

The Cultural Adoption of Human Rights in a Local Context: A Case in Norway

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Abstract

Growing ethnic and cultural diversity in welfare states like Norway has created a gap between the legal rights and the social realities of vulnerable individuals in certain immigrant communities. Such growing diversity calls for innovative approaches to ensure the enjoyment of individual rights without generating unnecessary controversies regarding the cultural legitimacy of human rights. Combining legal literacy with vernacularisation strategies for the cultural adoption of human rights is an effective approach to promote and protect human rights in situations where individual rights seemingly clash with the authoritative interpretation of cultural norms and values. This article illustrates the said approach using a polygamy case in Norway handled by Pakwom, an Oslo-based immigrant-women's non-governmental organisation.

Introduction

Many non-governmental organisations (NGOs) around the world facilitate vulnerable people's access to basic human rights in contexts where law and culture overlap. Activists of grassroots NGOs are especially important when it comes to creating innovative ways to reconcile human rights with the relevant cultural contexts, a process that is known as the vernacularisation of human rights (Merry, 2006). This article argues that combining the vernacularisation of human rights (i.e. the cultural adaptability of human rights) with legal literacy is especially useful for addressing rights violations and protecting vulnerable individuals from social exclusion. This approach will be illustrated by a polygamy case handled by Pakwom, an Oslo-based Pakistani-immigrant NGO. The research on Pakwom used in this study was conducted as part of my PhD research at the University of Oslo (Taj, 2013).

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The article is structured as follows: part one contains the introduction, part two considers the conceptual and sociolegal context, part three provides the profile of Pakwom, part four describes the polygamy case, and part five discusses the polygamy case. The article ends with concluding comments.

The Conceptual and Sociolegal Context

Legal literacy, the vernacularisation of human rights, women's rights in Islam, and NGOs' advocacy of the vernacularisation of human rights are the conceptual and socio-legal considerations taken up in this article.

Legal Literacy

Legal literacy refers to a layperson's ability to understand the words used in a legal text, to draw conclusion from the said text and to use these conclusions to take appropriate action (Zariski, 2014, p. 22). Legal literacy is a strategic tool to develop rights awareness and the related skills to take appropriate action (Schuler & Kadirgamar-Rajasingham, 1992). It enhances individuals' capability to interactively engage with the law (Hellum & Taj, 2014). Access to legal information is also a human right. Legal and empirical information is important for understanding how the law interacts with social realities (Hellum & Köhler-Olsen, 2014). Such interaction indicates how the law could be used and vernacularised to protect and promote the human rights of vulnerable individuals.

The Vernacularisation and Framing of Human Rights

Vernacularisation refers to the processes of appropriating ideas and discourses from international human rights instruments and implementing them in local cultural practices (Merry, 2006). Vernacularisation reframes a human rights idea to make it function in a particular cultural context without having changing the core meaning of the idea.

The context of women's rights in Islam is one area where human rights could be vernacularised. Women's rights in Islam is a contested issue. Some scholars claim that notions rooted in Islam breach women's rights (Inglehart & Norris, 2003; McLoughlin, 2014), whereas Muslim feminists argue that Islam is compatible with human rights (Ali, 2000; Wadud, 2006). However, the fact remains that many dominant discourses on Islam are oppressive to women. The main issue is that Islam's authoritative discourse leaves little room for substantive changes even when the possibility for change exists

(Shahidian, 2002, p. 74). Nevertheless, it is neither advisable nor desirable to expect people to abandon their religion, in this case Islam, in order to enjoy human rights. A middle way has to be found that ensures reconciliation between the enjoyment of human rights and the religious legitimacy of the rights (An-Na'im, 1990).

NGOs and the Vernacularisation of Human Rights

Research shows that grassroots NGO activists have been successfully engaging with Islamic discourse, celebrations, signs, and symbols to legitimise their work for human rights within local Muslim cultural or religious contexts (Buehler, 2016; Jafar, 2007). The activists have found ways and means to use Islam as a resource for the promotion and protection of human rights. For example, religious women in Aceh, Indonesia's only province where the legal code is based on Islamic law, reconcile their understanding of women's rights with demands for gender equality based on international human rights law (Afrianty, 2015).

The vernacularisation of women's rights could be especially relevant for Muslim minorities in Western democracies, where some people believe that the laws of non-Muslim democratic states are not compatible with certain Islamic values, leading the people to prefer the prevalent understanding of Islamic norms over state law when it comes to family relations (De Kroon, 2016; Woodman, 2008). The law in Western democracies does not formally recognise any social norms that clash with the letter and the spirit of the law, including any such norms rooted in Islam. This means that certain Islam-based norms that are contrary to the law but still regulate social relations in some situations are merely a sociological fact. However, this sociological fact may undermine women's rights in certain situation (see Wærstad, 2006 for examples). In some Western countries with Muslim minorities, this sociological fact has also resulted in the emergence of informal Islamic institutions, such as the British Sharia Councils, where Muslim women's rights may be compromised during the processes of obtaining an 'Islamic divorce' (Bano, 2011). Such possibility of rights violation is especially relevant in cases where a violation may not be seen as a 'violation' according to the dominant Islamic discourses, such as the discourse about polygamy, which is permitted by many authoritative interpretations of Islam. This means that informal bodies, like the British Sharia Councils that often upheld traditional or dominant understanding of Islamic norms, may often not vernacularise women's human rights. In such situations, NGOs are one type of actor that can vernacularise human rights in secular Western democracies.

NGOs in Norway and the Vernacularisation of Human Rights

NGOs in Norway play an important social role as intermediary actors between vulnerable people and the welfare state (Loga, 2018). Assuming a broad view of ‘law as culture’ (Moore, 2001, p. 96) and a site of ‘discursive struggle’ (Shahid, 2007, p. 9), the Norwegian NGOs tend to avoid any activities that could potentially give the impression of a law-culture clash. The reason is that NGOs in Norway expect a part of their funding from and cooperation with the authorities in connection with their work. In fact, in welfare matters (including human rights matters), Norwegian NGOs showed an early dependence on the state in terms of finances and control (Selle, 1993). This implies that Norwegian NGOs are likely to abide by state law and unlikely to draw on any cultural norms that may seem contrary to Norwegian law. This also implies that the vernacularisation of human rights is not one of the NGOs’ tasks in Norway. Nevertheless, one manifestation of the growing ethnic and cultural diversity in Norway is the fact that some NGOs do engage in the vernacularisation and framing of human rights (Taj, 2013). The aim of such NGOs is to adapt human rights to a specific minority’s value system and, more concretely, to confront rights violations through advocacy and activism.

In many Western countries, the status of women’s rights in Islam is an intense focus of research, yet little is known about how NGOs vernacularise women’s rights in the context of Muslim minorities in welfare states with a non-Muslim majority, as is the case in Norway. To address said knowledge gap, this article discusses a polygamy case handled by Pakwom, an Oslo-based women’s NGO, that involved a combination of vernacularisation and legal literacy.

Pakwom’s Vernacularisation of Women’s Rights Combined with Legal Literacy - A Profile

Pakwom is run by women of Pakistani background, referred to as Norwegian-Pakistanis in this article. The NGO’s leader and caseworkers are all Norwegian Pakistanis. Pakwom works for the Norwegian-Pakistani women who are its members, but the NGO is also open to providing help and support to any non-member Norwegian-Pakistani woman who approaches it. Pakwom has 135 members, annually paying 300 Norwegian kroner (about 28 Euro) per person as the membership fee. The members come from various parts of the Punjab province in Pakistan, with most women belonging to the Jatt *bradary* (kinship group) and the Butt *bradary*. Most of them are Norwegian citizens,

some are permanent or temporary residents in Norway, some members have been living in Norway for approximately 25 years, and some have come to Norway more recently. Most members speak little-to-no Norwegian and are housewives. A few of the members are fluent in Norwegian and have jobs in the country.

Pakwom works to ensure the human rights of women who have little contact with the wider Norwegian society. It organises various activities, such as seminars, courses, group discussions, and picnics, among others, planned in consultation with its members. The NGO endorses the principles of self-help and empowerment. It frequently contacts the Norwegian welfare sector, including the Work and Welfare Management (known as Nav [Arbeids- og velferdsforvaltningen] in Norwegian), Social Services, the Child Welfare Services, schools, the police, crisis centres, hospitals, and municipal boards to procure the necessary help and support for its members.

Arguably, Pakwom's most important work to do with human rights is socio-legal, including consultations with an imam of a mosque, a law professor, and law students. Thus, the NGO selectively consults the imam of Pakmosque, an Oslo-based mosque run by Norwegian-Pakistanis, for spiritual and religious counselling regarding domestic problems. Pakwom also invites the feminist Islamic scholar Dr Shaheen Sardar Ali, professor of law at Warwick University in the UK and Professor II at Oslo University, to give interactive lectures in order to familiarise its members with a women-friendly interpretations of Islam and to improve their understanding of the plurality of legal norms in the Islamic legal tradition. Moreover, the NGO also engages law students from the Faculty of Law at the Oslo University for promoting legal literacy among its members.

Pakwom provides support to individual women struggling with marital problems to do with domestic violence and divorce-related family matters. The basic rule is that it is up to the woman to make her own decision concerning the marital problem, and Pakwom's role is to facilitate her decision-making processes by providing appropriate information, counselling, and moral and material support whenever possible and appropriate. Women approach Pakwom directly or with the help of family and friends who have contact with the NGO or its members. Frequently, Pakwom's own members become clients and seek the organisation's help with marital problems or other issues. In some of its reports, the NGO states that it is working to make women confident members of their own communities and of the wider Norwegian society. Pakwom's support

for individual women is the focus of this article and will be demonstrated through a polygamy case handled by the NGO.

The Polygamy Case

Asma, 45, has a primary school certificate from her village in Pakistan. She was married to her first cousin, a Norwegian citizen, who was interested in another woman. The marriage did not last long and ended with a divorce in Norway. The families (her parental family and that of the husband) married her off to the younger brother of her former husband, 10 years Asma's junior, who was also interested in another woman but agreed to the marriage due to familial pressure. Asma did not have any children and suffered a great deal of violence at the hands of her first and second husbands and in-laws. Her second husband married another woman in Pakistan while still legally married to Asma (he had applied for separation, but the marriage had not yet ended in a divorce under Norwegian law). She knew very few people in Norway. An acquaintance took Asma to Pakwom, which referred her to the Social Services, and the latter arranged a place of residence and some financial help for her.

Pakwom's leader is the caseworker for Asma's case, and she put me in contact with Asma, who agreed to participate in the research (Taj, 2013). I carried out two in-depth interviews with Asma at the Pakwom office. Additionally, during the one and a half years of fieldwork, I had seven informal discussions with Asma during the various social gatherings arranged by Pakwom for its members, such as *Eid* (Muslim festival) parties, *Milad* (the celebration Prophet Muhammad's birthday), cooking course, a Quran study course, a 17 May celebration (the national day of Norway), and a 14 August celebration (the national day of Pakistan). Moreover, I also had telephone discussions with the informant. Furthermore, at one point I facilitated the conversation between Asma and her Norwegian lawyer. Asma, whose Norwegian language skills are not good, requested me to accompany her to her lawyer in order to translate the conversation between the them. Asma and I (and other members of Pakwom) shared the same language, Urdu, in which we spoke to each other.

The leader of Pakwom came up the idea of relying on Norwegian law to help Asma, who, according to the leader of Pakwom, agreed 'following a face to face discussion that lasted for less than an hour'. The discussion also included a telephone conversation with a lawyer, in which the caseworker and Asma discussed the pros and cons of the

case with the lawyer. Pakwom hired a lawyer through the Social Services, who filed a polygamy case (hereafter referred to as the bigamy case because that was how the court documents classified it) in a Norwegian court on behalf of Asma. During the trial, Pakwom assisted the lawyer in preparing arguments – for example, by collecting material (marriage documents and video clips of marriage ceremony of the new marriage of Asma’s husband) from Pakistan to substantiate the claim that Asma’s husband had indeed entered a second marriage while still being married to Asma in Norway. The court punished Asma’s husband for bigamy: 21 days in prison and a 7,000 kroner fine. The reason for the relatively ‘lighter’ punishment was the court’s judgment that it was not his intention to be a bigamous man (it was he, not Asma, who had applied for the separation). His only breach of the Norwegian law was that ‘he was too quick to remarry and did not wait for the legal termination of the marriage’, Asma’s lawyer explained.

After the court’s decision, Asma looked confident and started to return to normal life. For example, she began actively looking for jobs. Pakwom was helped her with job applications, and finally she got a temporary position in a kindergarten. A year after the ruling, the leader of Pakwom, in consultation with Asma’s mother, arranged a new marriage for her. Asma is now happily married to a man from Pakistan, who has joined her in Norway.

Discussion

Asma’s case shows how grassroots NGOs negotiate contextual solutions to rights violations that arise due to law-culture overlap. The case highlights three important aspects of the contextual solution. The aspects, discussed in the following lines, provide useful empirical insights to advocacy groups for contextually addressing similar rights violations in Norway and elsewhere.

The Interconnectedness of Human Rights

This case underlines two important rights: the right to dignity and the right to equality in marriage. According to the Preamble and Article 1 of the Universal Declaration of Human Rights, dignity is a human right. The right to equality in marriage is established by Article 16 of the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Norway and now part of Norwegian law (i.e. the Norwegian Human Rights Act).

It was Asma herself who first pointed out to the case worker that the domestic violence that she had been through had violated her dignity. This is how she elaborated her position during an interview with me:

They [her in-laws and her husband] beat me. They tortured me, physically and mentally. (...) They used to say I was a good-for-nothing, useless, mindless creature. (...) I descended into an inferiority complex. I have lost my *izat-e-nafs* [dignity]. I feel everyone in the world is better than me. I am good for nothing. (...) I have no children, not much formal schooling, and I can't speak the Norwegian language. I live alone. (...) The only thing that would restore my dignity is to get him [her second husband] behind bars. This will re-establish my confidence in myself. It will prove them [her second husband and her in-laws] wrong – their repeated assertion that I am good for nothing. It will prove to them and to their extended family that I can have goals and achieve them single-handedly.

After discussions with Asma, the leader of Pakwom concluded that Asma had a strong desire to restore her dignity by punishing her second husband and in-laws. 'The punishment', said the caseworker, 'has to be legal'. This led the caseworker to look for what she called an 'extraordinary possibility'. She found this possibility in Norwegian law, which bans bigamy. She said the following:

I understood [from the discussions with Asma] that her dignity had suffered. (...) She wished to do something to restore her dignity. (...) I realised that something could come from Norwegian law, which bans bigamy. (...) Muslim law was not even an option because it permits bigamy.

Asma wanted to restore her right to dignity. Pakwom, in consultation with her, restored this right by invoking the right to equality in marriage. The right to equality in marriage was not an urgent objective for Asma. She might have compromised and accepted a co-wife if her in-laws and husband had not been abusive towards her over the years. In this sense, the case is neither a 'radical challenge to patriarchy' (Merry, 2006, p. 137) nor a fulfilment of the right to equality in marriage as demanded by the article 16 of CEDAW. Nevertheless, the case is remarkable in other respects. First, it demonstrates

how grassroots activists can use one human right, even if it is not the main objective in a given context, to achieve another right that is sought for by a vulnerable individual. In other words, activists can draw on the interconnectedness of human rights to realise the most appropriate contextual solutions to concrete human rights violations.

Legal Literacy

The case as whole underscores the usefulness of legal literacy as a strategic tool for meaningful engagement with the law. In other words, legal literacy facilitates the use of the law as a resource by both activists and vulnerable individuals (Hellum & Taj, 2014). The Pakwom caseworker, who has a basic knowledge and understanding of Norwegian law and human rights, shared the relevant legal information with Asma, who eventually chose to proceed with the bigamy case. In the process, Pakwom also facilitated another human right for Asma: access to legal information. In other words, the caseworker successfully imparted a part of her legal literacy to Asma, which Asma used to arrive at a contextual remedy for the rights violations she was facing.

Moreover, the bigamy case established a successful example that inspired other women in Pakwom to acquire legal literacy. It motivated the women who had concrete family problems to acquire and understand information about their rights according to Norwegian law. Some even began to claim their rights via court cases and/or by contacting the relevant branches of the welfare system. Following the successful outcome of the bigamy case, some other women who had been living in polygamous marriages approached Pakwom for consultations. Overall, the case brought a sense of confidence, success, and pride to the Pakwom caseworkers in relation to their work on human rights and resulted in a desire among the members of Pakwom to learn more about human rights in the Norwegian law.

The Vernacularisation of Human Rights

During the initial discussions leading to the lawsuit, no attempt was made by the caseworker or Asma to construct an Islamic argument in support of the legal case. Asma had already learnt in the Pakwom discussions about the multiplicity of interpretations on polygamy in Islam. There was no conceptual hurdle in Asma's mind preventing her from invoking Norwegian law. 'I was so happy when I came to know that I can teach a lesson to my in-laws and husband through Norwegian law', Asma responded when I asked her what was on her mind when she went home after the discussion with the leader of Pakwom during which they decided to rely on Norwegian law. Unlike in some

other cases, when the religious opinion of Pakmosque's imam is sought, the leader of Pakwom and Asma decided to use Norwegian law without consulting the imam. The leader of Pakwom explained as follows:

We knew what the imam would say. He would say, what is the problem? Polygamy is legal in Islam. There is no violation of God's law in this bigamy case. (...) There can be no punishment for polygamy. (...) Bearing in mind her [Asma's] situation and her desire to restore her dignity, she and I agreed to keep the imam out of the issue. This is what we did all the way through in her [Asma's] case.

Although Asma and the leader of Pakwom never engaged with the imam of Pakmosque before and after the lawsuit had been filed, they did discuss articulating an 'Islamic' argument in defence of their decision in order to counter any potential objections by someone in Asma's family or community. When Asma and the leader of Pakwom decided to keep the imam out of the case, they knew that polygamy is a disputed issue in Islam and that there are different interpretations of the Quranic verses regarding polygamy. Asma had come to know about the controversies regarding polygamy in the Islamic legal tradition during the seminars with Professor Shaheen Ali, which were arranged by Pakwom as part of the legal-literacy programs for its member.

Moreover, by drawing on the insights from the legal-literacy discussions at Pakwom, Asma could also link Islam and citizenship responsibilities from an Islamic perspective in order to justify the decision to sue her husband. Asma explained it to me in a conversation as follows:

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

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

Author: ‘So, you delink Islam from the whole issue. Islam is irrelevant in this matter.’

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

Asma’s argument that Islam does not allow Muslims to violate the laws of their freely chosen country goes to the heart of the debate initiated by some contemporary Muslim scholars. For example, Dr. Shaheen Sardar Ali argues that for the Muslim immigrants in Europe, the continent is ‘*dar-al-sulh*’, the land of peace (Ali, 2007, pp. 65–72). Ali (p. 71) argues that from an Islamic perspective, there is no hurdle for Muslims in Europe to engage with and follow the laws of European states, including family laws. This underscores, in relation to the bigamy case discussed, that choosing an interpretation of Islam that is compatible with the Norwegian ban on bigamy and linking Islam to citizenship responsibilities to justify the decision to sue Asma’s husband for bigamy can be viewed as an act of the vernacularisation (i.e. cultural adoption) of Norwegian law.

In this manner, the Pakwom leader and Asma developed an Islamic argument in defence of the lawsuit when the court proceeding was well underway. While developing this Islamic argument, neither Asma nor the caseworker perceived any specific challenge that could come from the wider Norwegian-Pakistani community regarding their decision to go to the Norwegian court. However, they did anticipate a reaction from Asma’s in-laws and the people close to them, who were displeased and disturbed by her reliance on Norwegian law. Thus, the vernacularisation of Asma’s decision to go to court and of the subsequent court decision using Islamic discourse was a conscious attempt to preempt religion-based opposition initiated by the in-laws and the people close to them with *mala fide* intentions. Asma and the leader of Pakwom were right to anticipate such a reaction. Some months after the court decision, both Asma and the Pakwom leader confirmed to me that there was no public criticism of the decision in the community and that the only people who criticized her decision and the court’s ruling were Asma’s former in-laws and the people closed to them, who did so because they disliked her rather than due to their religious convictions. Unconcerned relatives and community members objected neither to her decision to sue her husband under Norwegian law nor to the court’s decision.

Conclusion

One consequence of the growing ethnic and cultural diversity in Norway and other Western countries is the law-culture overlap that may, in certain situations, compromise human rights. This requires innovative approaches to protect and promote the human rights of vulnerable individuals. Grassroots NGOs, such as Pakwom, in close consultations with the vulnerable individuals, are negotiating contextual solutions that draw on law and culture as resources to remedy the rights violations. The NGOs' approaches provide relevant empirical and contextual insights that should be explored in further research so that others can, where appropriate, benefit from their innovative work.

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