



*Al-Qawārīr - Vol: 02, Issue: 01,
Oct - Dec 2020*

OPEN ACCESS

Al-Qawārīr
pISSN: 2709-4561
eISSN: 2709-457X
journal.al-qawarir.com

Patriarchal Sexual Harassment laws, Structural Discrimination in Seerah perspective

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Version of Record

Received: 30-April-20 **Accepted:** 20-Oct-20

Online/Print: 23-Dec-2020

ABSTRACT

This Research Paper examines patriarchal sexual harassment laws in perspective of structural discrimination arising out of states laws and policies having negative impact on the access to justice for women. This study de-constructs the dominant discourses of the patriarchy that shaped the Protection against the Harassment of the Women at the Workplace Act 2010 and Pakistan Penal Code. The gender binaries underpinned in the laws and policies can lead to the structural exclusion of those not given legal recognition and often are left invisible to the law. The feminism theory draws that the laws must consider experiences of the marginalized communities which the law completely ignores. The structures support the dominant power groups prevailing in the workplaces to further harass, intimidate and silence them preventing access to justice. As establishing and prevailing justice is the cardinal of teachings of Holy Prophet Muhammad PBUH. Equality, prosperity, dignity and tranquility of all genders are stressed in Quran and Sunnah. This research aims to dismantle patriarchal standard of laws like statute of limitation, strict evidentiary requirements which exclude practical women experiences essential for justice. The patriarchal socio-cultural behaviors translate into structural legal discrimination against women which do not support claims of sexual harassment. This research paper scrutinizes the structural discrimination from the



perspective of Seerat of Holy Prophet Muhammad PBUH and evaluates if the structural discrimination was prevalent in the Islamic traditions or not. It will be established that women were given broad economic, political, social, educational and right to work which is a solid testimony of gender mainstreaming. In addition to that laws were cultivated through arbitration of women's disputes by the prophet Muhammad pbuh setting the discourse for access to justice for women and protection against maltreatment of women.

Key words: *patriarchal sexual harassment laws, structural discrimination, Workplace, Seerah Perspective.*

Methodology

To analyse the loopholes and lacunas in the sexual harassment laws in Pakistan, I conducted these interviews. I have interviewed Shymla Khan, Project Director of Digital Rights Foundation, Miss Mariam Saeed, Academician and Lawyer. I interviewed Waiza Rafique, Zahra Sehr Viyani and Khadija Ali who have extensively worked on sexual harassment cases. I did secondary research, used academic texts and newspapers. I have included my analysis based on the interviews in the patriarchal nature of sexual harassment laws, gender blind laws and structural discrimination segments.

Introduction

Half of the world humanity is women. The female population of the world estimated by the World Bank is 49.6 percent.¹ (<https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS>) But they are in shambles in every nook of the world. They are experiencing different forms of violence day to day. Predominantly all the civilizations, cultures and even religion treat women differently and unevenly. According to Population Census of Pakistan, 2017 women constitute 48.76% of Pakistan's population.² (<https://www.samaa.tv/news/2017/08/population-census-2017-men-outnumber-women-pakistan/>>)

The plight of women population in Pakistan is in dismal state in all domains. They are not treated with due consideration and in accordance to the fundamental human rights principles in Islam. Women are marginalized and suppressed by the socio-politico, economic and legal institutions. Madadgar Helpline reported that 70 percent of women and girls experience violence at the hand of their intimate partners and around 93 percent women experience some form of sexual violence at public places. Moreover, more than 9,000 women and children have asked for protection by either contacting the helpline via phone or visiting in person.³ (<https://tribune.com.pk/story/1348833/93-pakistani-women-experience-sexual->

violence) Sexual harassment is a form of discrimination based on sexes.⁴ (<https://www.dawn.com/news/1486846>)

In contrast, Islam protects the dignity, prosperity, self-esteem, and self-respect of an individual irrespective of one's gender. It is stated in the Glorious Quran that Allah has created human beings esteemed and regarded. This is reflected in a Quranic verse: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference."⁵ (*Al-Isra* 17:70) It is mentioned in the Glorious Quran that human beings are the best creatures of Allah Almighty and equal in all walks of life and it is said in the Glorious Quran: "We have indeed created man in the best of moulds".⁶ (*At-Tin* 95:4)

Even in the modern society women are discriminated in all fronts of life, despite the fact that laws are architected to provide justice to women are patriarchal, problematic, and discriminatory towards women. There are many loopholes in the modern legal system which fails to provide justice to women. Even though, The Protection Against Harassment of Women at Workplace Act (2010), is supposed to provide relief to the marginalized chunk of society but in vain. This law breeds structural discrimination at large. On the other hand, justice is the cardinal principle of Islamic teachings. The Seerat of Holy Prophet Muhammad PBUH, and his traditions outlaw all kind of discriminations based on caste, creed, and gender. The last Sermon of Holy Prophet Muhammad SAW is universal charter of human rights which protects the sanctity of women and elevates their position. There are many traditions of Holy Prophet SAW which guarantee the protection of the women and *Adl* to all genders.

Sexual Harassment- Laws and Policies in Pakistan

Since centuries long, the violence against women are rampant all over the world. Sexual Harassment is an everyday problem for women. A streak of frustration, painful experiences of harassment is the part of the daily routine of women in Pakistani society like unwanted physical contact or attention. National Commission on the Status of Women found that 50 percent of women they interviewed from the public sector had faced sexual harassment.⁷

(<https://www.dawn.com/news/1405703>)The law was steered by the ten years reform movement led by Fauzia Saeed, the first women to contest a case of sexual harassment in Pakistan⁸. In 2010 Pakistan passed anti-sexual harassment legislation, The Protection Against Harassment of Women at Workplace Act (2010) - the first of its kind in South-Asia. First time in Pakistan's legal history sexual harassment is criminalized to provide protection to the women from harm at workplaces and to ensure their safe participation in the workforce.⁹ World Movement for Democracy,

2014. I Was Not Alone: A Pakistani Activist's Journey For Change. [image] Available at: <<https://www.youtube.com/watch?v=KK7deYi6FwU>> [Accessed 21 June 2020].

The Pakistan Penal Code (Hereinafter referred to as “PPC”) provides in section 509 that an act of sexual harassment, wherever it may occur, is a criminal offence. This law covers a wide variety of conduct that can constitute sexual harassment. Under PPC the offender shall be liable with the punishment of three years imprisonment, or with a fine up to 500,000, or both.¹⁰ (Pakistan Penal Code)

Patriarchal Nature of Sexual Harassment Laws

The legacy of the patriarchal laws must be understood in its historical context. Post- Independence there were very few laws that provided fundamental rights and justice to women in every sphere. The minor ingress was made in the private sphere under the Muslim Family Law Ordinance 1969. During General Zia regime in 1979, women were viewed as repositories of culture, religion, and tradition. The Zina Ordinance 1979 conflated adultery with rape. The patriarchal mindset placed the immoral offences of adultery and rape, (sexual violence) both in the same category. The Protection of Women (Criminal Laws Amendment) Act, 2006 has brought rape under the Pakistan Penal Code but still the offence of rape is charged under Hadd provisions in many cases.¹¹ (Khadija Ali, 25 June 2020, 4:30 PM, Lahore) (Shmyla Khan 25 June 2020, 10:00 PM, Lahore)

The judiciary has a very protectionist approach in the sexual harassment trial, protecting the modesty and character becomes the subject of trial instead of acknowledging sexual harassment as a crime. Inhibition, honour and embarrassment is attached to the victim which harasses the victim further. Due this discriminatory attitude victim takes a back foot. Structurally there is gender disparity in the sentencing and men are always the beneficiaries of it. Zahrah Sehr Vayani states that though the judges reflect a neutral view in their judgments, they lean towards the view that sexual harassment is a crime at work place but the attitude of imposing a fine or suggesting the parties to compromise shows more protective approach towards men. Consequently, this patriarchal attitude fails to deter the sexual harassment crimes. While some judges are not open to the idea that someone has gone through sexual abuse. According to legal expert Khadija Ali, when large number of cases go to appeal before ombudsmen under the 2010 Act, the accounts of sexual harassment are deemed as vulgar and invasive and as a result woman are silenced.¹² (Khadija Ali, 25 June 2020, 4:30 PM, Lahore)

In addition to that judges do not construe law purposively and there is lack of expansionary judgements to impart justice.¹³ (UN Women Laws Consultation. 2020.)

For, example in one judgement it was ruled by the Islamabad High court that ex-employees do not come within the purview of sexual harassment laws¹⁴ (UN Women Laws Consultation. 2020.)

Gender Blind Laws

The dominant discourses of patriarchy have shaped the Protection against the Harassment of the Women at the Workplace Act 2010 and Pakistan Penal Code. The Workplace Act is discriminatory in its basic language and it excludes transgender and lacks intersectionality cutting across race, class, and ethnicity. It excludes domestic workers, home based workers and non-conventional workers structurally excluding them from the ambit of law and depriving them of their rights to seek redress.¹⁵ (<https://www.thenews.com.pk/print/331166-lacunae-in-the-harassment-law>)

The Sexual Harassment laws are gender blind and they ignore experiences of women and transgender equally in toto. Shmyla Khan, Project Manager at Digital Rights foundation states Pakistan Penal Code takes a narrow approach to defining gender sticking to the binaries of men and women and excludes transgender.¹⁶ (Shmyla Khan 25 June 2020, 10:00 PM, Lahore) These gender binaries are concretely underpinned in the law leading to structural exclusions for those not given legal recognition and rendering the violence they experience as invisible in the eyes of law.¹⁷ (<https://www.dawn.com/news/1538537>)

Lacunae in The Protection Against Harassment of Women at Workplace Act (2010)Act

Even though there are provisions in the Workplace Act 2010 and the Pakistan Penal Code that protect women against sexual harassment, but the plight of women remains unchanged. The lawmakers have left many lacunas in the workplace harassment act making the implementation and enforcement of law arduous. The law should protect all the victims of the sexual harassment, but it fails to do so. The employee and employer relationship has to be established and takes a narrow view of employment. Farida Shaheed of Shirkat GAH states that the relationship between the employer and employee does not fall under the traditional employee and employer set-up, she stated that studies show that harassment takes place with patients, nurses and visitors. The harassment in gymnastics and with hockey coach are appearing. The law must have expansionary approach to cover all types of employment relationships.(In: UN Women Laws Consultation. 2020. UN Women Laws Consultation. Lahore: UN-Women.) There are serious problems relating to the implementation of this law as most organizations have yet to constitute these

committees. According to the Sexual Harassment Watch reports that only 833 organizations within Pakistan are compliant with the law with duly constituted sexual harassment committees.

The second avenue for redressal is the office of the Ombudsperson for Protection against Harassment. According to the law every province should have an ombudsperson to ensure protection from harassment. However, Khyber Pakhtunkhwa and Balochistan appointed their first ombudsperson in 2019, nine years after the statute's enactment. Majority of cases never reach the ombudsperson due to socio-cultural barriers to access and practical issues of accessibility for victims of harassment. Dawn reported that sexual harassment is majorly under unreported and often managers pay a tight lip service to such incidents and never give the chance for the cases to be taken by ombudsperson. A procedural issue with a complaint or appeal to the ombudsperson is the lack of an appeal mechanism. It may be problematic for parties to the case who might be aggrieved by the decision of the ombudsperson. Their only other alternative is a representation to the governor, whose decision is to be final. Moreover, no specific procedure is provided under the Act, if the management of the organization fails to implement its own decision or the decision of the ombudsperson, except a minimal fine of PKR 100,000 upon a complaint filed before the ombudsperson.¹⁸ (Sadruddin, Munir Musa. "Sexual Harassment at Workplace in Pakistan - Issues and Remedies About the Global Issue at Managerial Sector." *Journal of Managerial Sciences*, vol. 7(1), no. 113–125, 10 Apr. 2017.) Meanwhile, although the civil law requires organizations to adopt a code of conduct and constitute internal inquiry committees, organizations often fail to implement it. According to former federal ombudsperson for harassment, retired justice Yasmin Abbasey, she admits that the high courts have sometimes issued stay orders to stop proceedings despite lacking the jurisdiction to do so.¹⁹ (www.dawn.com/news/1395215.)

Power Structures and Injustice towards Women

The structures support the dominant power groups prevailing in the workplaces to further harass, intimidate and silence women preventing access to justice. According to a research conducted by AASHA, Interference of power dynamics happens at the Karachi public hospital. There are power imbalances between the sexes but the imbalances that result also result because of backing by the political parties, affiliations, proximity to the power circles and being able to influence those on whom authority is exercised. Consequently, the nurses are forced to quit job leaving the burden on them.²⁰ (Rabia Jawaid, Aqsa Khan, Mujeeba Batool et al. *Situational Analysis Sexual Harassment at the Workplace Act*, <https://aasha.org.pk/>, Page 1-24, cited on 23/06/2020 June 2020.)

Structural Discrimination

There are three levels of discrimination: individual, institutional, and structural.

I. Individual Discrimination

Individual discrimination is defined as “the behavior of individual members of one race, ethnic, gender group that is intended to have a differential and/or harmful effect on the members of another race, ethnic, and gender group”.

II. Institutional Discrimination

Institutional discrimination can be defined as, “the policies of the dominant race, ethnic and gender institutions and the behavior of individuals who control these institutions and implement policies that are intended to have a differential and or harmful effect on minority race ,ethnic, and gender groups.”

III. Structural Discrimination

Structural discrimination: it can be defined as, “the policies of dominant race, ethnic and gender institutions and the behavior of the individuals who implement these policies and control these institutions, which are race, ethnic, gender neutral in intent but which have a differential and/or harmful effect on minority race ,ethnic ,gender groups. Individual discrimination involves the actions of an individual or small group of individuals”. For example, the policies of the Contract with America, the Republican Party's 1994 election platform was structural discrimination. The suggested cuts in medicaid, food stamps, school lunches, and the women, Infants, and children nutrition program would negatively and disproportionately impact on poor people of color and on women.²¹ (Fred L.Pincus, “Discrimination Comes in Many Forms: Individual, Institutional, and Structural.” Sage Journal, vol. 40, no. 2, 1 Dec. 1996, Page, 186-194 media.lanec.edu/users/martinezp/250%20CRG/Discrim.pdf. cited 13/04/ 2020.)

Discrimination permeates in the patriarchal legal institutions, the procedural and substantive laws implemented by the law enforcement agencies coupled with the criminal justice system. The patriarchal legal institutions and the rules negatively impact women’s right to justice in the sexual harassment cases. The court system involves women being harassed within court premises. Our lower courts are not a conducive environment for women to bring claims of sexual harassment. Male court staff, male lawyers, and predominantly male judges give some inappropriate gazes towards women.

Feminist theorists such as Catherine MacKinnon have spoken about how the female perspective has been historically excluded from debates regarding how the law should be developed. While shaping the law the legal principles often neglect to address the issues faced by women. Patriarchy is the root cause of it. Patriarchy

has made it difficult for both men and women to look to the law to obtain justice in cases of sexual harassment and abuse.

The substantive legal experiences fail to exhibit the experiences women experience in the sexual harassment cases, firstly the delay in registration of FIR. Considering a delay between the filing of FIR in a sexual harassment case and the incident, the FIR will be treated as suspect in the court of law. Victims of sexual abuse do not come forward until a significant amount of time has passed. In fact, most victims of sexual harassment don't speak up at all. Much of this has to do with trauma. The psychological trauma that harassment entails is the biggest deterrent against victims speaking up. Retelling the account of harassment asks the victim to relive the trauma, to battle with the trauma, having conversation with the complete strangers, police or lawyers takes time, bravery, and resilience. Once the victim speaks up courage is needed to face backlash and to allegations of 'liar,' 'attention seeker,' and 'opportunist.'

Of course, the law is reasonable having a principle that one must not delay in going to the police. The justification is based on the reasonable ground that the victim will not be able to recollect what happened once a considerable amount has passed therefore making victims account doubtful. The delay should not be fatal to the sexual harassment cases as the nuances are different for example, and the exception can be found within the Christine Blasey Ford Case. It was alleged by the university professor that the sexual harassment victims can recall the trauma related experiences very clearly as these memories are embedded in the brain and other memories drift away. If it is true than exception must be made in delay of FIR in the cases of trauma like sexual harassment

Secondly accepting the sole testimony in such cases is problematic. Sexual harassment often occurs against the victim by someone they know well and occurs where there are only two people present: the victim and the predator. In such cases the only evidence available is the testimony of the victim. The criminal law demands that the independent testimony or the independent witness exists to verify the claim of the victim. The sole testimony of victims is not deemed as sufficient for conviction. In Pakistan, the rape cases allow the testimony of the accused as a sufficient evidence for convicting the accused. This does not mean that the victim is allowed to say anything. The victim must stand the test of cross-examination by the accused's counsel. If after cross-examination the victim's testimony still remains free of contradiction, then the court may view their testimony as sufficient evidence. The cross examination is discriminatory against women in Pakistan and it maligns its stature in end. The nature of the offence is such that the victim's statement will usually be the, sole evidence available. Asking other people whether

or not they saw the harassment happen is usually not going to yield fruitful results. So instead, given the science that shows that trauma victims vividly recall the ordeal they have gone through, there is no reason not to take the victim's testimony as sufficient evidence to convict – provided it withstands the test of cross-examination. Another alternative could be introducing the standard of proof according to Tort cases. Tort being a civil wrong and attracting civil remedies allows the flexibility of lesser standard of proof, that of proving the cases on balance of probabilities rather than beyond reasonable doubt which is more potent means of redressal.²² (Lahore Education and Research Network (LEARN), “Understanding Harassment – A Roundtable Discussion of Policy and Legal Experts The Synopsis.” Lahore Education and Research Network (LEARN), LEARN, 28 Apr. 2018, Pg No-4)

It is essential that these two elements – delay and lack of independent evidence – be amended to fit the unique nature of sexual harassment cases. This will allow section 509 of the Pakistan Penal Code to achieve its true purpose in providing justice to victims.

Structural patriarchy does not just exist in our lower courts but is prevalent in our police too, under 509 to be heard before the court, the victims of Sexual harassment must file FIR with the police. The patriarchy has normalized such behaviors in society, that if law states that that even a sound or gesture constitutes harassment, the police think these instances are commonplace and not worth registering an FIR. Therefore, without FIR, there is no trial. There is faulty recording of evidence which impacts the overall case as it makes it difficult for the judiciary to impart the justice.²³ (tribune.com.pk/article/91190/understanding-pakistans-sexual-harassment-law-part-ii.)

Furthermore, the same problem regarding an environment of harassment exists in police stations just like it does in our lower courts. These patriarchal barriers prevent women from obtaining justice through the ordinary course of the criminal law. They prevent victims from coming forward. They force victims to relive the trauma of harassment. They are abhorrent hazards in the access of justice. The interplay of police with the judicial system hinders for justice to be served. The police cause the ineffective implementation of the law by defective investigations and insufficient evidence collected which makes the conviction of the perpetrator difficult. In interviews conducted with the lawyers, all of them criticized the role of police in ineffective implementation and enforcement of the sexual harassment laws. one of the important factors that PPC is ineffective due to the police's role in destroying prosecution's case. The investigation is dishonest and conceived on the part of the police. In many cases police tampers the statement after receiving bribes from the accused. So, if the investigation is not done properly, accused cannot be

charged or convicted by the court.²⁴ (Khadija Ali, 25 June 2020, 4:30 PM, Lahore, Shmyla Khan 25 June 2020, 10:00 PM, Lahore, Mariam Saeed, 29 June 2020, 5:30 PM, Lahore, Zahra Sehr Viyani, 26 June 2020, 9:PM, Lahore, Waiza Rafique, 26 June 2020, 5:00 PM, Lahore.)

Gender Justice in Islam

Patriarchy and gender discrimination are totally foreign concepts to Islam. Islam rejects superiority on the basis of gender and serves all the genders without any discrimination. The Quran addresses gender relation from ethico-social perspective. It transcends the notion of male and female superiority. Its ultimate concern is creation of a moderate, balanced and ethically responsible family and society. Man and woman, and its social system do not compete on the basis of gender but on the basis of ethical conduct and behavior. (*Musabiqat fip al-khayrat*). The Quran makes a paradigm shift from a gender-based world view to an ethics and morality centered world view. While declaring the origin of humanity from one single soul, the basis of superiority among the mankind it asserts is not gender, wealth, status, or physical strength but Allah consciousness, “*taqwa*” or ethical conduct and behaviour based on Islam. The last Sermon of Holy Prophet Muhammad PBUH is considered view on rejection of discrimination based on caste, creed, colour, and gender. The Holy Prophet SAW stated that “All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor a black has any superiority over white except by piety (*taqwa*) and good action.” The only ground of superiority is excellence in good deeds.²⁵ (Anis Ahmed, Gender, Law and Society in Islam. Islamabad, Pakistan, IPS Press, Islamabad, 2019, Page 40) Quranic principle is defined in Surah Al-Hujrat, verse 13

“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 most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted.”²⁶ (*Al Ahzab* 33:35)

Islam introduces the revolutionary approach as it transcends gender-based classification of mankind. The criteria of excellence are through ethical, responsible, purposeful, and moral behavior. Ethical transcendence is introduced as a measurable key performance indicator. According to Quran an observant and pious female in the eyes of Allah (S.W.T) is far more superior to a male who may be less observant believer.²⁷ (Anis Ahmed, Gender, Law and Society in Islam. Page 44)

Main Reasons of Crimes against Women in Muslim World

The widespread crimes against women in the Muslim countries stem from the regional traditional and cultural practices which tend to reflect in the laws and policies of the Muslim states and the denial of women's right to justice is a proximate effect of it. In Islam, all genders are entitled to dignity and equal rights in all spheres and walks of life. Islam commands to establish *Adl* and Injustice in any form is prohibited. Islam guarantees justice to women and protects them from all types of oppression and provides redress to them.

The disabilities from which Muslim Women suffered traditionally, and most still suffer today are primarily due to the social milieu that has developed in the Muslim societies over the centuries—a milieu that has resulted from the interpretation of many diverse cultural traditions although some of this disabilities are legal (disabilities which are being progressively remedied by Muslim governments). These all are results of the social temperament rather than of the moral teachings of Quran. In practice Islam shuns all the customs, traditions and practices which result in crimes against women in any domain.

Equitability of Men and Women in Islam, and their Complementary Nature to One

The status of women in Islam is unique and novel which is not found in any other religion and civilization of the world. Islam deals with women in a comprehensive way in the context of a relationship with Allah, her Creator and Lord, herself as part of humanity, and with men, her partner and natural spouse in the family. Both are equal in humanity with, same souls, brains, and limbs etc. Allah, the exalted, Almighty, is in Glorious Quran, "and of everything We have created pairs, that you may remember (the grace of Allah)(51-49)".²⁸ (*Adh-Dharyat 51:49*) Both male and female are equal in terms of their humanity. There is no difference between the two sexes in terms of qualification in humanity and each complements the others as the two genders of the species. Both have similar rewards for obedience and penalties for disobedience in this world and hereafter as stated by Allah in the Glorious Quran: whoever does righteous acts, whether male or female while he is a believer, verily, to him We will give a good life and We shall pay them certainly a reward in proportion to the best of what they used to do²⁹. (*Al Nahl 16:97*) Women have the same moral obligations and are entitled to the same general rights as men enguarding chastity, integrity and personal honour and respect etc. Women are equally qualified and allowed to engage in financial dealings and property ownership. Equal religious duties and rituals are required from both women and men. Islam has granted women a great position and exalted their status, as irrefutably proved in the Quran, Sunnah and through incidents of Biography of Rightly Guided Caliphs. Islam has granted women broad socio-

politico-economic rights and education and right to work which is a solid testimony to gender mainstreaming in Islam.

Islam has elevated the status of women and given special, dignified and splendid position. In all departments of life Islam protects the right of women and provides legal safeguards in every areas of life. Women's status is also elevated in Islam by granting her legal rights, to enter into contracts, in business transactions independently. It is emphasized from the beginning in Islam that women as half of the society, should be given all opportunities which would enable the development of natural abilities for effective participation in the development of the society. Also, it is stressed that women should be allowed to attain the highest ranks of progress materially, intellectually, and spiritually.³⁰ (Muhammad Haris, Gender Roles in Islamic Society. pp. 1–7.)

Women in Islam are guaranteed matrimonial liberty and independence. Women's liberation and economic independency stands proved by Hazrat Khadija's (R.A) business ventures. She was leading businesswomen of her time.³¹ (Lubna Abid, "Islamic Tradition and Feminism: A Comparative Study of Theoretical Perspective." International Journal of Business and Social Science, vol. 2, no. 6, 2011. Page 35, 159 and 160, <http://ijbssnet.com/>, cited on 15/06/2020)

The history of Islam and teachings show women's equality with men in politics, women participated in the formation of the state of Madinah, they had discussions with Prophet Muhammad PBUH on the political matters which built the political acumen of women. Women participated in numerous battles and wars and women were seen participating in these wars and attending to the wounded. Thus, women affected the politics of Islamic society.³² (Suraiya Nawab, The Contribution of Women to Muslim Society, a Study of Selected Auto-Biographical and Bibliographical Literature. 1997, pp. 1–148, Page 46 and 56 <https://core.ac.uk/download/pdf/18220341.pdf> , cited on 16/06/2020)

The Muslim women in Prophet PBUH era contributed to improving the situation of women through their work and experiences. Umm ul Momineen Zainab (RA) used to sell tanned leather and then sales revenues were given in charity by her. Umm ul Momineen Hazrat Aisha Siddiqqa (RA), became the most respected and accomplished jurist of her time, her advice was sought by the Rashidun Caliphs on political matters. Muslim women tended to the injured in battles. Umm e Darda (RA) took the sword and fought heroically in the battle of Uhud. The right to education was demanded by women and the Prophet granted it to them by setting aside a day a week to answer their questions about Deen. Surah Nisa was revealed by Allah which explicitly set out the rights granted to women enabling them to

become full-fledged citizens.³³ (Muhammad Haris, Gender Roles in Islamic Society. Page 4 and 5.)

Shariah and Patriarchal Sexual Harassment Laws

In a non-Islamic context, law and morality are areas which represent almost autonomous domains. An act may be immoral, but it may not call for a legal cognizance, for sin and crime often constitute separate entities. For instance, the criminal law was formulated by the British colonists and practiced in Pakistan until recently, regarded “adultery” as a legal offence only when the husband withheld its consent to the act. Adultery as such immoral; in the British Colonial Legal Framework introduced in 1860 and inherited by Pakistan when it became a sovereign state, it became an offence only when a husband objected to do it. (Anis Ahmed, Gender, Law and Society in Islam, Page 29)³⁴ Islamic society is essentially a moral order in which ethics determine human responses to socioeconomic, political and legal situations. Ethics place a foundational development of Islamic Law. The objective of Shari’ah (*Maqasid al- Shari’ah*), therefore are essentially moral values that determine the character of Islamic society and lay down the path for legal and societal growth. The five essential foundational values defined by our classical thinkers are “protection of life, (*Nafs*) protection of faith, (*Din*) reason, (*Aql*) property(*Maal*) and lineage(*Nasl*)”³⁵. (Muhammad Al-Tahir Ibn Ashur, Treatise on Maqasid al shariah, Mohd. el Tahir el-Mbawi, Washyti, (The International Institute of Islamic Thought, 2006). The five classical objectives of Shari’ah obviously speak of Islam’s concern for peace, justice, harmony and balance in life and society. Anees Ahmed preferred to look into these classical categorizations from the viewpoint more foundational principles that is *Tauheed and Adl*. If (pg 32) women are denied education, healthcare, a conducive environment to let them enjoy privacy with *Haya* it is a violation of *Tauheed and Adl*.³⁶ (Anis Ahmed, Gender, Law and Society in Islam, Page 32)

One of the objectives of Shariah is protection of progeny. Any act that subverts human lineage, for example, unrestricted sexual activity, rape, defamation, sexual harassment, and similar actions are condemned by the Shari’ah in order to uphold the absolute values of chastity, honour and dignity of humans. The law does not recognize defense in gender. A rape committed by a male is considered no different than committed by female in the eyes of law. Purpose of Shariah is to protect dignity, chastity and respect of all individuals irrespective of gender. Islam denounces patriarchal laws. It establishes justice among all genders. Islamic laws are not gender blind nor tilted towards one particular gender. The overall Shariah legislation does not follow a male dominated or female dominated approach it is founded on *Tauheed and Adl* that *i.e* Allah’s transcendence and strict following of

equality and fairness. The Quran and Sunnah introduce the concept of legal equality irrespective of gender differentiation.

Interpersonal (Gender), Legal and Structural Justice (*Adl*) in the light of Seerat

Adl (Justice) is the essence of shariah, it is one of the major attribute of Allah. Islam has stressed to establish *Adl* in every walk of life and nook of the world. The word *Adl* appears around 32- places in the Glorious Quran. It is the ultimate purpose of the believer's in this world is to prevail justice in personal, social, political, legal, cultural and monetary domains. The concept of *Adl in Islam* is very comprehensive, indiscriminatory and transcends the particularism of caste, creed, language, ethnicity, geographic origin, gender, nationalism and it is above biological makeup. Whoever observes *Adl* in human conduct irrespective of colour, gender, ethnic and racial origin is considered close to Allah and more respectful and beneficial for society. It is stated in the Quran that the fear of God is in establishing *Adl* in the land. Surah No5- Verse No 8 of Quran states " O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do."³⁷ (*Al- Mai'dah* 5:8) Islam neither accepts the supposed male supremacy, chauvinism, and patriarchy nor it sympathizes with so called empowerment of women grounded on the concept of mathematical gender equality. Islam abandons socio-politico and philosophical nurtured concepts regarding gender.

Seerat of Holy Prophet Muhammad SAW is the splendid example of gender justice in practice. Holy Prophet Muhammad SAW revolutionized the concept and philosophy of equality and gender justice. His teachings transcend gender-based classification of mankind.

I. Constitutional and Legal Equality

Adl demands legal and constitutional equality amongst all genders in toto. Both male and female are constitutionally and legally equal to each other. The Quran and Sunnah make clear that women have the same rights as men. It is stated in the Quran " And they (Women) have rights similar to those (of men) who were them in kindness". (2:228) It was narrated from 'Aishah that Quraish became concerned about the case of the Makhzumi woman who had stolen, and they said: "Who will speak to the Messenger of Allah SAW concerning her?" They said: "Who would dare to do that other than Usamah bin Zaid, the beloved of the Messenger of Allah SAW?" So Usamah spoke to him, and the Messenger of Allah SAW said, "Are you interceding concerning one of the legal punishments of Allah (SWT)?" Then he stood up and addressed (the people) and said: "O people! Those who came before

you were only destroyed because when one of their nobles stole, they let him off, but when one of the weak people among them stole, they would carry out the punishment on him. By Allah, if Fatimah the daughter of Muhammad were to steal, I would cut off her hand.”³⁸ (Muslim, Al-Sahi, Kitab Al-Hudud, Book 17, Hadith Number 4187)

II. Economic Justice

Islam equally bestows right to possession, ownership, and trade upon all genders. The Glorious Quran encourages entrepreneurial approach and economic transactions. It is stated in the Quran” When the prayer is ended, disperse in the land and seek Allah’s bounty and remember Allah much that you may prosper. (*Al-Jumu’ah 62:10*)³⁹

Islamic Shariah explicitly declares shares in inheritance of all genders up to their financial obligations.

III. Political Justice

The ultimate purpose of Islamic political system is to establish justice among all the citizens of Islamic polity. All have a right to vote, express their political views on all issues and decision making is done with mutual consultation (Shura). It is stated in the Quran” And those who have responded to their lord and established prayer and whose affair is [determined by] consultation” 42:38. ⁴⁰(*Ash-Shuraa 42:38*) Holy Prophet Muhammad PBUH consulted Umm-ul- Momineen on multiple occasions and used to seek their political insights. On the eve of treaty of Hudaibya Holy Prophet SAW took the advice of his wife Umm-Salmah.

Muhammad PBUH formed the diverse and mutually supported community coupled with peaceful co-existence. This was troubling for the patriarchal community, implying that more female participation must be encouraged in every aspect of life. Prophet Muhammad PBUH was the strongest advocate and a leading example of revolutionizing women rights. Abu Dawood reports said that Prophet PBUH said that: "Assuredly, women are the twin halves of men."⁴¹ (Abu Dawood, 204; al-Tirmidhi, 105),(Iman Sandra Pertek, Islamic Relief, “Islamic Relief Gender Justice Policy”, Pg-14)

Many hadiths of Prophet teach us about gender justice. The laws were cultivated by Prophet PBUH through the adjudication of women disputes setting the discourse for access to justice and ensuring protection of women against the maltreatment. Through his influence and power Prophet Muhammad PBUH restored the status, rights, and respect of the most vulnerable chunk of society that is i.e. women and girls. Islam imposes a strict deterrent punishment on one who commits the crime and there is no punishment for the women if she was forced and over-powered by the rapist. Abu Alqama reported:

“A woman went out to pray during the time of the Prophet, peace and blessings be upon him, and she was met by a man who attacked her and raped her. She screamed and he ran away. Then another man passed by and she said, “This man has molested me!” A group of emigrants were passing by and again she said, “This man has molested me!” They caught the man whom she thought was her attacker and brought him to her and she said, “Yes, this is the one.” They brought him to the Prophet and he issued orders concerning him but the one who had attacked her stood up and he said, “O Messenger of Allah, I am the one who attacked her.” The Prophet said to her, “Go now, for Allah has forgiven you,” and the Prophet said kind words to the man who had been mistakenly arrested. The Prophet said to the man who had attacked her, “Stone him,” and the Prophet said, “Verily, he has repented in such a manner that if the people of Medina were to repent in this way, it would be accepted from them.”⁴² (al-Tirmidhī, Hadith No 1454)

In another hadith Salamah ibn al-Muhabbiq reported:

“A man had intercourse with the servant girl of his wife, so the matter was referred to the Prophet, peace and blessings be upon him. The Prophet said, “If she had done so willingly, then she belongs to him and he must pay the likes of her price. If he had forced her, then she is free, and he must pay the likes of her price.”⁴³ (Musnad Aḥmad, l’lām al-Muwaqqi’īn 2/21, Hadith No 19556)

Ibn al-Qayyim said, *“As for if he had forced her, then this is a type of abuse as compulsion into sexual intercourse is abuse. Indeed, such intercourse is carried out in the manner of a criminal offence, so for this reason he is not absolved from a fine or legal punishment.”⁴⁴ (Musnad Ahmad, l’lām al-Muwaqqi’īn 2/21, Hadith No 19556)*

It can be deduced that if a woman is coerced into sexual intercourse it is an abuse and a criminal offence for which a wrongdoer has to be penalized.

In many traditions’ holy prophet SAW, it is stressed to treat women with respect, dignity and kindness and forbade the ill-treatment of women. Any kind of emotional, mental and physical abuse is punitive and liable to take legal discourse. Ibn Abbas reported: The Prophet, peace and blessings be upon him, said, *“The best of you are those who are best to women.”⁴⁵ (al-Mustadrak ‘alā al-Ṣaḥīḥayn, Hadith No 7407)*

The prophet PBUH, has instructed to not touch sexually an unrelated woman. This has been done to combat abuse of women. Ma’qil ibn Yasar reported: The Messenger of Allah, peace and blessings be upon him, said, *“For a nail of iron to be driven in the head of one of you would be better for him than to touch a woman who is not lawful for him.”⁴⁶ (al-Mu’jam al-Kabīr Hadith No 16910)*

Prophet Muhammad PBUH to protect the dignity and chastity of women schooled the men to never stare at women therefore preventing sexual abuse. Buraydah reported: The Messenger of Allah, peace and blessings be upon him, said, “Do not follow one glance at a woman with another. Verily, you have the first one and not the second.”⁴⁷ (al-Tirmidhī, Hadith No 2777) In a famous incident, a woman described as strikingly beautiful approached the Prophet to seek his guidance on some religious matters. The Prophet’s companion, Al Fadl, began to stare at her because of her beauty. Noting this, the Prophet Muhammad did not scold the woman for her attire, but instead, he “reached his hand backwards, catching Al Fadl’s chin, and turned his face to the other side so that he would not gaze at her”⁴⁸ (www.independent.co.uk/voices/harvey-weinstein-islam-sexual-assault-rape-womens-rights-a8001521.html.)

The Prophet Muhammad SAW Sunnah and the arbitration of disputes has set a precedent of curbing sexual abuse against women and is an example of imparting justice in a fair and reasonable manner. Men have been commended to guard their modesty and respect women. On the contrary to modern law, on several occasions Prophet Muhammad PBUH punished an accused rapist on the testimony of the rape survivor alone. Islam created an environment of gender equity for women to progress and grow in society by ensuring their dignity and integrity.

Structural Discrimination and Islam

Islam abolishes all types of discriminations and establishes supreme justice. It is stated in Quran:

*Surely Allah commands to justice and fairness and bringing (charity) to a near kinsman, and He forbids obscenity and maleficence and iniquity. He admonishes you that possibly you would be mindful.*⁴⁹ (Al Nahl 16:90)

The important aspects in this Ayat are establishment of *Adl* and related to good governance. It is a reminder for those in political power to observe social justice and establish institutions for resolution of people’s disputes and legal disputes in an amicable manner. Besides asking those in authority to establish fair legal institutions and reminder to judges to decide cases with impartiality, honesty, and observance of fairness in judging between people.⁵⁰ (Anis Ahmed, Gender, Law and Society in Islam. Page 53 and 54)

Thus, it can be deduced that there is no room for structural discrimination under Islam and justice is for all regardless of gender, colour and sex. Justice under Islam is a-gender and it only looks at remedying the injustice and ending oppression be it man, women or transgenders.

Conclusion

The landmark laws of sexual harassment have failed to live up to the promise of protecting women against the sexual harassment at workplaces. The hudood laws

implemented during the Islamization regime of 1970's permeated in the fabrics of the legal justice system giving birth to patriarchal nature of laws failing to adequately punish and remedy women against sexual harassment crime. The Act is discriminatory and gender blind as the dominant discourses of patriarchy in the act excludes transgenders, it ignores intersectionality cross-cutting race, class, ethnicity and experiences of women. The Sexual harassment laws have left many loopholes in the law which make the implementation and enforcement of law difficult. The dominant power blocs in workplaces makes justice a farfetched truth. The patriarchal legal institutions, procedural and substantive law implemented by law enforcement agencies structurally discriminate against women's right to justice. Humanistic concepts of patriarchy and discrimination are shunned by Islam. The gender justice criteria in Islam ranks men and women based on piety and excellence of character. The widespread crimes against Muslim women are prevalent due to social and cultural vices which reverberates in the legal system ultimately denying justice to women. Islam establishes *Adl* for all gender and rejects social, cultural and traditional customs. Both male and female are equal in all walks of life and are entitled to the same socio-political, economic, legal and educational rights. Islamic society is an ethic-based society It is standard for meting out treatment to all genders. Ethics lay down the foundation of shariah law. Shariah protects the right to progeny prohibiting all forms of sexual transgressions to protect dignity and chastity of all genders. Islam denounces patriarchy and gender-blind laws. The concept of *Adl* in Islam is very comprehensive, indiscriminatory and transcends the particularism of caste, creed, language, ethnicity, geographic origin, gender, nationalism and it is above biological makeup. The mathematical equality between genders in deserted by Islam. Islam establishes constitutional equality between the sexes. The economic rights like equal rights to ownership, possession and to conduct trade is for all gender. Political justice is inclusive of all genders as women are given an active right to participate in the affairs of the state from voting to political sense. Prophet SAW established *Adl* for women by considering their experiences to safeguard protection of women from oppression and injustice. The broad principle of gender justice should be integrated in the legal framework. Gender justice trainings should be conducted to sensitize the judges, police, and lawyers to impart justice in impartial and fair manner to the oppressed genders. It is a means to remove structural issues in the legal system and the criminal justice system. The examples from Seerat can remove patriarchal nature of substantive and procedural laws which fail to take in to account experiences of women. The cases adjudicated by Prophet PBUH can be used a precedent to accept the sole testimony and to create exception for the delay in the registration of the FIR. Moreover, a

shorter and speedy route of justice should be established as justice delayed is justice denied. The time limit should be fixed for the pronouncement of judgment. More female judges and ombudsmen should be appointed in such cases to understand the nature of female problems in the sexual harassment cases.

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