

Investigating Qur'anic inheritance laws

ZEESHAN HASAN

ONE of the common perceptions about Islam is that it dictates a traditional system of Islamic Law ("sharia") which discriminates against women by allowing them to inherit only half as much as men. In fact, the Qur'anic position on these traditional laws is quite debatable; examination of the Qur'anic verses in question will allow us to decide whether or not the inferior position of women's inheritance in traditional Islamic law is justified.

The traditional view of inheritance in Islamic law comes from the following verses:

Allah enjoins you about [the share of inheritance of] your children: A male's share shall equal that of two females (Qur'an 4:11)

If there are many brothers and sisters, the share of each male should be that of two females. (Qur'an 4:176)

While the above seem clear enough, and were taken as the basis for the inheritance laws laid down by the traditional schools of Islamic law, there is on the other hand the fact that the Qur'an also tells all Muslims to make a will specifying inheritance of their assets.

Prescribed for you, when any of you is visited by death, and he leaves behind some goods, is to make testament in favour of his parents and kinsmen honourably -- an obligation on the God-fearing.

Then if any man changes it after hearing it, the sin shall rest upon those who change it; surely God is all-hearing, all-knowing.

But if any man fears injustice or sin from one making testament, and so makes things right between them, then sin shall not rest upon him; surely God is all-forgiving, all-compassionate. (Qur'an 2:180-182)

The first verse makes it obligatory for all Muslims to make a will determining the distribution of their assets after their death. The second verse emphasises the importance of this will by saying that no one has a right to falsify it. The third verse again emphasises the importance of the will by saying that any claimant who feels they have been unjustly dealt with should resolve the injustice by discussion with the maker of the will before their death. Altogether, the three verses make it clear that wills are integral to the Qur'anic view of inheritance; this acknowledges the general principle that every

person is best suited to determine their obligations to their heirs and the fate of their assets.

The importance of making a will is also underlined by the Qur'anic specification that the will must be made in the presence of two witnesses:

O believers, the testimony between you when any of you is visited by death, at the bequeathing, shall be two men of equity among you; or two others of another folk, if you are journeying in the land and the affliction of death befalls you. Then you shall detain after the prayer, and they shall swear by God, if you are doubtful: "We will not sell it for a price, even though it were a near kinsman, nor will we hide the testimony of God, for then we would surely be among the sinful." (Qur'an 5:105)

If the inheritance formulae are indeed meant to be a special legal provision reserved for war and natural disasters, then the general Islamic ruling on inheritance which remains is the Qur'anic insistence that everyone make wills and dispose of their assets fairly and as they see fit.

The question now arises, what is the Qur'anic position on inheritance? Is inheritance to happen according to the specified formulae, in which case women will inherit half as much, or according to an individually decided will, in which case no formulae apply? There is an obvious contradiction between these two alternatives.

To resolve these differences it is important to look at the context in which the various Qur'anic inheritance verses were revealed. The verses supporting individual disposal of assets through a will were likely revealed in the early Medinan period, in which the Prophet was called upon to establish basic rules according to which the early Muslim community in Medina would run. However, the more involved inheritance formulae were revealed after the battle of Uhud, in which many Muslims were killed; quite likely many of them had made no will, thus resulting in a chaotic situation regarding

the disposal of their assets among many claimants. The traditional schools of law generally held that the earlier Qur'anic requirement of making a will had been overruled by the later inheritance formulae (the term used by legal scholars to describe this was "naskh" or abrogation).

But the question arises as to why we today should continue to adhere to a set of inheritance formulae (coincidentally favouring males) which seemingly were revealed as an emergency measure following a major disaster (the unexpected death of many Muslims at Uhud). Common sense should make us realise that Qur'anic rulings based on general, universally applicable principles are likely to be the ones which are still applicable in modern times; as opposed to the verses which were obviously revealed in very specific situations of the early Muslim community, and likely were never intended to be applied beyond those situations.

In the case of inheritance, there are two visibly different guidelines given in the Qur'an. The first supports the general principle, which should be applicable at all times, of each individual's right and duty to determine the fate of their own assets after death. The other simply provides a quick formula to distribute assets after a disaster such as Uhud where many may have been killed without leaving wills. Perhaps the latter inheritance formulae could still be applicable today in situations such as war or natural disasters which kill many people unexpectedly before they have made a formal will, but there is no reason to support these formulae as a general case. Traditional Muslim scholars always made the assumption that inheritance formulae overrule the rights of individual wills; but this was a simplistic judgement on their part, because the inheritance formulae could simply be meant for the special case where there are no wills.

If the inheritance formulae are indeed meant to be a special legal provision reserved for war and natural disasters, then the general Islamic ruling on inheritance which remains is the Qur'anic insistence that everyone make wills and dispose of their assets fairly and as they see fit. If such an interpretation of the Qur'anic verses were accepted today, then there would be no further general use of the gender-biased inheritance laws which are now practiced in some Muslim countries.

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| The New York Times EXCLUSIVE

Arab spring, Kurdish summer

SEBAHAT TUNCEL

TURKEY often presents itself to the world as a model Muslim democracy, but it is in fact denying basic democratic rights to almost 20% of its population. Turkish Prime Minister Recep Tayyip Erdogan was re-elected by a large margin, and he now faces a major domestic challenge. Despite Turkey's impressive economic growth and increasing international profile during Erdogan's eight years in power, his government has ignored the country's most important and politically explosive issue: Turkey's oppressed Kurdish minority.

Kurds have been struggling for freedom and autonomy in Turkey for decades -- often in the face of violent state repression. We will no longer accept the status quo. We are demanding democratic freedoms, the right to speak our own language in schools and mosques and greater political autonomy in Kurdish-majority regions.

Since Erdogan's Justice and Development Party, known as the A.K.P., came to power in the 2002 elections, Turkey has deepened its diplomatic and economic ties with governments across the Middle East, and Erdogan's public denunciations of Israel have made him a popular figure throughout the region.

As Turkey's various political parties debate the drafting of a new Constitution, the resolution of the Kurdish issue will be of paramount importance -- and this will require the active participation of Kurdish members of Parliament.



But while the prime minister frequently expresses his sorrow over the deaths of Palestinian children, he has not so much as mentioned the Kurdish children who have been killed by the army and the police in Turkey.

Last week, as Syrian refugees fled across the border into Turkey, Erdogan condemned the Syrian government's violent crackdown on protesters. He neglected to mention the Turkish government's use of tear gas, bullets and water cannons to disperse Kurdish protesters in April. Until Erdogan gets his own house in order, he is in no position to criticise his neighbours.

Indeed, it is impossible for pro-democracy movements in Egypt, Syria or Libya to trust the Turkish government when it neglects its own opposition, suppresses protests and denies the legitimate demands of the Kurdish people.

Erdogan's government can follow one of two paths. It can seriously consider these demands, include Kurdish lawmakers in the process of drafting Turkey's new Constitution, provide constitutional guarantees for the collective rights of the Kurdish people and accept our demand for autonomy that will allow for self-government and bring peace. Or it can insist on the policy of violent suppression that it has pursued to date. If the second path is taken, Turkey could enter a more intense period of conflict than ever before.

Unfortunately, Erdogan's recent comment that he would have hanged Abdullah Ocalan, the imprisoned Kurdish nationalist leader, had he been in power when Ocalan was arrested in 1999, gives the impression that he is leaning toward the second path.

It was not always so. In a 2005 speech in Diyarbakir, Erdogan declared: "The Kurdish problem is my problem." It seemed that he had accepted the failure of Ankara's heavy-handed security policy and was setting a new process in motion. This "Kurdish opening" seemed like a step in the right direction; it offered the possibility of greater language rights, more autonomy and amnesty for antigovernment Kurdish militants.

However, it soon became clear that Erdogan was not sincere. Despite the Turkish public's approval of the opening, the A.K.P. did not take serious steps toward resolving the Kurdish problem. On the contrary, it stepped up military operations, banned the leading Kurdish party, the D.T.P., and arrested Kurdish politicians, including me. (I was arrested in November 2006 and spent nine months behind bars, until I was elected to Parliament from prison and granted immunity in July 2007.)

Since then the government has largely ignored the Kurdish people's grievances. Under the guise of an opening, it has continued the traditional nationalist politics of denial. Rather than meeting the demands of the Kurdish people, it seems that the A.K.P. is now dragging Turkey toward a new confrontation. The election of 36 pro-Kurdish deputies to Parliament will be the most effective check on the A.K.P.'s destructive policy.

As Turkey's various political parties debate the drafting of a new Constitution, the resolution of the Kurdish issue will be of paramount importance -- and this will require the active participation of Kurdish members of Parliament.

The unjustified arrests and military operations must come to an end and Turkey's Kurds, after decades of struggle, must be granted the right to learn and pray in our own language and exercise self-government in our cities and towns.

The writer is a Kurdish member of Turkey's Parliament. ©The New York Times. Distributed by the New York Times Syndicate.

Indigenous issues: Need PM's intervention

LELUNG KHUMI

IDENTITY crisis and only partial implementation of the 1997 CHT Accord are the most important issues for the indigenous peoples of Bangladesh at the moment. They want to be identified as "indigenous" and not as a "small ethnic minority" because the term "small ethnic minority" is an imposed identity and a violation of the "right to self-identity." On the other hand, that the CHT Accord has not been fully implemented is an issue parallel with the identity crisis. Thus, the issues have become very controversial in the local, national and international arena and are a matter of great concern.

Many political and social organisations representing indigenous peoples of Bangladesh have

The indigenous representatives of Bangladesh who attended the Permanent Forum last month urged the international community, including the Chair of Forum, to raise their voice so that the indigenous peoples of Bangladesh are recognised in the constitution of Bangladesh as "indigenous" and not as "small ethnic minority."

However, the government representative to the UN, directed by the government, claimed at the Forum that "there are no indigenous people in Bangladesh, but some small ethnic minorities." This is not a surprise for the indigenous peoples of Bangladesh, or for those who are aware of the current standpoint of the government on indigenous issues.

After the claim of the representative, international indigenous participants and experts at the

government has any answer to the statement that "indigenous peoples have rights to self-identity" and to the human chain formed in Dhaka protesting against the statement made by the government representative!

A few weeks ago, an article was published in the Naya Diganata (a daily Bangla newspaper) regarding indigenous issues, saying that the foreign ministry of Bangladesh is against constitutional recognition of the indigenous people as "indigenous."

It is not only the general indigenous peoples of Bangladesh who are demanding recognition as "indigenous" in the constitution but five indigenous parliament members, many leftist politicians and many national and international organisations are also now strongly standing on the side of the term "indigenous" despite many anti-indigenous politicians, bureaucrats and intelligence groups being against it.

Perhaps there may be some people who are against constitutional recognition of indigenous people as "indigenous," and one feels that that particular stance goes against the interest of the indigenous people.

We, the indigenous people of Bangladesh, know that Prime Minister Sheikh Hasina has been very sympathetic towards us. Otherwise, her government would have never signed the CHT Accord. Indigenous leaders do not claim that the prime minister has ever been against the interest of the indigenous peoples.

We hope that under the leadership of the Prime Minister Sheikh Hasina the government will show love and sympathy, and intervene to save the indigenous peoples of the country by giving us constitutional recognition as "indigenous," recognising our traditional customary laws, traditional land management system in the constitution, and fully implementing the CHT Accord.

There will always be suspicions of conspiracy from many sides against the existence of indigenous peoples until and unless the prime minister intervenes in these matters. We look forward hopefully to her positive intervention in preserving the existence of the indigenous people of Bangladesh.

The writer is a development activist.



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arranged roundtable discussions, talk shows, workshops, seminars, held demonstrations and had dialogues with concerned officials at the local and national levels with the help of many pro-indigenous organisations and people. The issue has also recently been discussed at the 10th session of the UN Permanent Forum on Indigenous Issues in New York.

Forum told him that "indigenous peoples have rights to self-identity," no government can impose any identity on any community of its country. Following his claim, the indigenous people of Bangladesh formed a human chain in Dhaka on the June 3, protesting against the statement that "there are no indigenous people in Bangladesh but some small ethnic minorities." We are not sure if