

State Obligations, Immigrant Women's Rights, Islam and Legal Pluralism in Oslo, Norway

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Abstract:

The paper depicts a view of the complex multicultural relationship between protection against discrimination, cultural diversity, collective identity and individual rights. It presents a picture of the lived experiences of women from the Pakistani community in Oslo and their search for dignity and justice through engagement with legal pluralism. The paper explore how a responsive and context sensitive legal approach adopted by a Norwegian-Pakistani women NGO is responding to individual women's mixed identities as Norwegian citizens and members of social and religious communities. The NGO provides multiple choices that enable its clients to opt for the choice that most suits their situation. The Norwegian state depends on such immigrant NGO to protect and serve the civil rights of its female citizens with non-Western background.

Key words:

Multiculturalism, Human Rights, Legal Pluralism, Bigamy, Gender Discrimination, Agency, Citizenship, Islam, Muslim Personal Law, NGO

Introduction

This paper depicts the view of how the Norwegian state relies on immigrant women NGOs to protect human rights of those immigrants women who could not access the state institutions for different reasons and how the NGO's perform the task. The data for this article comes from research conducted for my doctoral thesis. The thesis explores marital disputes processing by an Oslo-based Norwegian-Pakistani immigrant women NGO in consultations with a Norwegian-Pakistani mosque in the Norwegian capital. This state funded NGO is one of the several immigrant NGO's that are expected to facilitate immigrant women's access to human rights that the Norwegian state is obligated to protect under the international human rights instruments, for example the UN Women Bill known as the Convention on Elimination of All Forms of Discrimination Against Women, CEDAW.

The paper shows that multicultural context of the NGO provides multiple choices that enable the clients of the NGO to opt for the choice that most suits their situation. The desperate circumstances of the women create a context for discussion, deliberation and reflection with the NGO case workers to explore the possibilities in legal pluralism constituted by the Norwegian law and Muslim Personal law. In this context the women also mediate on non-conventional and non-gender discriminatory interpretations of Islam that may be compatible with the Norwegian law, but incompatible with the centuries old Muslim Personal Law and the views of the imams whom the NGO consults for religious legal counseling. The women may choose solutions to specific family disputes that may push the limits of the Muslim family law. As an example, a polygamy case processed by the women NGO is presented. In this paper the word human rights and women rights are interchangeably used because it is globally recognized that women rights are human rights (Kisaakye, 2002:268).

Women's Rights and State Obligations

State obligations under CEDAW include having effective measures in place to remove discriminations against women in marriage and protect their rights in marriage. How can such state measures protect the rights Pakistani immigrant women in Norway? Most Norwegian-Pakistanis are followers of Hanafi Islam that prescribes its own personal law, which is gender discriminatory and incompatible with the Norwegian family law. Consequently, the contact between the wider Norwegian society and the Norwegian-Pakistanis produces a socio-religious diversity that leads to legal pluralism.

The undertaken research shows three categories of people: those who ignore out right the Muslim Personal Law and follow the Norwegian law, those who abide by the Muslim personal law, even though it may be a violation of the Norwegian law, e.g. men practicing polygamy, and lastly, those who remain confuse and need help to deal with legal issues. They latter category of people may swing towards either law, depending upon which law most suits their situation. The first two categories are beyond the scope of this paper. The paper focuses on the third category of people third category is relevant, because it is they who need an appropriate support in order to take an appropriate legal course of action. It is, after all, not a new experience for Pakistanis to be faced with situations in which they can act within a dual or parallel legal system (Mehdi, 2007:37). For nearly two hundred years the traditional village councils in Pakistan have existed parallel to the formal system of the British jurisprudence (Cohn, 1959).

How does the Norwegian state stop discrimination against women faced with the challenges and possibilities of the legal pluralism in this context? The official documents concerning the issue show that dialogue and cooperation with the immigrant communities is the way forward towards the solution. In this regard the state finances women NGO's that work for rights of the immigrant women to ensure that the women exercise their rights as enshrined in the Norwegian law.

Moreover, Norway has an old tradition of NGO's delivering social services to the local communities. There is a saying in Norway: 'without NGO's Norway would not have been Norway'. The expectation of the state from immigrant women NGO's is that they provide platforms to the immigrant women so that they can claim their rights. The women under consideration are those who may not have a direct access to the relevant state institutions in the time of need for different reasons, such as unfamiliarity with the Norwegian language, lack of appropriate information, various cultural hindrances etc. The work in many of the NGO's are led by 'natural helpers' or cultural assistants'- people who have the confidence of and trust within the communities and ensure the active involvement of local resources persons (Thune, 2007:372). These are individuals with unique opportunities to establish an environment of confidence that helps people to speak about health problems, sex, personal relations, marriage, childbirth and menstrual problems (ibid). With the arrival of citizens from cultures and societies different from the Norwegian norms, situations arise that challenge human rights at a practical level (Thune, 2007:363).

In this background the NGO's provide a culturally sensitive context to understand

the specific problems and seek appropriate help from the state welfare system or within the Norwegian-Pakistani community. The angle of the cultural sensitivity is important because sometimes the cultural connotations may not be even understood by most in the wider Scandinavian society. For example, Mehdi fascinatingly describes the role of supernatural means, like Evil eye, 'cutting the Quran', divination, alms to poor, freeing of caged birds etc, used by some Danish-Pakistanis to affect the outcome of family disputes in courts (Mehdi, 2008: 200215). She also argues that each time a supernatural means is used it takes a person into another mental space where family context and other legal disputes are perceived and approached differently (Mehdi, 2007 as stated in Mehdi, 2008:197).

The NGO and Immigrant Women's Rights

ABC (fictitious name) is an Oslo based NGO that offers a range of services to Norwegian-Pakistani women, including legal services to women caught up in marital disputes. The NGO works to cater to the needs of Muslim women faced with challenges and possibilities of legal pluralism, i.e. state law vs. Muslim Personal Law. For example, like women confronting marital disputes in other diasporic Muslim communities in the West, women in the Norwegian-Pakistani community may be obliged to fulfill the requirements of the Muslim Personal Law along with the state law. The two laws may not be compatible with each other, pushing women in a legal limbo, like the 'divorced yet married, situation as narrated by several writers (Storhaug, 2003:197, Warraich and Balchin, 2006:7, etc). The NGO takes recourse to the state institutions and authorities (courts, police, lawyers) on one hand and Muslim institutions and authorities (mosque and imam) on the other hand to process the marital disputes. Each marital dispute is discussed between the woman and the NGO worker. Depending upon the circumstances of a case and subject to the consent of the concerned woman, the case may be referred to an imam for religious counseling or to a lawyer to be pleaded in the court of law or to both. The advice given by the imam and/or lawyer is deliberated upon by the concerned woman and the case worker in order to take further appropriate action. At every stage of the dispute resolution the woman is free to turn down the advice of the imam or lawyer. She is also free to terminate the dispute resolution through the NGO at any time. The NGO-assisted process of dispute resolution enables the women's agency to overcome the constraints of the Muslim family law. I illustrate this through a polygamy case processed by the NGO.

Moreover, the NGO is funded by the state and in accordance with the Norwegian state policy of gender equality is working for eradication of gender discrimination. 'We struggle for gender equality. We see polygamy as gender discrimination', said the leader of the NGO. Her view on polygamy is contrary to the view of the imam who does not perceive polygamy as gender discriminatory. On the other hand, her view is in line with the state obligation under CEDAW that regards polygamy as gender discriminatory. The CEDAW Committee in questions and comments on country reports has on a number of occasions noted the discriminatory nature of polygamy (Hellum, 1998:92). The cited polygamy case is 'our contribution towards elimination of gender discrimination in the

Norwegian-Pakistani community' informed the NGO leader.

The Polygamy Case

Asma (fictitious name) was married to a first cousin, who was interested in another woman. The short-lived marriage ended with a divorce. The families (her parental family and the husband's) married her off to the younger brother of her former husband, who too was interested in another woman, but conceded to the marriage under the family pressure. She did not have any children from both marriages and suffered a great deal of violence. Her husband married another woman in Pakistan, while still married with her legally (he had applied for separation, but the marriage was not yet terminated with a divorce under the Norwegian law). One day during a quarrel her husband and in-laws threw her out of the house. One acquaintance took her to the NGO, which took her to the social service, that arranged for residence and some financial help for her. In light of her wishes the NGO arranged for a lawyer who sued her husband for bigamy in a Norwegian court of law. The NGO also collected, upon the advice of the lawyer, some material (videos clips of her husband's marriage and marriage documents) from Pakistan to substantiate her case in the court.

The court handed him a penalty for bigamy: 21 day in jail and a fine of 7000 Norwegian Kroner. The court awarded him a light punishment in light of the fact that it was not his intention to be a polygamous man (it was he not Asma who applied for separation). His violation of the Norwegian law was attributed to his quickness in remarrying and not waiting for the legal termination of the marriage.

Legal Pluralism and Dispute Resolution of the NGO

The laws that constitute legal pluralism in this case are Muslim Personal Law and the Norwegian law. The Norwegian legal system is unitary: there is only one Norwegian law regulating family relations of all Norwegian citizens regardless of their religious affiliations. The Muslim Personal Law is not recognized by the state and the law competes with the Norwegian law as an unofficial legal norm among the some Norwegian-Pakistanis.

The Muslim personal law under consideration is the Hanafi law. Most Norwegian-Pakistanis are Sunni and subscribe to the Hanafi School of law. This

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school expounded the Hanafi law in 9 , 10 and 11 centuries and the law has been handed down through generations to this date. The Hanafi law is gender discriminatory. It permits polygamy, allowing a man to have four wives. The law is incompatible with the Norwegian law, which bans polygamy. In the Norwegian law women have the same legal status as men and enjoy identical rights under family law and in the judicial system. The mosque that the NGO consults for counseling on family disputes follows the Hanafi law. The Hanafi law is referred to as the Muslim Personal Law in this article.

According to John Griffith, legal pluralism is 'that state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs' (Griffiths, 1986:2). This means that normative social orders (e.g. the under consideration Muslim Personal

Law) unrecognized by the state law (Norwegian law in this case are just as much law as those recognized by the state legal system in terms of regulating the life of people (Norwegian-Pakistanis). Sally Falk Moore's concept of semi-autonomous social field highlights the working of the normative order (Moore, 1978). She argues that a social field in which non-state laws exist is a semiautonomous social field that generates and enforces its own laws (ibid). Consider ABC, the NGO under consideration as a semi-autonomous field where both Muslim Personal Law and the Norwegian law are explored to find solutions that most suit the situation of the women caught up in family disputes. This may facilitate women's access to their human rights as enshrined in the Norwegian law. Asma's case is an illustration of this point.

Asma's case pushed the limits of the Muslim Personal Law when she got her former husband punished under the Norwegian law for polygamy. The Muslim Personal law does not recognize any punishment for man marrying more than one wife. Asma's pursuit of the case in the court and the punishment it finally fetched is contrary to the Muslim Personal Law. Asma argues that her action and the Norwegian court decision are not violations of Islam.

What motivated Asma to pursue the case and construct a discourse compatible with Islam in its defense? It is argued in the following section that her agency facilitated her to cross the limits of the conservative Muslim Personal Law. Her agency was her desire to restore her self-respect. Her agency, i.e. the desire in order to be fulfilled, was greatly aided by the environment of legal pluralism provided by the NGO.

Agency and Assistance of the NGO

Through the interviews with Asma and the case worker at the NGO it turned out that she had a strong desire to restore her self-respect that was lost in the humiliation inflicted on her by her in-laws and former husband. Consider the following conversation from the interview with her.

'They (in-laws and the husband) battered me. They tortured me, physically and mentally. (...) They used to say I was good for nothing, useless, mindless creature. (...) I descend in inferiority complex. I have lost my self-esteem. I feel every one in the world is better than. I am good for nothing. (...) I have no children; not much formal schooling and I can't speak the Norwegian language. I live alone. (...) The only thing that will restore my self-respect is to get him behind the bar. This will reestablish confidence in myself. It will prove them wrong- their repeated assertion that I am good for nothing. It will prove to them and to the extended family that I can aim goals and achieve them single-handedly'.

Farhat: 'Don't you think your problem is not this man and his family, but the lack of Norwegian skills. Learn the language as soon as possible; find yourself a job and move on with your life. You will forget them all. What do you think?'

Asma: 'I did a Norwegian language course. I did not learn much. I could not focus on the course. I cannot focus on anything. (...) I can't do anything before I saw him punished. This would reestablish my lost confidence in my person and potentials. (...) I

need that confidence restored before I move on with my life.'

This and other conversations with her showed that she had a strong desire to see her former husband and in-laws punished. Her desire fostered in the context of her desperate family circumstances. Her husband's family and relatives in Norway had abandoned her. Her brother in Denmark, she said, had almost no time to care for her. The only person who cared for her was her ailing mother who also lived alone thousands miles away in Pakistan. The mother was also helpless to extend her any help. She had no children to turn her attention to. Her husband had married another woman, who was related to her and her former husband. This factor alienated her from the family of that cousin. She had no relatives in Norway to turn to for help. She felt isolated. Moreover, given her educational background and non-existent Norwegian language skills, she did not have much hope for decent job in Norway. She had only ten years school education from Pakistan and could not speak Norwegian language. She never worked outside her home in Norway. She was living alone in an accommodation provided by the state and surviving on the state financial support. Above all, she felt she stood humiliated in the eyes of her relatives both in Pakistan and Norway. There was no one to avenge her humiliation. It had befallen on her to stand up and reassert herself.

In the above context she developed a robust desire to restore her self-respect. The desire turned out to be her agency. Agency is the capacity of an individual to act. The robustness of her desire armed her with the capacity to explore what she never did or thought to explore: to 'use' the state law to prove to her former in-laws that she can 'aim goals and achieve them single-handedly'. The goal was to get her former husband punished. But mere desire would not have achieved the 'goal' without the support of the NGO. Therefore, her agency was greatly bolstered by the legal and moral support of the NGO.

When Asma and the case worker agreed to sue the ex-husband for bigamy in a Norwegian court, they knew they were violating the Muslim Personal Law. They were aware of the fact that they were violating the views on polygamy of the imam that were expressed in seminars arranged by the NGO and in his writings. Yet the two women took the matter to the Norwegian court. From the detailed interviews with Asma and the case worker I concluded that the following three reasons motivated them to take resources to the Norwegian court.

Asma's Desire:

As mentioned above, Asma had a strong desire to restore her self-respect by punishing her former husband and in-laws. This led the case worker to explore possibilities on the matter. She found that a possibility existed in the Norwegian law that bans polygamy. She said.

I understood (from the discussions with Asma) that her self-esteem had suffered. (...) She wished to do something to restore her self-esteem. (...) I realized the something can come from the Norwegian law that bans polygamy. (...) Muslim Personal Law was not even an option, because it permits polygamy'.

Unlike other family disputes that the NGO refer to the imams for religious legal advice, Asma's case was not taken to the imams by the NGO. The case worker explained:

'We knew what the imam would say. He would say what the problem is. Polygamy is legal in Islam. There is no violation of the God's law. (...) There can be no punishment for polygamy'. (...) Keeping in view her (Asma's) strong wish, I and she agreed to keep the imams out of the issue'.

Obligation of Citizenship and Multiple Interpretation of Islam on the floor of the NGO

Asma linked Islam to her decision to sue her former husband in terms of the obligations of citizen towards the state. Consider this conversation with her:

Farhat: 'Your husband's marriage is legal in the Islamic law. You said you are a devoted Muslim person. He has not violated Islam. Why would you punish him for something that Islam permits him?'

Asma: 'Islam may permit it. But the Norwegian law does not. He is a citizen of Norway and lives in Norway. He must not violate the law of Norway. But he did. Any citizen of this country who violates the law of this country must face the law and so must he.'

Farhat: 'So, you delink Islam from this whole issue. Islam is irrelevant to this matter'.

Asma: 'No, Islam is relevant. The religion of Islam that I understand does not obligate its followers to violate the law of a country that they have freely chosen to live in'.

Asma's argument that Islam does not require Muslims to violate the laws of their freely chosen host country goes to the heart of the debate initiated by contemporary Muslim scholars. For example, Dr. Shaheen Sardar Ali, argues that for the Muslim immigrants Europe is dar-al-sulh (the land of peace) (Ali, 2007). European Muslims are subjected to all laws of their respective states of domicile in Europe (ibid), including the family laws of the European states. Dr. Shaheen writes:

'Form an Islamic point of view therefore there is no obstacle for Muslim communities in Europe to engage with and abide by the laws of these (European) jurisdictions' (ibid).

How can Asma link Islam with the notion of state, law and obligation of citizen? Given her level of education and social milieu, how was come she familiar with the ongoing academic debate on Muslim immigrants, citizenship and human rights in the West? Upon further probe in the interview, I found that she was not familiar with the debate. She, however, had heard that Western media projects issues of Muslim women. It was surprising that she was able to links Islam with state, law and citizenship as she did in the cited conversation. She said this was her 'common sense' understanding of the state law and the obligation of citizens towards it and the interpretation of Islam that she grew up with in Pakistan. By linking Islam with state law and responsibilities of citizenship, Asma said she answered the criticism on her decision. Her argument is the empirical

support for legal scholars like Dr. Shaheen, who are engaged in developing an 'Islamic rationale' for Muslim migration and citizenship in Europe.

Moreover, she attributed her familiarity of debates on women's rights in Islam to her interaction with the NGO. When Asma and the case worker decided to keep the imams out of the case, they knew that polygamy is a disputed issue and that there are different interpretations of the Quranic verses regarding polygamy.

Notwithstanding the imams' view on polygamy and the Muslim Personal Law, women members of the NGO continue to question polygamy in their group discussions and seminars on the floor of the NGO's. Some women members also resort to web based Islamic literature against polygamy. Moreover, the imams are not the only 'experts' that the NGO consult on family disputes. The NGO also hold seminars with liberal Muslim legal scholars who argue against polygamy from within an Islamic perspective. Thus the NGO provides a milieu where the Muslim Personal Law as upheld by the imams is debated and questioned. This milieu is in line with the inbuilt pluralism of the Muslim legal tradition. This milieu has the potential to provide the conceptual possibilities within the framework of Islam to push the limits of the Muslim Personal Law, as indicated by the Asma's case.

Conclusion

The Norwegian state discharges a significant part of its responsibility to protect the human rights of those immigrants who have no or limited contact with the Norwegian legal system through the immigrant women NGO's. The NGO's act as a bridge between the women and their human rights as enshrined in the Norwegian law in line with the state commitments under the international human rights instruments. NGO's try to mitigate the sufferings of the women in a legal pluralist and culturally sensitive milieu. The dispute processing by the NGO exposes the women to multiple choices contained in the legal pluralism. Which choice the woman ultimately picks depends on the most optimum option in her situation. Asma's case shows that the women may be willing to look beyond the limits of the Muslim Personal Law that denies them the human rights that they are entitled to as citizens of Norway.

End Notes

Like, 'Turning Point', the action plan against domestic violence (2008-2011), Ministry of Justice and Police. Government of Norway, and Action Plan against forced marriages (2008-2011) Ministry of Children and Equality, Government of Norway

- Interview with the leader of the NGO ABC
- Interview with the imam of the mosque who the NGO case worker contacts for his religious-legal advice on family disputes.
- Interview with the leader of the NGO ABC
- Islam is divided into two main sects: Sunni and Shiites

In the legal tradition of Sunny Islam, four schools of law have been expounding laws based on Quran and Hadith (the reported sayings of Prophet Mohammad). The four schools are: Hanafi School, Maliki School, Shafi School and Hanbali School. Hanafi School is widely followed in South Asia (especially in India, Pakistan and Bangladesh). Traditionally, most Norwegian-Pakistanis are the followers of the Hanafi School of law.

It permits polygamy. Women have restricted rights to divorce and custody of child. It accords a lesser share in inheritance of property to women than men etc. The law is clearly contrary to the standards of gender equality in the UN Convention on Elimination of All Forms of Discrimination against Women and the norms of gender equality in Norway.

For examples the NGO invites Dr. Shaheen Sardar Ali to discuss with its women members about gender and family law in the context of Quran. Dr. Shaheen's interpretation of Quran is different from the imams'. For example, during

her lecture on the floor of the NGO on 4 June 2008, Dr. Shaheen said polygamy is not allowed in Islam. She said the Quran verses allowing polygamy are restricted in application to a specific context in the life of the Prophet Mohammad, when several war widows informed the Prophet they needed help to run their households. The Prophet asked the neighbors and relatives to help them. After some days the widows again approached the Prophet saying that the help accorded by the neighbors and their relatives was not enough. Upon this the Quranic verses allowing polygamy were sent by God in order to ease the sufferings of the war widows and their orphan children. Dr. Shaheen said today hardly any men enter polygamous union with the sole aim to help widows. They marry second, third wives for all kinds of reasons minus with the view to aid the suffering widows. Such polygamous marriages are not allowed in Islam, she said. In contrast to this, under the Muslim Personal law, a man may enter a polygamous marriage union if he can support the union materially, i.e. in terms of food, housing and routine household expenditure.

It is a well established fact that there is a plurality within the Muslim legal tradition, as has been highlighted by several researchers (e.g. Ali, 2000, Mehdi, 2000, Mir-Hossaini, Vikør, 2005).

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