CHAPTER 10

Koranic, Pakistani and Human Rights Standards: A Comparison

In the preceding chapters three different standards of women’s rights were discussed: the Koranic; the statutory Islamic law of Pakistan; and the international human rights. Now we are in a position to put them in comparative perspective to find out how much compatibility exists between them. In the Koranic standard, a clear line is drawn between the two different interpretations of the Koranic verses regarding women’s rights: the conservative interpretation (decontextualised), on which the statutory Islamic law of Pakistan is based, and a contextual interpretation proposed in this study. Each substantive provision of the 1979 Women’s Convention is compared with each interpretation, to demonstrate that it is the conservative interpretation and the statutory Islamic law of Pakistan that conflict with the international human rights standards, not the Koranic standards. It is important to note one major point from the very outset: that is that the spirit and overall approach of the Koran and the Women’s Convention are the same – equal and human treatment of women. The Koran started the reformation of 7th century Arab society by liberating women and enjoining men to treat them as human beings. The Women’s Convention has the same liberating and human thrust. The 1973 constitution of Pakistan follows a similar approach of gender equality but its inconsistent application of the equality clause (article 25) and also sex-discriminatory criminal, evidence and personal status laws defeat that spirit.

10.1 GENDER DISCRIMINATION

The Women’s Convention prohibits discrimination on the basis of sex (article 1; see chapter 8.4.1). However, it does not simply seek the elimination of discrimination on the basis of sex but rather that which adversely affects women (Khaliq, 1995-96). The Koran is against discrimination on the basis of gender. It says that men and women are equal by birth as they are
created from a single soul (Koran, 4:1) and both are equal morally and spiri-
tually (Koran, 33:35). Everyone is responsible for his/her actions (Koran,
2:286) and no one shall carry the burden of other people’s actions (Koran,
74:38). Both men and women have the right to enjoy what they earn (Koran,
4:32). The Koran (49:19) describes one criterion for different treatment, i.e.
righteousness. However, the Koran does prescribe different social roles for
different sexes, such as the role of woman as a mother in the family. These
different roles are complementary rather than discriminatory and no one
should be discriminated against because of her/his specific role as a member
of society. For instance, a pregnant woman or a mother cannot be discrimi-
nated against because of her temporary situation. The constitution of Paki-
stan (article 25) prohibits gender discrimination (see chapter 5.1). In
contrast to the Koranic, constitutional and human rights standards, the
statutory Islamic law of Pakistan such as criminal law, law of evidence and
personal status discriminates on the basis of gender (see chapter 6.2.2; chap-
ter 7.1). These provisions are discussed one by one in the following pages.

The Convention extends its reach to the private sphere unlike most
other human rights instruments. Both the Koran and law in Pakistan cover
private spheres as understood in the human rights scholarship. The Koran
does protect the right to privacy but does not exclude the regulation of
harmful actions taking place in the private sphere (see chapter 3.4). The
same is the case with the legal system in Pakistan.

10.2 STATES PARTIES OBLIGATIONS

The Convention (article 2) obligates States Parties to undertake positive
actions to prevent and eliminate discrimination by changing laws and abol-
ishing harmful social and cultural traditions adversely affecting women. So
does the Koran. The Koran not only obligates the ruler of the time to prevent
all kinds of discrimination but also imposes a duty on every member of soci-
ety to refrain from such behaviour or activities. The constitution of Pakistan
forbids all sorts of discrimination specifically on the basis of gender (article
25) and any custom or tradition inhibiting the enjoyment of fundamental
rights contained in the constitution. Everyone is entitled to all fundamental
rights and some provisions are designed to protect women’s rights. For in-
stance, the constitution (article 8) declares that any law, custom or usage
having the force of law, in so far as it is inconsistent with fundamental rights,