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Islamic View on Right to Equal Opportunity to Work for Female Ex-Offenders and Pakistan's International Obligation for Provision of Equal Opportunities for Work

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Islamic View on Right to Equal Opportunity to Work for Female Ex-Offenders and Pakistan's International Obligation for Provision of Equal Opportunities for Work

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ABSTRACT

Women in Muslim society faces obstacles to get employment since it is generally assumed that Islam does not allow women to work as their responsibility is to be shouldered by men. This misapprehension leads to issue of gender discrimination in employment and situation get further worse when women hold criminal record. Therefore, this paper sheds lights on Islamic view of gender equality while taking into consideration the natural difference exists between man and woman. Then the study aims to discuss that Shariah recognizes human rights of women in Islam and allows women to work as there is no explicit Quranic verse or tradition which ban jobs of women. The article further elaborates that women with previous criminal record are abandoned by the society and their families which further substantiate their right of to get employment in order to meet their ends. The article further encompasses discussion of conflicting interest of ex-offender women and society and how the same can be settled with harmony while applying principles of Islamic jurisprudence. The article has referred verses of the Qur'an, Sunnah of the Prophet (SAW) practices of caliphs (the research contained reference to hadiths reported by Companion of Holy Prophet (SWA) and his wives, their rank and respect is kept at the highest while referring them therefore the expression (R.A) to be read wherever their names are referred) and opinion of Muslim jurists to enrich the legal analysis. Article also encompasses Pakistan's international obligation for provision of equal opportunities to work for all without discrimination to give an insight about basis to claim right to work for female offenders.

Key Words: Gender Equality, Ex-offender Women employment, National Wealth, Social Justice.

INTRODUCTION

Islam recognizes all human beings as one family and descendants of Adam. The indication of equality of all human beings is found in many holy verses of the Quran which describe about the unification of all human beings for worship of Allah alone; who is their sole creator and had created them from the same source. Islam also negates the concept of gender superiority and therefor it lays down obligations and responsibilities on men and women and mentioned them together at the same places in the holy Quran. Both the genders are held responsible for their deeds. Thus for their good deed they are rewarded in the form of paradise and for bad deed they are punished in hell. This indicates that women are not less than men in intellectual faculty, otherwise the criteria for reward and punishment for their deed would be different. The concept of gender equality in Islam is stressed by the un-superiority of either sex over the other. The Quran Says: "O mankind! Reverence your Guardian-Lord, who created you

from a single Person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women; fear Allah, through Whom ye demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you”.¹ There are many verses in the Holy Quran which guarantees the equality of man and women. The Holy prophet in his last sermon has also pointed out towards the gender equality. Islam recognizes gender equality in economic sphere of life. Therefore, Islam emphasis on equal opportunities to work for all and forbid exploitation and injustices while obligating employers to act on the principles of “*Al-adl*” and “*Al-qist*” which means provision of equal opportunity of work for all without any discrimination. However, there is a misconception that Islam recognizes human rights of women except right to work. Many Muslim majority communities have discriminatory attitude towards the employability of women. These practices of Muslim communities led west to view women caged in house which have no right to work for their economic benefits or simply they are deprived of economic development. Therefore, this article first addresses the meaning of gender equality in Islam as step stone to build an argument in favour of right of women to have opportunities to work.

GENDER EQUALITY UNDER ISLAM

Islam has declared that all human beings are created from same source. The Qur’an says: “We have created man out of an extract of clay; when we made him a seed lodged in a secure place; we made the seed a clot of blood, and we created clot into a morsel. We created the morsel bones, and we clothed the bones with flesh. We made him grow as a new creation; blessed be Allah, the best of all creators”². This verse makes it clear that human beings are equal to one another. Thus, there is no race, class or gender that can claim superiority over others. Allah further says: O ye People, we created you male and female, and we made you race and tribe that you may know one another. Verily the noblest among you is the pious”³. The Prophet (s.a.w.) was also reported to have said that: “People are equal as the teeth of a comb”. This indicate that Islam recognizes gender equality. Every person irrespective of the gender is seen as equal in Islam. This is to an extent, which will benefit male and the female. Allah (s.w.t.) says: “O Mankind, keep your duty to your Lord who created you from a single soul and from it created its mate (of same kind) and from them twain has spread a multitude of men and women”⁴. He also says: “He (God) it is who did create you from a single soul and therefrom did create his mate that he might dwell with her (in love)”⁵. In another verse, He says: “And their Lord has accepted (their prayers) and answered them (saying): “Never will I cause to be lost the work of any of you, be he male or female; you are members, one of another”⁶ Allah (s.w.t.) says: “Verily, the Muslims, men and women, the believers men and women the men and the women who are obedient (to Allah), 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 Allah has ordered and in abstaining from all that Allah has forbidden), the men and the women who are humble (before their Lord Allah), the men and the women who

give Sadaqat (i.e. Zakah, and alms, etc.), the men and the women who observe Saum (fast) (the obligatory fasting during the month of Ramadan, and the optional Nawafil fasting), the men and the women who guard their chastity (from illegal sexual acts) and the men and the women who remember Allah much with their hearts and tongues Allah has prepared for them forgiveness and a great reward⁷. It manifests from these verses of Quran that Islam views men and women as equals.⁸ However, Islam does not consider men and women as equal in matters where considering them as equal would result in injustice to one of them.⁹ Such as Jihad in the cause of Allah (s.w.t.). It is made obligatory for men, but jihad in the sense of fighting is not obligatory for women. This is the mercy of Allah (s.w.t.) towards them, as He considered their nature. Women are equal to men in some aspects. They differ from them in others, but they have equal rights to enjoy their human rights without any discrimination.

RIGHT TO WORK OF WOMEN UNDER SHARIAH

Islam recognized the right to work before it was incorporated in International Human Rights instrument. Work is at high pedestal in Islam as it is source of preservation of life (ibqa). The status of work in Islam can easily be adjudged from the fact that the Holy Prophet (P.B.U.H) worked as shepherd in his childhood and also worked as a trade agent of Hazarat Khadija. Therefore, for a Muslim to do a work for gain amount to follow the Sunnah of Holy Prophet. Islamic concept of employment is not only effort by an employee to secure a livelihood, but at the same time considered a holy obligation where if a Muslim performs his work honestly, he will be rewarded not only in this world but also in Hereafter. Hence, the concept of reward for work in Islam differs from the civil law, where rewards is only seen in the form of salary or wages in lieu of services rendered by an employee.

Islam in order to protect life has cast a duty upon employers to do “adl” and “qist” which means provision of equal opportunity of work to all without any exploitation and injustices and forbid to cause harm to his fellow Muslim brothers. This teaching is expressly manifested in the Hadith of Holy prophet where The Messenger of Allah (s.a.w) ascended the Minbar and called out with a raised voice: “O you who accepted Islam with his tongue, while faith has not reached his heart! Do not harm the Muslims, nor revile them, nor spy on them to expose their secrets. For indeed whoever tries to expose his Muslims brother’s secrets, Allah exposes his secrets wide open, even if he were in the depth of his house.” He (Nafl) said: ‘One day Ibn ‘Umar looked at the House- or – the Ka’bah and said: ‘What is it that is more honored than you, and whose honor is more sacred than yours! And the believer’s honor is more sacred to Allah than yours.’¹⁰ this hadith forbids Muslims to cause harm to other fellow beings thus employers while denying opportunity to work to any individual without any just cause has inflicted harm to him and thus violated commands of Islam. Almighty Allah does not like his creature to be exploited and therefore through his last messenger Muhammad (PBUH) taught mankind to refrain from exploitation and injustice and to adopt fair and just treatment in all human relations. The Holy Quran says:

“Do they distribute the mercy of your Lord? It is we who have apportioned among them their livelihood in the life of this world and have raised some of them above others in degrees [of rank] that they may make use of one another for service. But the mercy of your Lord is better than whatever they accumulate.”¹¹

The Holy Quran reminds us of honesty, justice and impartial as a mean for fair distribution of wealth in the society. Islamic principles of management lay great stress on these principles. The Holy Qur’an says: *“God doth command you to render back your trust to those to whom they are due; and when ye judge between man and man, that ye judge with justice; verily how excellent is the teaching is the teaching which He giveth you! For God is He who hearth and seeth all things.”¹²*

The Holy Qur’an further says: *“Do not entrust your properties, which Allah has made a means of support for you to weak of understanding”¹³*.

This verse covers a very wide spectrum of meaning. It emphasizes to the community of believers that wealth is one of the main support of human life. Therefore, it should not be left at the mercy of those who are incompetent to handle it properly by misusing the wealth. Therefore, the employers need to be mindful of their conduct at the time of selection for employment, since it is a source of distribution of wealth through work. Their discriminatory behavior could destroy the balance of social and economic life. Similarly, the Holy Quran has also prescribed parameters of trust worthiness of a person to be employed by the believers. The Holy Qur’an says:

“Truly the best of men for thee to employ is the man who is strong and trustworthy”¹⁴

This verse does not specified virtue of trustworthiness to men only therefore those women who are trustworthy can be considered for employment. But it is often debated that women are not allowed to work in Islam. This presumption is derived due to divergent view about the interpretation of word al-qawwamoon appeared in Surah Nisa. The Quran says: *“Al-rijal qawwamun ‘ala al-nisa’ bi ma faddala Allahu ba‘duhum ‘ala ba‘din wa bi ma anfaqu min amwalihim”¹⁵* Translation: *“Men are qawwamun in relation to women, according to what God has favored some over others and according to what they spend from their wealth.”*

Traditional interpretations of this verse stresses on female obedience and male authority. While contemporary interpretations emphasize on the financial component of men’s marital duties and the limits on a husband’s power over his wife. According to Sheikh Salman Al-Oadah¹⁶ it does mean that the man has the responsibility of taking care of his woman (under his responsibility), protecting her, defending her honor, and fulfilling her needs regarding her religion and her worldly life. The reasons for that as the verse show are: *“because of what Allah has preferred one with over the other and because of what they spend to support them from their wealth”*. The verse indicate that economic responsibility is placed on the shoulder of men instead of women. But this does not mean that women are not entitled to have economic freedom.

There is no verse in the Holy Qur’an that declares ban on women’s work. Rather there are verses which indicate that women are allowed to work. Allah says: ¹⁷“.... And do

not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned " It is apparent from this verse that women are enabled to work like men. Imam Khomeini, a greatest Muslim jurists had pointed out that Islam had recognized right of women to work 1420 years ago.¹⁸ It is pointed out that, the word "acquisition" used in the verse covers both voluntary and non-voluntary action,¹⁹ however philologist considered that both words of "earn" and "earning" refer to particular situations where human action is performed voluntarily²⁰. This verse refers to women's employment permits and made it clear that if a man or woman earn anything by working it will be their own. In other words, this verse negates the misconception that earning money or working are specific for men and endorses the concept that both men and women through earning money and economic efforts can participate in social development. Islam has granted women financial independence keeping in view its divine aspect and principles of equality and justice without exploitation and discrimination. Another verse which can be referred to establish right of employability of women is: "And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah, and remember Allah often that you may succeed." This verse generally addressed all human beings that after the prayers disperse within the land to get some earnings. This verse has not addressed men rather it used the word "you" used which includes both men and women.²¹

Similarly, Quran in other place says: "There is no blame upon you for what they do with themselves in an acceptable manner. And Allah is [fully] acquainted with what you do."²² This verse allowed women to engage in economic social activities provided that it is based on the common rational and does not conflict with humane principles of society for example a job that does not infringe family dignity and affects martial duties. The permissibility of women work can also be adduced from the Quranic verse which says: "And when he came to the well of Madyan, he found there a crowd of people watering [their flocks], and he found aside from them two women driving back [their flocks]. He said, "What is your circumstance?" They said, "We do not water until the shepherds' dispatch [their flocks]; and our father is an old man." In the verses of Surah Al-Qasas, God has well described the quality of women's presence in society and dealing with strange men. Where He mentions the daughters of Prophet Shu'aib who used to be shepherds and because of their father's old age, they were replaced by the shepherd and always waited for the other shepherds to water their sheep and then watered their own²³. This verse refers that Prophet Shu'aib was old and he had no one else except his daughters therefore they were engaged in all outside work like watering and gazing of cattle while shepherding. This indicate that daughters of prophet had replaced him to do outside work due to his advanced age. This verse established that Islam allows women to work outside their home. There is no text in the Quran or in the Hadith state that women should be confined to the home and the domestic sphere alone. Historical records show that women Participated in

public life with the early Muslims, especially in times of emergencies. Women used to accompany the Muslim armies engaged in battles, nurse the Wounded, prepare supplies, and serve the warriors there is no text in the Quran or in the Hadith state that women should be confined to the home and the domestic sphere alone. Historical records show that women Participated in public life with the early Muslims, especially in times of emergencies. Women used to accompany the Muslim armies engaged in battles, nurse the Wounded, prepare supplies, and serve the warriors there is no text in the Quran or in the Hadith state that women should be confined to the home and the domestic sphere alone. Historical records show that women Participated in public life with the early Muslims, especially in times of emergencies. Women used to accompany the Muslim armies engaged in battles, nurse the Wounded, prepare supplies, and serve the warriors Islam has given women the rights to work, to own property and to have wealth. Regarding the right to participation in the economic, political and social spheres, in the Islamic history there were no restrictions in women's full participation in these issues. For example, Khadija, the Prophet's first wife was one of the most important merchants of that time, and the Prophet himself was one of her employees.²⁴

This indicates that Islam recognizes women financial independence. Women in Islam are free to possess or own property, similarly she has no restriction to dispose of the same according to her own wish without interference of any other person.

Islam allows women to work outside of the house provided that job is permissible in Shariah and does not contravene any explicit Islamic ruling; Similarly, women should ensure safety of her person and modesty and lastly jobs should commensurate with physical and psychological nature of women. Resultantly a woman's work then will not affect her personal life and her responsibilities at home. The permissibility of women to do work can very well be inferred from the tradition of Holy Prophet where Jabir Ibn 'Abdullah (Allah be pleased with them) reported: My maternal aunt was divorced, and she intended to pluck her dates [from palm trees]. A person scolded her for having come out (during her waiting period). She came to the Prophet (peace and blessings be upon him) and he told her: "Certainly you can pluck (dates) from your palm trees, for perhaps you may give out charity or do an act of kindness."²⁵

Thus, Islamic injunctions (Quran and Hadith) clearly laid down gender equality at home, in the workplace, and in politics and point out that the general rules are the same for men and women. Therefore, the practices of Muslim countries which restrict women at home and do not allow them to work is greatly influenced from their culture and custom, therefore the same cannot be considered as part of teaching of Islam. The status of women in Islam greatly differs from what is practiced in Muslim Societies. It lays stress on equal rights for men and women in every sphere of life and recognize women's right to get opportunities to work.

Right to Work of Female Offenders:

Now coming to the case of female offenders. There is settle social attitude that society looked down over ex-offenders being violators of law and thus does not allow their

entry in society. Generally, females find it difficult to interact socially and to get jobs of their choice, however the situation get more worse when female offenders came out of the jail and try to enter the society. The society which is ready to place any stigma on women and give them less space to breath find it easy to have discriminatory treatment with ex-offender on the pretext of safety and security. Ex-offender women are even not welcomed back in their families and therefore they face isolation. Consequently, in such situation to expect that male members of Muslim society are willing to take their financial responsibility seems to be unimaginable. Resultantly, ex-offender women are constrained to find jobs to support themselves and their children. But discriminatory behavior of employers towards female gender coupled with previous history of criminal record create obstacles for employability of ex-offenders' women. It is not deniable fact that Islam restores the rights of offenders if he or she amends subsequent conduct, repent and show that he or she is sorry for what they did.²⁶ The Holy Quran has expressed this principle in its verse "But if the thief repents after his crime, and amends his conduct, Allah turneth to him in forgiveness; for Allah is oft forgiving, most merciful".²⁷ The same can be depicted from the conduct of Holy Prophet during the conquest of Makkah by forgiving the people who had committed heinous crimes against Muslims and the family of Holy Prophet. Those people surrendered before the Holy Prophet, and after their repentance and acceptance of Islam, the Holy Prophet had given them same status as other Muslims. Similarly, in another Occasion Ma'iz Son of Malik came to the prophet and said: 'Make me clean.' The Prophet said: 'Woe to thee, go back, ask for God's pardon and repent before Him.' The man went away a short distance and returned and again said: 'Make Me Clean.' The Prophet gave him the same reply as he had given in earlier stance. The man went away, came back again, said the same thing, got the same reply and went away. He returned for the fourth time and Said: 'Make Me clean' The Prophet Said; 'of what should I make you Clean?' The man replied: 'Of adultery' The Prophet said: 'Is the man mad?' People Said he was not. The Prophet then asked: 'Has the man taken any intoxicant?' Thereupon a man stood up and smelled the mouth of Ma'iz and Said: 'No! He is not drunk.' The Prophet asked the man: 'Have you committed adultery?' He replied: 'Yes' The Prophet then ordered that the man should be stoned to death and so his was.²⁸ in one version of Ma'iz story, it is said that when the people began to stoning him, he ran away. He was overtaken and stoned to death. When the Prophet was informed of all this, he said: "Why did you not let him go?"²⁹ Shafi Says that the exception, in favour of those offenders who repent and reform themselves, made by the Quran in connection with certain offences may be apply to all offences³⁰. This rejuvenate the concept that once a man or woman had surrendering himself or herself before the law to serve punishment then he or she had paid debt to society and they are no more bad persons until commit a new crime, therefore such a man or woman qualifies to be considered trustworthy as others.

Consequently, employers cannot discriminate against female ex-offenders on the basis of criminal record and give preference to persons without criminal history. Since female ex-offenders for their wrong deed had already received punishment while any person who had done good deeds and remained law abiding citizen, he or she is rewarded in hereafter. Hence, female ex-offenders and non-offenders are equally entitled to get job opportunities in order to earn ownership and possession of wealth. The equal rights of all persons in national wealth is clear from the circumstances that occurred during the period of the first Caliph; Abu Bakr. He distributed the gifts among the Muslims equally. A group of people differed with him in opinion on this distribution and argued, ‘Oh Caliph of the Prophet (peace and blessings of Allah be upon him)! We notice that you have distributed the gifts in equal shares among people. However, certain individuals have certain virtues and priorities. We wish that you had given a special gift to such individuals. ‘Abu Bakr replied: “How can I tell the specific virtues and privileges of the individuals you mentioned? What I give is merely a living allowance. Offering an equal living allowance to people is better than favoring certain individuals. As for those who presented extra work for Islam, their rewards are preserved with Allah (S.W.T.). As for this worldly wealth, it is here for the good pious person and the evil ones. This wealth is not remuneration for the works they presented”³¹. Islam also recognized rights of individuals irrespective of gender over the buried land resources such as gold, oil, precious metals etc. without any discrimination. Islamic State must try its best to secure job opportunities for its members and utilize the national resources in the best interest of the state.³² it is regarded as a public property, which no one has the right to abuse, monopolize, or act according to his or her personal interest.³³

This further establishes right of female ex-offenders on natural resources of state which is common property of all. Allah (S.W.T.) states that: “It is He Who has made the earth manageable for you, so traverse you through its tracts and enjoy of the Sustenance Which He furnishes: but unto Him is the Resurrection”³⁴. Then whether depriving female ex-offenders of their share in national wealth and natural resources by denying them opportunity to work affect ex-offenders as individually or it has bearing over the interest of society? There is fundamental controversy in legal theories of west to evaluate that whether the individual or the community is the ultimate value. These theories assume any of three attitudes: Either they subordinate the individual to the community such as modern totalitarianism asserts the supremacy of the community by completely destroying individuals’ rights. Or they subordinate the community to the individuals like Hobbes who stands for individualism or there are theories which attempt to blend the two rival claims such as Bentham’s utilitarianism, spencer’s theory of evolution, however these theories could not strike a balance between the interest of individuals and those of society.³⁵

While according to Islam individuals are seen as integral part of the totality of mankind, emphasizing the two-way relationship between the individuals and society.³⁶

Individuals are considered collective entity with reference to social responsibility, as they are required to participate actively in human affairs in order to establish direct link with their environment³⁷. Islam does not recognize isolation of individual from society³⁸. Therefore, individuals are offered full opportunities in Islam to develop their personality so that they may be better qualified to serve community interest.³⁹ Therefore, if female ex-offenders are not offered jobs this would lead to their isolation from society and deprivation of their right to get their share in national wealth.

Female ex-offenders are victims of an injustice caused to them by preferential discrimination of employers and state policies restricting their entry in employment, therefore they have right to protest and claim their rights against any government, institution, person or group of persons reigns injustice while they are at the helm of affairs. Islam does not allow anyone to deny the people of this inalienable right. Any attempt to deny the people of this right is rebellious against Allah (S.W.T.). Islam considers encroachment upon the nature and ability of the individual by the society is kind of social oppression.⁴⁰

It is an injustice not only to the individual, but to the society also. Denying the job affects and suppresses the activity of the individual by crushing her natural trends and ability and thus it resulted into deprivation of individual to excel her ability while availing job opportunity and thus it also affects the whole society from benefiting of maximum abilities of that individual.⁴¹ Therefore, the social system needs to vouch for the rights of the community in the efforts and abilities of individuals and while imposing limitation on the freedom and ambitions of individuals it should not ignore the rights of individuals concerning the freedom of action within the limits which safeguards the welfare of community and individuals themselves. Consequently, any restrictions on the jobs of female ex-offenders need to be analyzed on the aforementioned principle of Islam in order to ensure welfare of society as well as the individual. However, since the limitation of job imposed by the society on female ex-offenders snatches their freedom without any indication that the same is beneficial to the society. Therefore, the sanctions on the job of ex-offenders need to be revisited on the theory relating to the Rule of Necessity and Need (*darurat wa hajat*) since the deprivation of this right would lead to snatching source of income from ex-offenders which is essential mean to spend a life. This right under legal theories of Islam falls in the domain of *al –Maslah al Mursilah* (unrestricted interest) and it qualifies all the conditions prescribed by Malikites⁴²: i.e. first- that the case under review should be one pertaining to the transaction in order to construct the interest on the basis of reason. The case should not be one related to religious observance or (*Ibbadat*). Secondly-that the interest should be in harmony with the spirit of the Shariah and should not be in conflict with any of its sources. Thirdly- that the interest should be of the essential and necessary (*Darurat WA Hajat*) and of case of luxury (*tahsinat wa tazyyinat*). The essential and necessary type should include the preservation of life, religion, reason, offer spring and property.

Tufi of Hanbali and al- Ghazali of Shafi' school also accepted the conditions prescribed by Malikites since it is related to theory of Necessity and Need and not luxury.⁴³ According to al Ghazali aims of Shariah regarding a man is fivefold: to conserve his religion (*hifz ul deen*), conserve his life (*hifz ul nafs*), conserve faculties of reason (*hifz ul aqal*), conserve offspring (*hifz ul nasal*), conserve his property (*hifz ul maal*) and he considered that preservation of these five falls within the category of necessities.⁴⁴ Al- Ghazali place second purpose i.e. preservation of life at higher place than preservation of Din, in case of conflict, for the reasons that without life there would be no Din. Female ex offenders' right to equal opportunity for work has close nexus with right to life. Thus it falls within the aims of Shariah i.e. *hifz ul nafs*. Therefore, it is necessity which need to be protect by employers and society otherwise it would lead to anarchy in the society.

This establishes justice in society by providing equality in opportunity and freedom of talents to female ex-offenders within the limits which do not conflict with the high ideals of life in Islam. Islam though does not impose equality in narrow literal sense of the term and recognizes that individuals are endowed with different talents, but the case of female ex-offenders is not only to claim equality of talent with rest of the individuals, but also to assert their right on the principle of equality of opportunity.

Now coming to the freedom of employer to employ a person of his or her choice, Islam recognizes individual freedom, however his social behavior at the time of selection for jobs must be restrained and guided by the Devine law to promote civilization and embellish life. The employer behavior should be based on Islamic principle of *Al-adl*. Allah Says, "Lo! Allah enjoineh al '*Adl*". This Law is considered as best rule to create balance in all basic social relations. Therefore, in employment, employers while exercising their discretion for selection of candidates, for the post, are in fact judging the people therefore they need to act justly and with *Al-Adl*. The Holy Quran says "And when ye judge between men and man that Ye judge with justice." Allah (S.W.T.) also says: "O David! We did indeed make thee a vicegerent on earth: so judge though between men in truth (and justice): nor follow thou the lusts (for thy heart), for they will mislead thee from the path of God." Justice is a compressive term and includes all virtues. It holds society into a bond of brotherhood. It requires to fulfill all the claims that are recognized in social life. Allah Says: "O ye who believe! Stand out firmly for God, as witnesses to fair dealing and let not the hatred of others to you make you swerve to wrong and departed from justice. Be Just: That is next to Piety and fear of God."⁴⁵ Therefore employers have no right to judge female ex-offenders' ability and suitability for jobs on the basis of his aversion or gender based discrimination since it negates the Devine law enumerated in the above verse i.e. hatred to a person should not infringe his right to justice and also it contravenes concept of social justice.

Employers under Islamic concept of ownership is not absolute owner of his wealth, rather, Allah is absolute owner of all wealth and Man Being God vicegerent on earth

hold it as his trustee. Allah says: "Allah's is the heritage of the heavens and the earth"⁴⁶ Therefore, employers are responsible to provide opportunity to work to deprived class of society i.e. female ex-offenders justly in order to enable them to enjoy their right (Haqq) in the society's wealth. They cannot be deprived of this wealth as they once violated laws of society and are women. Employers' discriminatory behavior towards female ex-offenders is against the principle of *Al-Adl*. They are questioned for their choice if it causes injustice to female ex-offenders and infringe their right of employability without affording them opportunity to be heard. Islam acknowledges the legal maxim: no man shall be condemned unheard.⁴⁷ The Prophet (S.A.W) while appointing Hazarat Ali as a Judge in Yamen, advised him "when two men come to you for decision, do not give decree in favor of the first till you hear the arguments of the other because that is more necessary so that decision may become clear to you". Resultantly, the discriminatory behavior of employer is against the principle of Islam to provide an opportunity of hearing before condemning any individual. Employers cannot absolve of their responsibility, and thus they are accountable for their action. Furthermore, according to principle of *Al' Adl* Man will be held responsible for his discretion only because Allah has first provided explicit guidance on what is best for him. Allah says "O mankind! Now hath the Truth from your Lord Come unto You. So whosoever is guided, is guided for (the good of) his soul and whosoever erreth only against it"⁴⁸ The Holy Quran further states: "Thus have we made of you an Ummah justly balanced, that ye might be witnesses over the nations, and the Apostle a witness over yourself."⁴⁹ This verse indicate that the Shariah held a person responsible to his acts and caste a duty upon him to follow the principles of Islam communicated by Holy Prophet to his Ummah, and to show by their words and conducts, the meaning of godliness and righteousness, of equity and fair play.

The discriminatory behavior of employers is not only detrimental to female ex-offenders, but also effect social welfare of society. Female ex-offenders who are without any family support and are unemployment pushes them to the world of crime again and they may lead an immoral life; this leads to recidivism in society. Therefore, by adopting Islamic rule of '*Sadd al Dharai*' Means End Schema or preventive measures to eradicate the evils before they take root⁵⁰, the discriminatory practices of employers and states towards employability of female ex-offenders should be eliminated. There should be a balance between employers' individual freedom to select a person of their choice without discrimination and society welfare. Therefore, employers are under a religious duty to display through their conduct that they have observed the principles of justice and equality while offering opportunity to ex-offenders who meet the prerequisite of their jobs.

Pakistan International Obligations for Protection of Right to Work:

Pakistan has ratified the ICESCR in 2008 and committed for implement of the provisions of the Covenant in letter and spirit. It has international obligation under Article 2.1 of International Covenant on Economic, Social and Cultural Rights to

incorporate these rights in its *constitution* as well as legal system. There are two legal models for including these rights in the domestic jurisprudence, one is the doctrine of incorporation (monist) and the other is the doctrine of transformation (dualist). Pakistan follows dualistic model system, therefore, it has incorporated ICESCR rights within its Constitution, 1973 and made it part of the first chapter which deals with the fundamental rights in order to ensure their effective enforcement.

Pakistan's obligation under international law for right to work is to respect, protect and provide to every person an opportunity to earn his living and guaranteed that he can freely choose his work.⁵¹ This means that the state should not destroy any person's opportunity to work for example to place ban on employment such as the case of ex-offenders. Right to work of ex-offenders is protected under the state obligation to respect human rights. State's responsibility to safeguard right to work from any interference comes under state obligation to protect human rights. Lastly, state has responsibility to provide access to opportunities to earn to everyone, therefore if someone has no source of earning, then it is state obligation to create opportunities to work for that person.⁵² The ICESCR includes some fulfillment-bound obligations such as access to technical vocational guidance and training programs and formulation of policies and techniques to achieve economic, social and cultural development and full and productive employment. State has obligation to provide access to vocational guidance and training programs. Hence either the state provides these trainings programs free of cost or fix a reasonable cost which can be borne by any person.⁵³

Another element of a state's obligation is nondiscrimination. People must not be denied access to work (or to any policies or programs related to this right) on the basis of gender, ethnic or national origin, religion, or social or other status.

The International Covenant on Economic, Social and Cultural Rights (ICESCR or the Covenant) protects human rights that are fundamental to the dignity of every person. The right to be treated equally and right not to be discriminated is associated with the right to work, in order to give it an effective application.⁵⁴ Similarly UDHR provides that all are equal before law without discrimination is entitled to equal protection of law⁵⁵ and same right is granted under International Covenant on Civil and Political Rights (ICCPR). Pakistan is a state party to these international instruments, hence right to work of female ex-offenders can be protected under these provisions of International Standards. However, the covenant clarifies that if a state protects right of a particular group of people who are aware of their rights and they never remained victim to the chains of primitive culture and patriarchal tradition, then the state has failed to provide equal protection of law to all. Deprivation of any person's rights cannot be justified on the ground of his /her lack of comprehension of those rights. It is the duty of a state to be conscious and vigilant of such rights on behalf of all the citizens.⁵⁶ Therefore the discriminatory practices towards females and particularly female ex-offenders violates an international obligation which requires from state to ensure such measures which provide safeguard to right of equal treatment at work.

CONCLUSION

Islam promotes gender equality and empowerment of women. Islam not only elevated the status of women in social sphere but also recognize their right of participation in economic circle of society therefore it allows women to carry out any permissible profession or trade of their choice. The explicit Quranic verses and ahadith manifest right to work for women. Therefore, the practices adopted in Muslim countries which place ban on the entry of women in employment is result of ill interpretation of Quranic verses and are greatly influence by their culture and custom, hence they cannot be considered as Islamic point of view regarding women's work. Further, the discriminatory behavior of employers towards women in general and ex-offender women in particular has complicated the issue of their employability and deprived them from their chances to get their earning particularly when male members of their family and society had developed aversion to them due to their criminal record. Hence there is a need that discriminatory social practices regarding employability of female ex-offender need to be revisited in order to ensure social justice in society.

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