



(PUU) Loose Cn ...119158

UiTM Journal of Legal Studies
2(2);2020



UiTM JOURNAL OF LEGAL STUDIES



Faculty of Law, Universiti Teknologi MARA **Vol. 2, 2020 ISSUE 2**

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VOLUME 2

2020

ISSUE 2

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"ISLAMIC PERSPECTIVE OF WOMEN INVOLVEMENT IN DISPUTE RESOLUTION AND MAINTAINING PEACE AT COMMUNITY LEVEL: CASE STUDY IN MALAYSIA AND PAKISTAN"

HANNA AMBARAS KHAN¹, MUHAMMAD IFZAL MEHMOOD², NORA ABDUL HAK³, AND GHULAM DASTAGIR⁴

¹AHMAD IBRAHIM KULLIYAH OF LAWS, (AIKOL)
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA, MALAYSIA

²FACULTY OF LAWS,
INTERNATIONAL ISLAMIC UNIVERSITY ISLAMABAD,

³AHMAD IBRAHIM KULLIYAH OF LAWS,
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA,

⁴AHMAD IBRAHIM KULLIYAH OF LAWS,
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA, MALAYSIA

HANNAAMBARASKHAN@YAHOO.COM

ABSTRACT

Islam never exclude women in making contribution in dispute resolution and maintaining the harmony in the society. Women is play key-roles in the administration of social problems in every society if they are given opportunities and support by the authority. In many Islamic or Muslims majority countries, there are different tools used to resolve the dispute at the community level keeping up the peace in the society. In Pakistan, there is a parallel or informal judicial system for dispute resolution named Jirga or Panchayats. The members of Jirga or Panchayats are the influential people or elders of the community. Unfortunately, until today there is no female representation in both systems. Women are barred from consultation in disputes resolution at community level, which have created discrimination against woman. On the other hand, in Malaysia, the Department of National Unity and Integration has trained women to be community mediators in resolving neighbourhood disputes at the community level.

Islam encourages the Muslim to keep peace in the society without restricting involvement of women. This paper discusses the dispute resolution in Islam and women participation, roles of female involvement in resolving neighbourhood disputes at community level in Malaysia and the system of *Jirga* and *Panchayat* in Pakistan. Subsequently, this paper makes some suggestion in including women participation in dispute resolution and maintaining peace in Pakistan.

Keywords: Community mediation, DisputeResolution, *Jirga*, Malaysia, Pakistan.

This is an improved paper presented at the International Conference on Women and Peace Building: "Expert Meeting on Empowering Women through Education" 2016

"ISLAMIC PERSPECTIVE OF WOMEN INVOLVEMENT IN DISPUTE RESOLUTION AND MAINTAINING PEACE AT COMMUNITY LEVEL: CASE STUDY IN MALAYSIA AND PAKISTAN"

INTRODUCTION

Islam is a religion of peace that stressed on the importance of living in harmony. Thus, Islam has prescribed *Sulh* or amicable settlement or mediation as the default dispute resolution method. This paper discusses the dispute resolution in Islam as provided by the Quran and practice of Prophet Muhammad (peace be upon him), women contribution in maintaining peace in Islam, the practice of community mediation by women in Malaysia and *Jirga* and *Panchayats* system in Pakistan. In this paper, the authors adopted a library-based research method as well as a qualitative legal method that involved interview, and personal observations in conducting research. It is suggested that the *Jirga* or *Panchayats* system should allow women participation since Islam never abandons women's contribution in the *shura*. *Jirga* or *Panchayat* system in Pakistan also may learn some lesson from Malaysia in training women as the community mediators.

DISPUTE RESOLUTION IN ISLAM

The practice of amicable settlement (*sulh*) or mediation in Islam is found in the Qur'an. There are verses that encourage and propose the usage of amicable settlement on different occasions or circumstances. The Qur'an inspires Muslims to be good, give charity or participate in reconciling two

parties in disputes to gain the pleasure of God. Hence, a person who volunteers to conciliate two disputing parties is considered to have acquired a reward equal to the reward of giving charity which is mentioned in Chapter 4: 114 of the Quran. Whilst Chapter 4: 85, the Qur'an explained that a person who intercedes or intervenes or mediates with good intention will be rewarded according to his intentions. This verse provides proof of the usage of mediation in Islam. In other words, Allah rewards a mediator who mediates or intervenes with good intentions but not for personal gain. Amicable settlement or mediation is encouraged in Islam as prescribed by the Qur'an and the Prophet's traditions. The boundary or the scope of its application is mentioned in one *ḥadīth* narrated by Abu Hurayrah (r.a),

"The Prophet (peace be upon him) said conciliation between Muslims is permissible. The narrator Ahmad added in his version: "except the conciliation which makes lawful unlawful and unlawful lawful. Sulayman ibn Dawud added, the Apostle of Allah (peace be upon him) said: Muslims are on (i.e. stick to) their conditions. (Abu Dawud, Kitab al-Aqdiyah: 3587)

There is no limit to the implementation of amicable settlement and mediation in the sense that it could be applied in all cases; commercial, family, community or within organizations so long it does not allow matters that fall under the rights of Allah or penalty prescribed by Allah. The Prophet (peace be upon him) himself participated in bringing peace, by applying amicable settlements. There is nowhere in the Quran or practice of the Prophet (peace be upon him) that prohibits women from participating in resolving dispute at community level in maintaining peace in the society.

In maintaining harmony in the community, Prophet Muhammad (peace be upon him) also did not hesitate to mediate between Muslims and non-Muslims. In a *ḥadīth* narrated by Jabir bin 'Abdullah;

That his father died and left a debt of a Jew on him. Jabir asked him to defer, but he refused. Jabir then spoke to the Messenger of Allah asking him to mediate to him on his behalf. The Messenger of Allah came to the Jew and spoke to him about taking fruit-dates in lieu of the debt that was on him. But he refused. The Messenger of Allah asked him to defer (the debt) to him, but he refused. He then narrated the rest of the tradition. (Abu Dawud: 2878)

The above *ḥadīth* shows that amicable settlements or mediation are not only limited to Muslims *per se*. It may be utilised by any person in the locality. The Prophet (peace be upon him) as the mediator in the abovementioned *ḥadīth* tried his best by giving options to the party in resolving the disputes.

Therefore, in today's modern world, Muslims must revert to mediation in resolving disputes at the community level as what had been done in the time of the Prophet (peace be upon him).

The concept of community involves the neighbourhood, and therefore related directly with relations between neighbours. Islam prescribes rules between neighbours in dealing no person is allowed to harm his neighbour and to do good to the neighbours, among others. These rules are found in the Qur'an and the traditions of the Prophet Muhammad (peace be upon him). Neighbours in the Islamic context include all races, religion and ethnicities. There is no rule that limits a Muslim to do good only to other Muslims which is mentioned in the Qur'an in Chapter 4: 36.

Muslims are required to do good to neighbours whether near or far. This rule places the rights of neighbours significantly at the same level with the ruling not to commit polytheism, and to do good to parents, demonstrating the significance of being good to neighbours. The verse does not explicitly mention that it only applies to Muslims, or that non-Muslims are excluded or it can only be done by a man and woman is excluded. Islam advocates for the good, the unity and harmony of the community and/or society. It might not be achieved if Muslims do not care for their neighbours.

WOMEN CONTRIBUTION IN MAKING DECISION AND MAINTAINING PEACE IN ISLAM

The participation in community level for women in Islam is the subject of ongoing debate that triggered by the culture of the Muslim majority or Islamic countries. Islamic history has proven that women played a vital role in maintaining harmony at community level.

In illustrating women contribution, it is best to refer to the event of *Sulh Hudabiyah*. Post execution of the peace agreement between the migrated Muslims of Madina and the unbelievers of Makkah, the prophet (peace be upon him) ordered his companions to slaughter animals as part of pilgrimage rules. It means that their pilgrimage is ended, and they have yet to make circumambulation (*tawaf*) of the Kaabah. They were unable to follow his instruction since they are depressed due to the situation in their mind, the conditions in the treaty were apparently against the interest of Muslims. The prophet (peace be upon him) gave instructions three times but the response was negative. He was frustrated and complained to his wife Sayyidatina Umm Salama about the attitude of the companions. The wife of the prophet (peace be upon him) understand the tense of the situation and reasons of such reaction of the companion. She shared her opinion with the prophet (peace be upon him). It is best for the prophet (peace be

upon him) to be the first to slaughter his animal and shaved his head, and his companion will follow. He listened to her opinion and immediately after seeing the conduct of the prophet (peace be upon him), the companions did as what he instructed. The prophet (peace be upon him) appreciated his wife opinion. (Saif Urahman al-mubarak pori, 2001) It shows that woman is not prohibited from giving opinion or idea in dealing with tense situation or resolving a dispute.

Another incident was at the time of Sayyidina Umar ibn Al Khattab when he was discussing regulation of dower (*mahr*) in a masjid. They were considering putting restrictions on the dower as some people discouraged young Muslim men from getting married. A lady from the back-seat of the masjid objected, by giving Qur'anic reference. She expressed her opinion and said that none has the right to introduce this. She said that when Allah has not put restrictions on the dower then who are you to put restrictions to it. Sayyidina Umar ibn Al Khattab upon heard that, immediately replied with humble that the woman was right, and he was wrong. In political terminology, the women's objection will be called as an objection to the breaking of the law of the constitution as Qur'an is the constitution for the Muslims. (Esposito, 2003) In Islam, it is proven that women have participated and involve in resolving issues at community level, even the Umm al Mu'mineen, Sayyidatina A'isha actively shared her opinions and views on different issues.

MUSLIM WOMEN INVOLVEMENT IN DISPUTE RESOLUTION AT COMMUNITY LEVEL UNDER THE DEPARTMENT OF NATIONAL UNITY AND INTEGRATION IN MALAYSIA

In Malaysia, the Government initiated community mediation programme under the Department of National Unity and Integration ("DNUI"), Prime Minister Office with the purpose of promoting social integration and simultaneously to maintain peace and harmony in a community. Community mediation programme is created to provide an alternative method to the people in resolving disputes at the community level rather than to let the authority, such as court to make the decision for them. Further, it empowers the people to resolve their problem in an amicable way to avoid the use of violence. Currently, there are more than 1000 community mediators in Malaysia trained by the DNUI. The number of female mediators trained in 2015 & 2016 in Peninsula Malaysia is estimated as 15 out of 100 persons.

Mediation is a process in which a neutral third person, a mediator facilitating communication between two disputing parties for them to arrive

at an agreed settlement. The role of the mediator is to assist communication between parties, not to judge or make a binding decision. The mediators of DNUI provide *pro bono* services. In selecting the participants, the DNUI do not limit the mediator according to their gender or level of education. The DNUI encourages women to be a mediator. This paper involves female community mediators appointed in 2015 to 2016 in Peninsula Malaysia only due to no new appointment made after 2016 by the DNUI. One to one in depth interview were conducted with 15 Muslim mediators from different States which include the President of Malaysian Community Mediation Association, the President of State of Johor Community Mediation Association, the Manager of Putrajaya Community Mediation Centre and Directors of States' DNUI as well as senior community mediator.

The women community mediators in Malaysia are active in providing their services in resolving disputes at community and the surrounding area such as school. The mediators are happy with the effort taken by the Malaysian government to train them and give them the opportunity to contribute their services to their neighbourhood areas. As Islam encourages for peace living community, these mediators felt obliged to work harder in fulfilling their obligation as Muslimah. Further, this is one of the ways to show the beauty of Islam to the non-Muslims in Malaysia. The mediators are hoping for more women to be trained and involved in community mediation programme.

All the respondents appreciate the effort of Malaysian government in empowering women in dispute resolution at community level. However, they hope that more women will be trained in future. They agreed that if Muslim women are given opportunity in participating in dispute resolution in all Muslim majority and Islamic countries, they can contribute more towards maintaining harmony in the society especially cases involving family matters.

F1 who is a practising senior mediator shared that female mediators are needed in her state and agreed by almost all the respondents. The number of female mediators in her state is not enough. According to her, in certain cases such as family matters, the parties prefer to appoint a female mediator. They are more comfortable with female mediators.

The respondents unanimously agreed that the mediation skills provided to them is not just useful to be applied in resolving dispute but also applicable to daily life issues. F2 is an owner of a private school. She admits that mediation skills help her to resolve students' problems at the school. F3 shares that she has been using the skills provided to her to assist her family members, relatives and neighbour in resolving their issues since she was being appointed. According to her, it is important to resolve problems at the early stage to avoid an unexpected incident such as *Kampung Medan*

incident. According to F5, mediation helps a lot in resolving neighbourhood problems amicably. She is helping her neighbours to resolve their dispute amicably. She also involved with schools around her area in assisting the discipline teachers and schools' counsellors to resolve students' problem. F7 added that the skills are useful for her in assisting parties involved in sexual harassment and conflict in the office. According to F15, the parties are more comfortable with female mediators.

In certain areas or States where mediation is still new, the mediators are working practice the skill within her family members and friends. According to F6, she only assists her family members and relatives to resolve the problem through mediation. She has yet to assist any community members but hopes to do so in near future. It is hoped that the female mediators will provide their services continuously and subsequently to contribute more to the community.

JIRGA OR PANCHAYAT SYSTEM AS DISPUTE RESOLUTION METHOD AT COMMUNITY LEVEL IN IN PAKISTAN

Jirga or *panchayat* (*panchayat* is an alternative term with same description) is an important part of the traditional customary and tribal system. (Cohan 2009, Gingburg 2011, Castetter 2002, de Silva 2011, Jocelyn 2010) Even though, *Jirga* and *panchayats* are critical part of the patriarchal tribal system, it is accepted in many areas as informal or parallel justice system in Pakistan. The term "informal or parallel justice systems" is used to refer to non-state justice systems which have existed, although not without change, since pre-colonial times and are generally found in rural areas of Pakistan. Informal or parallel justice systems include a range of traditional, customary, religious and informal normative frameworks and mechanisms that handle and resolve disputes. In Pakistan, the *Jirga* system in North West and Sindh Baluchistan provinces and the *Panchayats* in Punjab and, the *Fasilo* and *Sulh* in Sindh province are well-known non-institutional mechanisms for the settlement of disputes. *Jirga* is an assembly of influential persons of any village or tribe accompanied by religious persons who by custom and tradition functions as judiciary to resolve disputes of civil and criminal nature, regarding money, women, and land and award punishments. (Patel 2010, Khan 2006, NCSW 2011)

In Pakistan, unfortunately, as *Jirga* organised and dispensing justice, made this system notorious, particularly women have difficulty in achieving justice in *Jirga* or *Panchayats* because of their inferior position in this tribal patriarchal justice system. (Cohan 2011) Although these traditional customary and tribal system is an easy way of resolving dispute at community level but there is no female representation. Women are not

allowed to be a member of a *Jirga/Panchayats* and even cannot appear either as the accused or the complainants or a witness or observer. There is a concern about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities that discriminate against them and perpetuate their subordination within the family and society. (Amnesty International, 2002)

On the other hand, in the rural and tribal areas local customary courts (*Jirgas* and *Panchayats*) pass decisions that are respected and implemented by the community. According to the recent research, the elders representing the customary courts are respected for their piety which caused the people to choose this system compared to formal justice system. Further, it emphasises on the compensation of victims and the reintegration of offenders back into the community. (Wardak 2007) Furthermore, in the process of *Jirga* proceedings, elders reach decisions in accordance with accepted local traditions and values (customary practices) that are deeply ingrained in the collective conscience of the village/tribe. (Wardak 2007) The missing element in these two systems are the participation of women

CONCLUSION

Islam is the complete code of life. It provides rules for all aspects of life including dispute resolution. Islam never neglected the contribution of women in improving the *ummah*. Further, Islam has no restriction for women to be part of mediation either formal as practise in Malaysia or informal as practise in Pakistan. In Islam, all men and women have their same rights, but it varies according to the situation. Islam encourages the Muslim to advocate and promote peace in the society. Pakistan may again consider this matter whether the prohibition of women is due to Islamic law or its culture. As an Islamic country, the adherence of Islamic value is a must. Therefore, there will be no reason to reject women participation in resolving dispute and maintaining peace at community level. Further, the *shura* system in Islam allows both, men and woman to be members and give consultations. Therefore, there should not be a system that exclude woman in resolving dispute especially when it involve the women themselves. This will cause injustice. Islam never advocate injustice in fact it is prohibited. An Islamic or Muslim majority country must uphold the practice of Islam without depriving anyone of his/her rights. It is hope that Pakistan may learn the practice of community mediation in Malaysia and the involvement of women in it. In the event Pakistan is unable to amend the years of practice of *Jirga* and *Panchayat* in giving space for women participation, it is hoped that a community mediation programme will be established with the intention to allow women participation.

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