacred as those of a man.

Keywords

women's rights, Qur'anic law, institutions of family and marriage, social status, religion.

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Introduction

The role of religion is significant when it comes to the establishment of statehood as one of the ideological foundations of the state and society. Religion represents one of the most active forms of social consciousness, and is of decisive importance in people's life. Religion creates its

own system of values and social norms, and has quite a great impact upon the process of socialization of an individual providing the shaped and stereotyped roles for men and women not only in the social context, but also in view of the legal aspects, which must be mastered and observed in full obedience.

All world religions consider male and female origins is not just the opposite ones, but often mutually exclusive. A woman is seen as a second-grade and less significant sex. This is because all world religions reflect the social, political and cultural processes taking place at the time of emergence thereof. Consequently, religions represent the interests of social groups actively participating in the process of the formation of religions, and shape appropriate legal consciousness. All world religions originated in the patriarchal societies, which means that they primarily express the rights of men infringing upon the rights of women.

In this regard, Islam is of no exception.

No matter how the religion of Islam tends to get reformed, the fundamental provisions recorded in the Qur'an cannot be entirely changed. They shall continue to serve as the kind of guidelines to determine the attitude towards the world. Obviously, for the medieval Eastern society, some rights of women stipulated by the Qur'an could be regarded as achievement. Still, what was considered advanced in the Middle Ages, in the 21st century no longer satisfies the society which aims at establishing a legal and democratic state and shaping progressive legal social consciousness.

At the same time, the study of the rules of Islam, particularly its spiritual and humanitarian concepts, and its influence on development of the legislation in the Kyrgyz Republic remains a topical issue for the Kyrgyz society of today.

Principle of equality for men and women as stipulated by the Qur'an

The legal situation and social status of women, as well as the regulation of marriage and family issues, are canonized in the ideological sources. The Qur'an takes the first place among the principal sources of the social doctrine of Islam. The canonization of the Koran opened a new period in the history of family relations, i.e. the period of written presentation of the core principles of the Muslim doctrine as regards women. The marital and family regulations stated in the Qur'an served as grounds for the entire Muslim legislation. According to E.A. Belyaev, 'The provisions of the Qur'an provide and ensure a dominant position for men in the household and society. In order to restrain and chasten rebellious wives, husbands are not only allowed but rather

instructed in scolding, beating and depriving wives of marital reciprocity` [3, p. 85].

The arguments that women in the Eastern countries (including the Kyrgyz) were considered slaves to men and were subject to the reclusive lifestyle, were discussed by many researchers. According to Academician V. Barthold, 'A woman in Islam, right from its origin, was in a more belittled position in relation to a man than before; and after, the law and tradition limited her rights even more so'. In their research, Mirova Sabohat writes: 'The Qur'an and the Sharia, which regulate the issues of family, property and civil status, give a man the right to rule over a woman'. Many researchers of the Soviet period, for instance M. Vasikova, A.L. Mogilevsky, M.K. Garafova, condemned the Sharia rules, and highlighted the rightlessness and oppressed position of the Muslim women, i.e. 'A woman in the East was positioned among the things in the household, and was the property of her husband'. Nonetheless, it is noteworthy, that many opinions expressed on the position of women during the period under study primarily rested upon the Communist doctrine as regards the need to combat religious worldview, which was still imprinted in the people's minds. In this way, trying to infringe upon the rights of women within the context of Islam, the academic society put forward the arguments on the humiliating and rightless status of women.

That was particularly obvious in view of giving birth to female children. Islam was negative about giving birth to a daughter into a Muslim family considering this child undesirable. The authors believe, that the negative attitude of Islam towards giving birth to a daughter was explained primarily by the difference in roles of men and women in the Muslim society. Given the conditions of tribal fragmentation, the society needed men to become warriors. Thus, patriarchal families with many males in the household, as potential warriors, enjoyed the greatest authority. It was believed that the birth of a son strengthened the family. According to Massee, 'The core of the tribe lies in a family with many sons; such family made it possible to acknowledge authority of the tribe head and to unite around him` [8, p. 20]. For this reason, many ancient peoples, the Arabs inclusive, practiced a barbaric tradition of burying newborn girls. Nonetheless, despite the fact that some Arab tribes considered the murder of female infants

permissible, the Qur'an banned this tradition, and treated it a criminal offense equal to murder as regards the punishment for its commission.

Criticizing parents who renounce their female children, the Qur'an states as follows: 'When one of them learns about the birth of a girl, their face turns black, and they get depressed. They do not reason well'. Muhammad rebelled against such humiliating attitude to the newborn girls, and forbade the practice of their frequent killing by the Arabs (by burying girls alive in the sand). He proclaimed one of the postulates of Islam: 'He is not one of us (i.e. a Muslim), who puts male children above female ones'. The Qur'an condemns those who are not happy with the birth of daughters. Among the statements by Prophet Muhammad on this matter, the following is particularly significant: 'Whoever has a daughter and did not bury her alive, does not offend her, does not prefer a son over her, shall be led to Paradise by Allah' [7, p. 23-26].

The rules of the Qur'an proclaiming the principle of equality for men and women do not distinguish between them. Many Ayats of the Qur'an begin with the words addressed to both men and women. The Qur'an sets the rules that grant women, alongside men, the rights to get education, to participate in public life, to sign deals, the rights to run entrepreneurial activities, to own property, etc. Islam recognizes the inalienable rights, honor and dignity of a woman: 'He is the One who created you from one soul // And from that soul He created a couple'.

The woman often possessed material independence, which consisted of her rightful property, and neither her husband, father, nor her brother had the right to encroach on it. This statement can be supported by the following surah from the Qur'an: 'Men get their own allotment from the share that their parents and relatives assigned them as inheritance. And women get their allotment, that their parents and relatives assigned them as inheritance' (Sura 4, Ayat 7). This rule proves that, firstly, a woman was the owner of her dowry; secondly, she could receive from her husband some livestock and farmstead in addition to the dowry. In other words, by giving a woman the right to dispose of the property according to her will, the rules of the Qur'an prohibited anyone from encroaching on it.

In the public sphere, Islam does not prohibit a woman from getting education. This is stated in

the Qur'an as follows: 'Allah raises those of you by the degree to whom knowledge is bestowed' (Sura 58, Ayat 11). Moreover, Islam encouraged education for women on the grounds that studying is a holy duty of every person. The educated women were respected, and were able to participate in the discussion of important social issues [5, p. 42]. In Islam, there are many Hadiths devoted to treating women with respect: 'The most perfect faith is for the one among other believers who is distinguished by the best morals, and the best of you are those who treat women in the best of ways [12, p. 24].

Another illustration that the Qur'anic law encourages respect and esteem for women is as follows. The Qur'an states that women are entitled to rights and freedoms in all spheres of public life on the grounds equal to those of men, with the only exception: the right of headship in the household. This implies the obligation of material support provided by a man for a woman (mother, wife, sister). G.M. Kerimov adds that there is a rule according to which a wife has the moral right to disobey her husband, who does not provide for family costs [6, p. 94].

In view of inheritance, the matter consists in interpreting the following Qur'an rule: 'For a son, there is a share that is equal to the total share for two daughters', i.e. there were suggestions to grant men the right to receive inheritance in a larger share, unlike women. Nonetheless, this provision, according to M. Yusupova, can be considered much milder than the situation in the medieval Europe, when the creators of the Christian law insisted on the full property incapacity for women [12, p. 24]. In the meantime, the Qur'an rules state, that the 'larger share' shall be interpreted as the only category that allows a man to ensure the material well-being of his wife and children. As mentioned above, according to the Sharia, a man was responsible for the full financial support for his wife. Therefore, from the point of view of the social structure that existed in the Kyrgyz society, this difference, from the economic point of view, was logical and justified.

Restrictions on women's rights in Islam

However, despite the fact that the Qur'an rules proclaim the principles of social and legal equality between men and women, there are theories related to restriction and prohibition of certain

actions for women. These restrictions apply to the performance of religious duty and service to the faith. For instance, Islam does not allow women to occupy the position of cult ministers. Women cannot perform the functions of muftis and mullahs [4, p. 26]. According to V. Bartold, 'The rules created by Islam did not leave room for democracy and participation of women in public affairs'. In the meantime, in Islam, and particularly at its early stage, there were women equated with the holy women, such as the daughter of Muhammad Fatim, and many others. J. Goldtsier, with the reference to certain Muslim authors, lists the names of holy women who received general recognition in Islam. Studying particular cases of nunneries for the Muslim women in Mecca and elsewhere, he writes: '...contrary to some merely theoretical restrictions, neither the position of a woman during the initial Islamic movement, nor the teaching of a new religion prevented a woman from reaching the same significance in the cult practice and religious consciousness, as that of a man' [5, p. 42]. M.M. Khairullaev expresses similar opinion stating that in the initial period of Islam there were independent Sufi associations for women, and sisterhoods. The Sufi women were called Sufis, and the women who went on a pilgrimage to Mecca were referred to as hajiyas. In their spiritual practice, many Muslim women achieved a high level of enlightenment and received the title of Wali which means 'close to God'. The Lives of Muslim saints contain genealogies and biographies of the Sufi women Saint Rabia and Saint Nafis [11, p. 33].

Nowadays, speaking of the impossibility for women in the past to occupy high spiritual positions, it is necessary to highlight that today women of many Islamic countries succeed in education, scientific activities, teaching fiqh (the integral part of the Sharia) and Hadiths (the stories about the life and activities of the Prophet) at madrasa. The vivid situation that the religion does not currently restrict any rights for women in the field of science and education is that in the 1964 elections in Pakistan, Fatima Jinnah, the sister of the founder of the state, Muhammad Ali Jinnah, was elected a parliamentarian. Benazir Bhutto was twice elected Prime Minister of Pakistan.

Provided that the main social purpose of a woman lies in her reproductive role, Islam allows women not to visit a mosque to perform prayer in

consideration of the special role related to motherhood. Taking into account the physiological and psychological changes associated with the female body capabilities, women were released from prayers and fasting during menstruation and for forty days after giving birth to a child. She was also freed from fasting during pregnancy and breastfeeding, if that could harm her health or that of the child. In case if the skipped fasting was mandatory (during Ramadan), the woman was given the opportunity to replace the skipped days at her own free will. Women were given the right to visit the mosque, but they were not required to attend the joint prayers on Fridays, while for men this ceremony was mandatory.

Islam restricts the rights for women only in view of committing the Hajj, the pilgrimage to Mecca. Despite the fact that formal equality of opportunity is provided for men and women to exercise this ceremony, for women the pilgrimage involves a number of additional conditions and restrictions of fundamental importance. For instance, a woman undertaking the pilgrimage shall be accompanied by a husband or other close relative who, by the Sharia, is not allowed to marry her. The absence of such individuals did not give her the right to undertake the pilgrimage on her own. In such cases, a woman had to marry one of the pilgrims to Mecca in order to have a legally allowed companion.

Another one of the most forbidding and specific social and moral rules of Islam, which has an extremely negative impact upon the position of women in society, is a hijab (a retreat). Bibi Palvanova, Academician at the Academy of Sciences of the Turkmen SSR, renders a negative attitude to this phenomenon by stating that '...the monstrous reality was that these harems were centers of evil and debauchery, bloodstained violence, savage despotism and abuse of a woman [9, p. 5]. In reality, the institution of retreat and wearing ritual veils existed prior to the establishment of Islam not only in the countries of the Ancient East, but also in the ancient Athens and Byzantium. Among many peoples such as the Kyrgyz, Kazakhs, Bashkirs, Karachayevites, Kurds, the tradition of female retreat and wearing ritual covers were not instilled right at the beginning. M.V. Vagabov explains this situation as follows: 'Largely, the nomadic tribes (the Kazakhs, Kyrgyz, Turkmens) preserved the

patriarchal and clan relations with a low cultural level, while in the Central Asia and Azerbaijan the feudal relations were established with a higher culture, which served as the most suitable ground for Islam` [4, p. 26]. Indeed, the tradition of wearing a ritual cover dominated among the settled and, mainly, urban population. The nomads and peasants engaged in pastoralism and agricultural work were little aware of it. Consequently, the authors believe, that the most accurate is the opinion expressed by N.A. Smirnov in which this phenomenon is explained not only from the economic point of view, but also taking into account the household conditions of the nomadic peoples that did not meet the requirements of Islam on female retreat [10, p. 33]. It is equally necessary to bear in mind that at the time of adoption of Islam and during a relatively long time period after its adoption, these peoples, as well as the Kyrgyz, were under the influence of the Mongols, who, despite their commitment to Islam, retained own customs and traditions.

The most rigorous form of the retreat existed among the settled peoples. Women of the settled peoples, mainly the Uzbeks and Tajiks, from the age of 10-12 wore a burqa covering them from head to toe: `A black thick net made of horse hair called chachvan in Uzbek and chimmat in Tajik, veiled the face and chest` [9].

Conclusions

In conclusion, with popularization of Islam and canonization of the Qur'an, the legal situation and social status of the Kyrgyz women did not change significantly. Paying homage to a woman, the Kyrgyz people laid the foundation for the traditional beginning of her special status in the public hierarchy. As a result, the immortal images of female pagan goddesses such as Jer-Su, Umai, Domalak-Ana and many others which gave reason to believe that the ancient Turkic religion was monotheistic, live on. The heroic deeds, perseverance and selflessness of the legendary and brave queen Tomiris personified the wisdom and masculinity of women of those times [2, p. 185-187].

Subsequently, the Kyrgyz legal system was based on the principles and provisions of the Sharia with its own characteristics. The specifics of religious devoutness of the Kyrgyz made itself evident in the fact that Islam, being closely linked to the pre-

Islamic beliefs, contributed to the formation of the integrated set and symbiosis of religious and customary superstitions.

In view of the nomadic lifestyle, Islam was superficially mastered by them. That was due to the fact that Islam in Kyrgyzstan, as the external and borrowed religion, was a more recent phenomenon and, given the local conditions, it was perceived less fanatically but rather more contemplatively. Consequently, the Kyrgyz women, if compared to the women of other Central Asian peoples, had greater freedom, were not subject to the reclusive lifestyle, did not need to cover their faces with veils, were allowed into the male society, and young men and women enjoyed significant freedom of communication. A set of value orientations, humanistic beginnings of the Kyrgyz society received their particular expression and legal consolidation in the ideological source of the Qur'anic law. It is noteworthy, that the Qur'an rules prohibit marriage without the consent of young people, condemn lavish weddings and commemorations, and giving expensive presents. Any act with a trace of boasting, hypocrisy, or squander is considered inconsistent with Islam.

Thus, the religion of Islam, right from the time of its development and until the end of the 16-17th centuries, was the only religion urging to appreciate and respect a woman, her chastity and piety. The principles preached by the Qur'an, Hadiths, and the Sharia law ultimately contributed to strengthening the family, nullifying divorces, decimating debauchery and adultery. The elders peacefully lived their last years in the families of their children without any fear of being expelled and doomed to starvation and loneliness in old age.

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