

PRINCIPLE OF GENDER EQUALITY IN INTERNATIONAL AGREEMENTS AND ISLAMIC SHARIA

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Abstract:

The article highlights the convergence of the principle of gender equality between Islamic Sharia and international law, despite differing philosophical foundations; as international law seeks formal equality in rights and duties without discrimination, while Sharia emphasizes substantive equality based on justice and the complementary natural roles of man and woman in building society. It calls for integrating Sharia principles into international human rights discourse to enrich the global legal framework with an approach that respects cultural and religious particularities, thereby establishing just equality rather than identical uniformity.

Keywords: Equality, Genders, Islamic Sharia, International Conventions.

Introduction:

Gender equality stands as one of the most prominent issues garnering extensive attention in both Islamic Sharia and international law, owing to its direct impact on achieving social justice and establishing the foundations of human dignity. While modern international covenants affirm equal rights for women and men across political, economic, and social domains, Islamic Sharia has preceded these instruments in establishing the principle of equality grounded in justice—accounting for innate and functional differences between the sexes to ensure balance rather than mere uniformity. This convergence between the two frameworks raises fundamental questions regarding the concept of equality, its controls, and boundaries, as well as the degree of harmony or conflict between Sharia's legal rulings and the provisions of international agreements, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other UN instruments. Discussing this topic holds particular significance amid ongoing debates on women's rights and their empowerment in Muslim societies, along with the ensuing jurisprudential, legislative, and political challenges—necessitating rigorous scholarly analysis that elucidates points of agreement and divergence between the two systems, while highlighting the potential for reconciliation between the objectives of Sharia (Maqasid al-Sharia) and the principles of international law within a framework of civilizational dialogue and mutual respect for cultural and religious particularities.

First: The Principle of Gender Equality in International Conventions

This section addresses the principle of gender equality in international agreements, defining it as a formal principle based on equal rights and obligations without discrimination, and reviewing its applications in general and specific conventions.

1. The Meaning of Gender Equality

Gender equality (between women and men) means equality in rights, responsibilities, and opportunities related to women's participation in development and their access to decision-making at all political, economic, and social levels. This has resulted in the adoption of methods that promote

such equality, including advocacy for women's education and the amendment of legislation, customs, and traditions that prevent this equality and contribute to defining stereotypical gender roles. Thus, the mother's function is no longer limited to raising and caring for children, nor is the man's function restricted to working to provide livelihood for his family¹.

2. The Principle of Equality in General International Conventions

2.1. Equality in the United Nations Charter 1945:

The United Nations Charter is considered the first international treaty to refer in specific and clear terms to the equality of women and men in rights². It affirmed the principle of non-discrimination among people on the basis of sex, establishing equal rights for men and women, as stipulated in the provisions of Articles One and Eight.

2.2. Equality in the Universal Declaration of Human Rights 1948:

Equality between men and women is enshrined in the Preamble of this Declaration, which affirms the equality of men and women in rights³. It was also reaffirmed in Article Two, which stipulated the principle of gender equality in marriage, divorce, and family formation: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

2.3. Equality in the Two International Covenants on Human Rights⁴:

a/ The International Covenant on Economic, Social and Cultural Rights of 1966:

Article Three of the Covenant provides that the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

b/ The International Covenant on Civil and Political Rights of 1966:

This Covenant affirmed in Article 23 the principle of equality between men and women within the framework of the family and marriage in terms of rights and obligations. Article 26 further affirmed that all citizens are equal before the law and are entitled to equal protection of the law without any discrimination.

3. The Principle of Gender Equality in Conventions Specific to Women

3.1. The Convention on the Nationality of Married Women 1957:

Article One of this Convention provided that each Contracting State shall ensure that neither the celebration nor the dissolution of marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife⁵. Consequently, contemporary nationality laws have adopted and affirmed the principle of equality between men and women with regard to the acquisition of nationality.

3.2. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979:

The importance of the Convention stems from the fact that it placed women's issues among the objectives of the United Nations and on its list of priorities, thereby becoming part of international human rights law. It specifically addressed discrimination and treated it with depth and comprehensiveness with the aim of bringing about real change in the status of women. It established solutions and measures to be taken by States Parties to eliminate discrimination against women in all

¹ Nuha Al-Qatargi, *Women in the United Nations System*, University Foundation, Lebanon, 1st ed, 2006, p. 18.

² Mohammed al-Shafi'i, *Human Rights Law*, Munsha'at al-Ma'arif, Egypt, 5th ed, 2009, p. 72.

³ Wahid Ra'fat, *International Law and Human Rights*, The Egyptian Journal of International Law, Egypt, Vol. 33, 1977, p. 16.

⁴ Ibrahim al-Anani, *Equality and Non-Discrimination in Islamic Sharia and International Law*, Proceedings of the Scientific Symposium on Human Rights between Islamic Sharia and Positive Law, Naif Arab University for Security Sciences, 1st ed., Riyadh, 2001, Vol. 1, p. 227.

⁵ Quraishi Raziqa, *The Effect of Mixed Marriage on the Nationality of Family Members*, Master's Thesis, Faculty of Law, University of Boumerdes, Algeria, 2009-2010, p. 81.

fields, which was not provided for in preceding conventions, each of which addressed only a specific aspect of women's issues¹.

Article One of the Convention provides a comprehensive definition of discrimination applicable to all provisions of the Convention. Discrimination against women includes "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2 obliges States Parties not only to condemn all forms of discrimination against women but also to take various measures to eliminate it. This is achieved by embodying the principle of equality in national constitutions and all legislation, and by adopting legislative and non-legislative measures to prohibit all discrimination against women.

The Convention also urged States Parties, through Article 5, to take all appropriate measures to eliminate gender stereotypes and to modify the social and cultural patterns of conduct of men and women that perpetuate the inferiority or superiority of either sex. It further requires that family education includes a proper understanding of maternity and recognition of the shared responsibility of both women and men in the upbringing of children and care for family affairs, as well as the division of responsibilities between them in marriage and divorce. Article 16 guaranteed equal rights for men and women upon marriage, during marriage, and upon its dissolution.

The Convention obligated States Parties to take all measures, including legislative ones, to combat all forms of trafficking in women and exploitation of prostitution. It also requires granting women the same rights as men with respect to acquiring, changing, or retaining nationality, and ensuring in particular that marriage to a foreigner or change of nationality by the husband during marriage does not automatically impose the husband's nationality upon the wife. The Convention also obligated States Parties to grant women equal rights with men concerning the nationality of their children², and to prohibit the dismissal of women workers on grounds of pregnancy, maternity leave, or marriage, with penalties imposed on violators. It also requires ensuring women's access, on equal terms with men, to all healthcare services.

Second: The Principle of Gender Equality in Islamic Sharia

The principle of equality and non-discrimination is considered the cornerstone and pivotal point in every legal framework governing public freedoms and rights, which is precisely what Islamic Sharia has taken into account in all its legislative provisions. It should be noted that the use of the term "gender" in this article is adopted solely in conformity with the prevailing terminology employed in international conventions and United Nations documents. This usage does not imply an endorsement of the ideological or sociocultural interpretations often associated with the concept of gender in contemporary discourse. From an Islamic legal perspective, equality is founded upon the recognition of the two natural sexes, male and female, as fixed and inherent biological realities. Therefore, the more accurate and Sharia-compliant term is "the two sexes" rather than gender. The latter is used here strictly for analytical and comparative purposes within the framework of international legal texts. as we shall address in the following.

1. Definition of Equality: In this regard, we address the meaning of equality in both linguistic and Islamic jurisprudential terminology.

1.1. Equality in Linguistic Terms: It is the verbal noun derived from the expression "sāwāhu yusāwīhi" (he equaled him), meaning "he made equal to him." When two things "istawā" and

¹ Boukaies Soumia, Gender Equality in Algerian Family Law in Light of the Convention on the Elimination of All Forms of Discrimination Against Women, Faculty of Law, University of Tlemcen, Algeria, 2013-2014, p. 08.

² Grichi Razika, The Impact of Mixed Marriage on Family Members' Nationality, op. cit., p.91.

"tasāwayā," it means they became equivalent (identical). "Sawā' al-shay'" means the like or equal of something, and its plural form is "aswā'".¹

2.1. Equality in Terminological Meaning: It means that a person has the same rights as his fellow and bears the same obligations, without increase or decrease. The minimum condition for equality involves at least two parties, but it exists in a common treatment between them in one matter or more. It is an indivisible value with no subdivisions, and it represents the noblest proportion of relationships between things because it is true equivalence, making each party equal to the other in every respect². Equality is the objective that justice seeks to achieve and the desired goal thereof. The just ruler in the realm of governance is one who rules with equity, as he succeeds the Lawgiver (Ṣāhib al-Sharī'a) in preserving equality.³

2. Manifestations of Equality between Men and Women in Islam

Islamic Law has granted women great rights and imposed upon them obligations that suit their constitution and nature (fiṭra). It has assigned to men, by virtue of their specific characteristics of male guardianship (qiwāma), physical strength, resourcefulness, and capacity, the responsibility of leadership over women. This is a leadership that is neither tyrannical nor oppressive⁴. Allah the Almighty has associated males and females in life's affairs, establishing equality between them in several matters, including:

2.1. Equality in Humanity: Allah the Almighty says: " O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allāh is that (believer) who has At-Taqwā[i.e. he is one of the Al-Muttaqūn (the pious)". (V.49:13). All people are equal in their human nature, and no group is superior to another based on its human essence, original creation, descent from a particular lineage, or what has been transmitted to it from this origin through heredity⁵. Rather, their superiority lies in obedience to Allah and following His Prophet Muḥammad (peace be upon him)⁶. All people are equal; their origin is one. Allah the Almighty says: " Mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him (Adam) He created his wife [Ḥawwā' (Eve)], and from them both He created many men and women." (V.4:1). The address is general to all those legally responsible (mukallaḥīn), encompassing men and women equally⁷. The Prophet Muḥammad (peace be upon him) affirmed: "Women are the counterparts (shaqā'iq) of men".

2.2. Equality in the Right to Life: Many Arabs used to view the birth of a female as an ill omen⁸, burying her alive in the earth out of fear of disgrace⁹, as they claimed. Allah condemned them for this and denounced their practice, saying: " And when the female (infant) buried alive (as the pagan Arabs used to do) shall be questioned: For what sin, was she killed? (V.81:8). The right to life is

¹ Ibn Manzūr, *The Tongue of the Arabs*, op. cit., vol. 14, p. 410.

² Ṣāliḥ ibn Ḥumayd, *Encyclopedia of the Radiance of Bliss on the Noble Morals of the Honorable Prophet*, Dār al-Wasīla, Saudi Arabia, 2nd ed., 2000, vol. 7, p. 2795.

³ Ibn Miskawayh, *Refinement of Character*, ed. 'Imād al-Hilālī, Manshūrāt al-Jamal, Lebanon, 1st ed., 2011, p. 343."

⁴ Su'ād Dākhil, *Manifestations of Honoring Women in Islamic Sharia*, Master's thesis, College of Sharia and Islamic Studies, Umm al-Qura University, Saudi Arabia, 1407-1408 AH, p. 10.

⁵ 'Alī 'Abd al-Wāḥid Wāfī, *Human Rights in Islam*, Dār al-Nahḍa, Egypt, 5th ed., 1979, p. 8.

⁶ Ibn Kathīr, *Tafsīr Ibn Kathīr*, Dār Ṭayba, Saudi Arabia, 2nd ed., 1999, vol. 7, p. 387.

⁷ Al-Rāzī, *Maḥāṭib al-Ghayb*, Dār Ihya' al-Turāth, Beirut, 3rd ed., 1420 AH, vol. 9, p. 475.

⁸ Al-Qurṭubī, *Tafsīr al-Qurṭubī*, Dār al-Kutub, Egypt, 2nd ed., 1964, vol. 19, p. 232.

⁹ Al-Ṭāhir ibn 'Āshūr, *Al-Taḥrīr wa al-Tanwīr* (Liberation and Enlightenment), Al-Dār al-Tūnisiyya, Tunisia, n.d., 1984, vol. 8A, p. 100.

guaranteed by Sharia for every human being, whether male or female¹. With the advent of Islam, women regained their right to life and their violated dignity. 'Umar ibn al-Khaṭṭāb (may Allah be pleased with him) said: "By Allah, in the pre-Islamic period (Jāhiliyya), we did not regard women as having any significance until Allah revealed concerning them what He revealed and apportioned to them what He apportioned"².

3.2. Equality in Worldly and Otherworldly Recompense: Both genders, men and women, are equal in the principle of action and recompense³, and in their relationship with Allah. Allah the Almighty says: "Whoever works righteous ness — whether male or female — while he (or she) is a true believer (of Islāmic Monotheism) verily, to him We will give a good life (in this world with respect, contentment and lawful provision), and We shall certainly pay them a reward in proportion to the best of what they used to do (i.e. Paradise in the Hereafter). (V.16:97). And the Almighty says: "Whosoever does an evil deed, will not be requited except the like thereof; and whosoever does a righteous deed, whether male or female and is a true believer (in the Oneness of Allāh), such will enter Paradise, where they will be provided therein (with all things in abundance) without limit. (V.40:40)

2.4. Equality in Religious Obligations : Women, like men, are encompassed by the textual injunctions commanding the performance of the obligations and pillars of Islam, such as the command to perform prayer (ṣalāt), fast during the month of Ramadan, and perform pilgrimage (hajj) to the House of Allah. They are likewise encompassed by the prohibitory texts, such as the prohibition of adultery (zinā) and theft. Ibn Ḥazm stated: "We are certain that the Messenger of Allah (peace be upon him) was sent to women just as he was to men, and that the Law (Sharī'a), which is the Law of Islam, is binding upon them just as it is binding upon men. We are certain that the address (khiṭāb) concerning acts of worship and legal rulings is directed to them as it is directed to men, except where evidence specifically distinguishes them or distinguishes men from them. All of this necessitates that men not be singled out to the exclusion of women in anything in which all share equally, except by explicit text (naṣṣ) or consensus (ijmā')"⁴. Allah the Almighty says: "Verily, the Muslims (those who submit to Allāh in Islām) men and women, the believers men and women (who believe in Islāmic Monotheism), the men and the women who are obedient (to Allāh), the men and women who are truthful (in their speech and deeds), the men and the women who are patient (in performing all the duties which Allāh has ordered and in abstaining from all that Allāh has forbidden), the men and the women who are humble (before their Lord — Allāh), the men and the women who give Ṣadaqāt (i.e. Zakāt, and alms), the men and the women who observe Ṣaum (fast) (the obligatory fasting during the month of Ramadān, and the optional Nawāfil fasting), the men and the women who guard their chastity (from illegal sexual acts) and the men and the women who remember Allāh much with their hearts and tongues— Allāh has prepared for them forgiveness and a great reward (i.e. Paradise). (V.33:35). The reason for the revelation of this verse is that a woman came to the Prophet (peace be upon him) and said to him: "I see that everything is for men, and I do not see women mentioned in anything"⁵.

¹ Muḥammad al-Zuhaylī, *Human Rights in Islam*, Dār al-Kalim al-Ṭayyib, Lebanon, 3rd ed., 1424 AH, p. 143.

² Ibn Ḥajar, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Ibn Bāz, Al-Maktaba al-Salafiyya, Cairo, 1380 AH, vol. 8, p. 657.

³ Majīd Maḥmūd, *Women and Political Rights in Islam*, Maktabat al-Rashīd, Saudi Arabia, 1st ed., 1997, p. 48."

⁴ Ibn Ḥazm, *Precision in the Principles of Legal Rulings*, Dār al-Ḥadīth, Egypt, 1st ed., 1404 AH, vol. 3, p. 341.

⁵ Al-Shawkānī, *Opening of the All-Powerful*, Dār al-Kalim al-Ṭayyib, Beirut, 1st ed., 1414 AH, vol. 4, p. 326.

2.5. Equality in the Right to Education: Islamic Sharia has granted women the right to seek knowledge just as men¹. Indeed, it has considered the pursuit of knowledge an obligation (*farīda*) upon both males and females, while observing the legal parameters concerning this matter. The Messenger of Allah (peace be upon him) said: "Seeking knowledge is an obligation upon every Muslim"². Ibn Ḥazm mentioned: "It is obligatory upon women to go forth to acquire religious understanding (*tafaqquh fī al-dīn*), command what is right, and forbid what is wrong, just as it is obligatory upon men. It is obligatory upon every woman to acquire understanding of everything that concerns her, just as this is obligatory upon men. Thus, it is obligatory upon those among them who possess wealth to know the rulings of *zakāt*, and it is obligatory upon all of them to know the rulings of purification (*tahāra*), prayer (*ṣalāt*), fasting (*ṣawm*), what is lawful (*ḥalāl*) and unlawful (*ḥarām*) regarding food, clothing, drink, and other matters, just as it is for men. There is no difference between them"³.

2.6. Equality in Civil Rights: Islam has established equality between men and women in civil rights of all types, with no distinction in this regard between a woman's status before or after marriage. Before marriage, a woman has her independent civil personality separate from that of her guardian. If she is of legal age, she has the right to contract, undertake obligations, own real and movable property, and dispose of what she owns⁴. After marriage, a woman retains her full civil personality. She does not lose her name, her capacity to contract, or her right to ownership. She retains her name and family name, her complete civil rights, her capacity to undertake obligations, and her ability to execute various contracts⁵.

2.7. Equality in the Right to Work: Islam has established equality between men and women in the right to work. It has permitted women to undertake lawful professions and occupations that they can perform well and that do not contradict their nature, while preserving women's dignity without compromising their role in raising righteous offspring and maintaining the family⁶.

2.8. Equality in the Right to Express Opinion: Islam has established equality between men and women in the right to express opinion, based on the intellect that Allah has placed in both of them, which has the capacity to acquire knowledge, thought, and discernment⁷.

2.9. Equality in Divorce with Observance of Legal Parameters: Islam has established equality between women and men regarding the desire for cohabitation or separation if they cannot live a happy, acceptable life together. It has permitted the husband to divorce his wife after paying her all her legitimate rights such as the dowry (*mahr*), maintenance (*nafaqa*), etc. Islam has also permitted the wife to separate from her husband if he is unjust to her or treats her badly. She may separate from him if all attempts at reconciliation between them have failed.

There are matters in which women are distinguished from men in Islamic Sharia in consideration of women's circumstances and their difference from men, such as exempting them from certain acts of

¹ 'Umar Quraysī, *The Tolerance of Islam*, Maktabat al-Adīb, Saudi Arabia, 3rd ed., 2006, p. 339.

² Ibn Mājah, *Sunan Ibn Mājah*, ed. Shu'ayb al-Arna'ūt, Book of the Sunna, Chapter on the Virtue of Scholars and Encouragement to Seek Knowledge, ḥadīth (224), Dār al-Risāla, Lebanon, 1st ed., 2009, vol. 1, p. 151; authenticated by al-Albānī, *Ṣaḥīḥ Ibn Mājah*, Maktabat al-Ma'ārif, Saudi Arabia, 1st ed., 1997, vol. 1, p. 92.

³ Ibn Ḥazm, *op. cit.*, vol. 3, p. 337.

⁴ Aḥmad al-Kubaysī, *Philosophy of the Family System in Islam*, Maṭba'at al-Ḥawādith, Iraq, 2nd ed., 1990, p. 101.

⁵ 'Alī 'Abd al-Wāḥid Wāfi, *Women in Islam*, Dār al-Nahḍa, Egypt, 2nd ed., 1999, p. 11.

⁶ Zayd Maḥmūd al-'Uqaylah, *Rights of Working Women in Islamic Sharia and Positive Laws*, Al-Fikr Magazine, University of Biskra, Algeria, Issue 08, p. 408.

⁷ Majīd Maḥmūd, *op. cit.*, p. 50.

worship like prayer (ṣalāt), requiring them to make up missed fasts but not prayers after the cessation of menstruation (ḥayḍ) or postnatal bleeding (nifās), and exempting menstruating women from the farewell circumambulation (ṭawāf al-wadā'). The lack of equality between male and female does not signify women's inferiority or denigration; rather, it signifies the difference between men and women. The sky differs from the earth, and the sun does not resemble the moon. Similarly, the lack of equality between them does not mean that superiority is confined to men; rather, women may be superior and higher in status than men. Paradise lies beneath the feet of mothers, and daughters are a shield from Hellfire for their fathers, unlike sons¹.

Third: Comparison of the Principle of Gender Equality in Islamic Sharia and International Law

The comparison between Islamic Sharia and international law is manifested through the following points:

1. Illusory Equality: The United Nations General Assembly has issued a series of conventions and covenants that do justice to women, grant them all their rights, and prohibit discrimination between them and men. These came to crown an era in which violations of women's rights prevailed during the twentieth century and earlier, in the context of deviation from the teachings of the Islamic religion, which did justice to women and granted them all their rights as human beings². These international covenants stipulated equality between men and women in the sense of uniformity and identical treatment. This stems from the Western perspective on the family after its separation from religion, and in application of individual freedom and human rights, without regard for the wide cultural variance and the differences in women's conditions and problems from one society to another. This imbalance went so far as to raise the slogan of gender equality instead of equality between the sexes, as we observe in the resolutions that culminated in the international conferences organized by the United Nations, from the Cairo Conference to the Beijing Conferences.

The result was that Western women freed themselves from the grip of deprivation only to fall into the abyss of licentiousness. Today, she is either "a daughter tossed about by the hands of human wolves, or a toiling wife who barely returns home except exhausted and weary, sharing with men even the payment of car and house installments—otherwise she has no value—or a mother ultimately cast by her children into one of the social care homes"³. In the name of this equality, women have been transformed into objects of degradation and vulgarity, driven into this condition at an astonishing pace and manner unprecedented in human history. Women have become commodities... Women are exploited to promote goods and advertise them... Women are used for illicit pleasure and for competition between television channels to attract viewers... Women are used for fashion shows, or for displaying bodies in the name of fashion...!⁴

2. Equitable Equality: In Islamic Sharia, however, the concept of equality between women and men is a concept that has limits and parameters. In truth, the term "equality" lacks precision. We cannot say that Islam is a religion of equality; rather, it is correct to say that Islam is a religion of justice

¹ 'Abd Allāh Muḥammad al-Dāwūd, *Does History Lie?*, King Fahd Library, Saudi Arabia, 3rd ed., 2008, p. 266.

² Taysīr Futūḥ Hījja, *Huqūq Women's Rights in Islamic Sharia and International Covenants*, Center for Human Rights Information, Palestine, 2009, p. 47.

³] Zayd ibn Muḥammad al-Rummānī, *Muslim Women Between Invasion and Westernization*, Dār al-Ṣumay'ī, Saudi Arabia, 1st ed., 2002, p. 16.

⁴ Aḥmad al-Raysūnī, *The Humanity of Man Before Human Rights, Human Rights as the Axis of the Purposes of Sharia*, Al-Ummah Book Series, Issue 87, Muḥarram 1423 AH, Year 23, p. 49."

('adl)¹. Islam establishes equality between those who are equal, for "no Arab has superiority over a non-Arab, nor does a white person have superiority over a black person, except through piety (taqwā)"². It establishes equality between those who differ overall but are equal in certain aspects, in matters where equality between them exists—for example, Islam establishes equality between men and women in the reward for righteous deeds common to both, such as reciting the Qur'an. Conversely, Islam differentiates between those who are similar overall but differ in certain matters where differentiation applies, such as the distinction between males and females in many obligations like jihād, the supreme leadership (al-imāma al-kubrā), and similar matters.

Islam has established equality between men and women in all religious and doctrinal matters, as well as in freedoms. However, Islam has established justice ('adl) between them in many matters that correspond to the physical nature of each. "All that Islam has done is distribute practical responsibilities in a manner consistent with the natures of masculinity and femininity"³. This differentiation relating to women in Islamic Sharia can be considered positive discrimination, because it embodies mercy and compassion toward women—that creation concerning whom Allah the Almighty and His Noble Messenger commanded us to treat well. This differentiation cannot be understood, as enemies of the religion promote, as Islam oppressing and persecuting women and depriving them of their basic rights. Rather, it represents the elimination of injustice that would befall both parties, because equality in inappropriate contexts constitutes severe injustice to both men and women⁴.

3. The Role of Man and Woman: The French scientist Alexis Carrel, Nobel Prize laureate in Medicine, clarified the reality of the difference between men and women⁵, stating: "The differences existing between men and women do not derive from the particular form of the reproductive organs, the presence of the uterus and pregnancy, or the method of education. They are of a nature more fundamental than that. They arise from the very constitution of the tissues and from the impregnation of the entire body with specific chemical substances secreted by the ovaries. Ignorance of these essential facts has led advocates of femininity to believe that both sexes should receive the same education, be granted the same powers, and bear similar responsibilities. The truth is that woman differs considerably from man... Women must develop their aptitudes in accordance with their nature, without attempting to imitate males. Their role in the advancement of civilization is higher than that of men, and they must not abandon their specific functions"⁶.

Can advocates of equality transform the reality of men and make them participants in women's specific capabilities and feminine functions, which men are incapable of performing? Likewise, they cannot masculinize women and grant them the characteristics and functions of men, which women are incapable of performing. Divine wisdom has configured each sex and prepared it specially to qualify it for performing its functions and duties in life. There is no escaping the diversification of

¹ Ibn 'Uthaymīn, Commentary on the Wāsiṭī Creed, Dār Ibn al-Jawzī, Saudi Arabia, 6th ed., 1421 AH, vol. 1, p. 229.

² Al-Bayhaqī, Branches of Faith, Book of Guarding the Tongue from What is Unnecessary, Chapter on What the Tongue Must Be Guarded Against Including Boasting About Ancestors, ḥadīth (4774), Maktabat al-Rushd, Saudi Arabia, 1st ed., 2003, vol. 7, p. 132; authenticated by al-Albānī, Series of Authentic Hadiths, ḥadīth (2700), Library of Knowledge, Saudi Arabia, 1st ed., 1996, vol. 6, p. 449.

³] Muḥammad al-Ghazālī, Human Rights Between the Teachings of Islam and the United Nations Declaration, Dār al-Nahḍa, Egypt, 4th ed., 2005, p. 102.

⁴ Khalīl al-Hadrī, The Concept of Discrimination Against Women: A Legal Perspective, dated 22/04/2016, website old.uqu.edu.sa/page/ar/82190.

⁵ Ṣāliḥ Ridā, Scientific Miracles in the Prophetic Sunna, Library al-'Ubaykān, Saudi Arabia, 1st ed., 2001, vol. 2, p. 1177; Waḥīd al-Dīn Khān, Islam Challenges, Library al-Risāla, Beirut, 1st ed., 1974, p. 231.

⁶ Alexis Carrel, Man the Unknown, Library of Knowledges, Beirut, 1st ed., 2003, p. 102.

tasks between them according to their competencies and qualifications... and each is facilitated for that for which they were created.

The function of man is to perform arduous labor, handle affairs external to the home, toil to provide the means of livelihood for his family, and persist in protecting and ensuring their happiness materially and morally—tasks with which women would be burdened and which they cannot master or excel at.

The function of woman is to be the lady of the household and guardian of the home, and an exemplary mother who raises competent men. She alone is capable of making the home a paradise for man, where he finds respite from life's hardships, and where children enjoy the warmth of affection and the conditions for growth and flourishing.

Forcing women into men's domains and having them compete with men in their work represents a waste of women's competencies and qualifications. Moreover, it immobilizes men from practicing their vital activities which they excel at and women do not, and prevents them from establishing families and forming households.

4. Attempting to Equalize Men with Women: Women's competition with men in their specific functions and activities in modern ignorance has caused serious moral, social, and psychological evils. Its harms have multiplied far beyond its benefits, and women there have come to suffer the bitterness of struggle and the humiliation of degradation in pursuit of livelihood, so as not to be touched by poverty due to men's refusal to provide for them. This has hindered them from performing their specific functions of managing the household, caring for the family, and raising children properly.

Regarding this, the scholar al-Shanqīṭī (may Allah have mercy on him) said: "The attempt to establish complete equality between women and men in all aspects of life cannot be realized, because the differences between the two sexes—first, cosmically and decreed by divine will (kawnan wa qadaran), and second, legislated by divine law prevent this categorically. Due to the strength of the cosmic, decreed, and legal differences between male and female, it is authentically reported from the Prophet (peace be upon him) that he cursed those of either sex who imitate the other. There is no doubt that the reason for this curse is the attempt by those who seek to imitate the other sex to demolish these differences that cannot be demolished. Had the differences between male and female been possible to demolish and eliminate, those who sought to do so would not have deserved the curse of Allah and His Messenger... These differences—only one who is obstinate about observable reality would dare to claim complete equality between them in all domains. None calls for equality between them except one whose insight Allah has blinded"¹. Islam builds the concept of a dual-gender society with all that this concept entails of cooperation and mutual support.

Conclusion

In light of the foregoing, it is evident that the principle of gender equality constitutes a point of convergence between Islamic Sharia and international law, notwithstanding the divergent philosophical foundations and premises upon which each is predicated. International law seeks to achieve formal equality based on parity of rights and obligations without discrimination, whereas Islamic Sharia emphasizes substantive equality grounded in justice and complementary roles, whereby each gender—man and woman—is accorded a status commensurate with its nature and function in societal construction. Thus, a proper understanding of these concepts is attainable only through recognition of the balance ordained by Sharia between rights and obligations, and between legitimate differentiation and prohibited discrimination. Furthermore, integrating the principles of Islamic Sharia into international human rights discourse enriches the global legal framework with a humane approach that respects cultural and religious particularities, while establishing the notion of equitable—rather than identical—equality. Consequently, reconciling the provisions of Sharia texts

¹ Al-Shanqīṭī, *Lights of Elucidation*, Dār al-Fikr, Lebanon, ed. 1995, vol. 7, p. 417.

with the imperatives of international law emerges as an intellectual and legislative imperative, ensuring harmony between the international obligations of Muslim states and the noble objectives (maqasid) of their Sharia, and opening broader horizons for the integration of both systems in service of human dignity irrespective of gender.

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