INTRODUCTION
Introduction

Statement of the Problem

Woman, in Islam, is a highly respected creature of Allah who has been accorded the status of a mother under whose feet lies the Heaven. A man came to the Holy Prophet (PBUH) and asked, “Who is worthy of my care the most?” the Holy Prophet (PBUH) replied him, “Your mother”. Then he asked again the same question and the Holy Prophet (PBUH) replied the same and again for the third time he repeated his question and the answer given by the Holy Prophet (PBUH) was again the same as before. The man asked the same question for the fourth time and then the Holy Prophet (PBUH) replied, “Your father”. This hadith shows the status of woman as a mother in Islam.

A woman is also a wife who has been created as a companion for man. A husband and wife have been declared as a source of comfort and solace for each other. The Almighty Allah says in this regard:

“And among His signs is this, that He created wives from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your (hearts).”

Further, Allah says in Surah-e-Baqra of the Holy Qur’an, beautifully describing the relationship between a husband and wife:

“…They are like a garment to you and you are like a garment to them…”

This shows the status of a woman as a wife which has been described by Allah by comparing her with a garment for her husband and vice versa. As the humans wear garments to protect themselves from the heat and cold and the shame of the society and thus, live a comfortable life, the same way, the spouses have been created for humans so that they may find solace in each other. They have been created equal but not identical. The men have been given one degree of superiority in terms of responsibilities but that does not mean that women are lower in status than men. This only means that Islam wants to create a balance in the society by providing division of labour among men and women. Man has been given the responsibility of providing maintenance and sustenance for his family (i.e., wife, children and aged parents)

1 Holy Qur’an, XXX:21.
2 Holy Qur’an, II:187.
and women have been given the responsibility of procreation and up-bringing of children. The main aim behind this division of labour among men and women is to do justice and create a balanced society, free from any kind of chaos and over-burden upon any particular gender. Practically speaking, when a woman looks-after the household work and also works outside, she gets over-burdened and exhausted and sometimes, fails to perform her obligations properly which leads to problems among the husband and wife which ultimately leads to divorce. On can clearly witness that the divorce rate is increasing day-by-day and a social dis-balance has been created in the society to a large extent. Thus, by the division of labour, Islam just wants to prevent this social dis-balance. It is not that Islam prevents women from working outside the house and earn money, in fact, Islam encourages women to contribute their skills and knowledge in the development of the society if they have time left after the performance of their obligations towards their family. Actually, Islam is the first religion that makes the ‘right to education’ an obligation for females too along with their male counterparts. The Holy Prophet (PBUH) is reported to have said:

“Seeking knowledge is obligatory for both, the men and women.”

Knowledge here does not mean the knowledge of religious teachings only but also includes the knowledge of every type like the knowledge of science, politics, mathematics, medicine, law, engineering, etc. Islam wants to create a well-developed society where women must also contribute their skills and knowledge if that does not come in the way of performance of their basic obligations. Women constitute the half population of any society and Islam considers that if half of the population remains dormant and thus, does not contribute anything in the development, then how can a society progress in that situation. There is a well-known proverb in this regard:

“When you educate a man, you educate an individual only but when you educate a woman, you educate a whole community.”

Thus, the Muslim women must also participate in the progress and development of their community and society as a whole whenever they get time after fulfilling their basic obligations towards their families. The division of labour has been made between the men and women so that a balanced and well-developed society can be created. At the same time, Islam has ordered men to treat their wives with equality and justice. The Holy Prophet (PBUH) said:

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3 Reported in Tirmidhi.
“The best among you are those who are best to their wives.”

As a daughter also, a woman opens the gates of heaven for her parents. Islam considers female children as a blessing and not a burden like the pre-Islamic Arabian society considered. The birth of a daughter is welcomed in an Islamic society with great happiness. Islam is the first religion in the world to ban the inhumane practice of female infanticide. Islam considers the upbringing, maintenance and education of daughters the responsibility of the father and provides that whoever fulfils his obligations very well as a father towards his daughters, he will enter paradise. The Holy Prophet (PBUH) is reported to have said in this regard:

“Whoever maintains two girls till they attain maturity, he and I will come on the Resurrection Day like this; and he (PBUH) joined his fingers.”

The word ‘maintenance’ here includes the education and marriage also of the daughters. The Holy Prophet (PBUH) is also reported to have said at another place:

“Lucky is the woman whose first child is a daughter.”

All this shows that Islam regards the existence of woman in the society as an equal partner and companion of man and not his subordinate. But before the advent of Islam, women had no position in the society. They were at the mercy and caprice of their men-folk and were treated as goods and chattels. Caprice of unrestricted polygamy was the order of the day and women could be divorced at the whim and pleasure of their husbands. Rights and privileges were totally denied to women in the pre-Islamic Arabian society and were being considered as exclusively men’s dominion. They argued that woman was weak and incapable of enhancing family’s resources and was thus, a hindrance rather than an asset in the defence against the enemies. They considered her a burden because she was not able to bring home the spoils of war so that the economic condition of the household and the tribe could improve. On this ground, she was denied the share in the property too. The same way, the boys of tender age also could not get a share in the family substance because they could not participate in wars. Only those men who were young and able-bodied and could face the enemies in the battle field were entitled to inheritance.

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4 Ibid.
5 Reported in Musnad Ahmad.
6 Reported in Al-Maqasidul Hasanah.
7 Dr. Muniruddin Qureshi, Status of Woman in Islam 181 (Reference Press, New Delhi, 2003).
It was not that only Arabian society alone kept women deprived of their rights and privileges. The other social orders of the world also kept her deprived of the same on the basis of above-mentioned and other pretexts and only men were entitled to have rights. Even the major civilisations and religions of the world failed to give equal status to women like that of men. It was Islam that came to their rescue at that time and gave them, for the first time, a status which the world could not even think of, not even to this day also. They have been given fair liberty in matters of marriage and divorce. Islam removed various domestic and conjugal hardships by prohibiting unlimited polygamy. Islam upgraded their status in the society by giving them the right to seek knowledge and educate themselves with every field of knowledge that is considered beneficial to the humankind. She has been given the right to choose her life-partner with her free consent without any pressure from the family members. She has also been given the right to keep her maiden name even after her marriage and hence, not losing her identity after becoming the wife of a man. This proves that Islam recognises women’s individuality and separate existence apart from being a daughter, mother, wife or sister. Thus, Islam has done everything possible to enhance the status of women in the society, so that they may live their life with respect and dignity.

It, thus, becomes crystal clear that the Holy Qur’an has given women equal rights in all spheres of life. Islam has declared man and woman to be equals. They are considered as each other’s counterparts and no one is superior or inferior. Equality does not mean here the likeness; it means equality of status. No two individuals in this universe can be alike as everyone has been created with a different physical appearance and mental abilities but that does not mean that they are not equal. One may be better in one way and the other in another but overall they are equal. By the term ‘better’ we mean here that one may be having great potential in one area and the other may excel in another area. Thus, ‘equality’ is a term that needs to be understood with a liberal interpretation. For example, Article 14 of the Indian Constitution speaks of equality in this sense only i.e., everyone is equal before law but everyone is not treated alike. Same is the case with the concept of equality under Islamic Law and it treats both men and women in equal way but not alike. The Holy Qur’an provides clear-cut evidence that woman is completely equated with man in the sight of God in terms of her rights and responsibilities. A comprehensive study of the Holy Qur’an and Ahadith (Traditions of the Holy Prophet (PBUH) also shows that Islam has enjoined women with equal rights like that of men and they enjoy the same status like them. The Holy Qur’an says:
“O mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him (Adam) He created his wife [Hawwa (Eve)], and from them both He created many men and women and fear Allah through Whom you demand (your mutual rights), and (do not cut the relations of) the wombs (kinship). Surely, Allah is the Ever an All-Watcher over you.”

In the above verse, Allah has made it clear that He has created all the human beings from a single pair (i.e., Adam and his wife, Eve) and hence, nobody is superior over the other in any way. Allah declares everyone to be equal, may it be a man or a woman and the only superiority among them is that of their character, faith, kindness and good deeds. The Holy Qur’an says in this regard:

“So their Lord accepted their prayers, (saying): I will not suffer to be lost the work of any of you whether male or female. You proceed one from another…”

“Whoever works righteousness, whether male or female- while he (or she) is a true believer (of Islamic Monotheism) verily, to him We will give a good life (in this life with respect, contentment and lawful provision), and We shall pay them certainly a reward in proportion to the best of what they used to do (i.e., Paradise in the Hereafter).”

“Verily, the Muslims (those who submit to Allah in Islam) men and women, the believers men and women (who believe in Islamic Monotheism), the men and the women who are obedient (to Allah), the men and women who are truthful (in their speeches 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., Zakat, and alms), the men and the women who observe Saum (fast), the men and women who guard their chastity (from illegal sexual acts) and the men and women who remember Allah much with their hearts and tongues Allah has prepared for them forgiveness and a great reward (i.e., Paradise).”

“In the above verses, the Holy Qur’an declares that men and women are equally responsible for their actions without any distinction on the basis of sex. It should be noted that Allah has
addressed all the human beings in a gender-neutral way and He has not used any term like “O men” only. Instead the non-sexist terms like, “O believers”, “O those who believe”, “O mankind”, etc. have been used by Him while communicating with the humans which shows that His Commandments are for men as well as women alike. He has declared them equal as human beings, both in this world and in the Hereafter. The Holy Qur’an specifies only one criterion for distinction between human beings, namely righteousness:

“And to all are (assigned) degrees according to the deeds which they (have done), and in order that (Allah) may recompense their deeds, and no injustice be done to them.”

Therefore, no question can arise of honour for man and dishonour for woman or the superiority of man over woman. Both of them are considered equally honourable under Islamic Law and it makes no distinction on the basis of sex. In fact, Allah has made both of them equally important for each other and wants them to live in harmony with each other and no one should try to dominate the other in any way. This shows that Islam did not intend to make men superior over the women and He wants them to live their life as a husband-wife with great love and affection in their hearts for each other without considering oneself superior to the other. This clearly and undoubtedly proves the Islamic Law’s principle of equality among spouses. Allah declares regarding the rights of women in the Holy Qur’an:

“…And they (women) have rights (over their husbands) similar (to those of their husband) Over them (as regards obedience and respect) to what is reasonable, but men have a degree (of responsibility) over them. And Allah is All-Mighty, All-Wise.”

Those who contend that a woman is not equal to man in the matter of rights and obligations, quote the following verse of the Qur’an in the support of their argument:

“Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore the righteous women are devoutly obedient (to Allah and to their husbands), and guard in the husband’s absence what Allah orders them to guard (e.g., their chastity, their husband’s property),…”

The plain wordings of this verse may seem to show that Allah has made men superior over women and most of the scholars (whether Muslims or non-Muslims) interpret this verse in

14 Holy Qur’an, XLVI:19.  
15 N. M. Shaik, Women in Islamic Society 21 (Kitab Bhavan, New Delhi, 1991).  
16 Holy Quran, II:228.  
17 Holy Quran, IV:34.
this sense only but it is a well-known fact that the verses of the Holy Qur’an are to be interpreted after going through the whole context of it. Only then, one may be able to get through the true intentions of the Almighty Allah’s Commandments. Therefore, when the verse of the Holy Qur’an given above is interpreted in its proper Qur’anic and social context, the conclusion is that the Holy Qur’an never discriminates on the basis of gender. It is the interpretation of the Holy Qur’an, reflecting the masculine and patriarchal prejudices of the interpreters, that is discriminatory. Hence, it is clear that Islamic considers women to be equal to men and orders it followers to treat their better-halves in the best possible way that they can and not to mistreat them in any way.

Further, the Holy Qur’an strongly guarantees fundamental rights without reserving them to men alone. These rights are so deeply enrooted in our human nature that their denial or violation is tantamount to a negation or degradation of that which makes us human. That is why the Holy Qur’an upholds women’s right to life considering it sacred and declares that no life can be taken without law and made the killing of women a crime equal to that of killing men. It lays down:

“...Take no life, which Allah hath made sacred, except by way of justice and law...”\(^{18}\)

The Holy Qur’an also recognises the women’s right to property in general terms and forbids its improper acquisition and lays down in this regard:

“From what is left by parents and those nearest related there is a share for men and women, whether the property, be small or large, a determinate share.”\(^{19}\)

As already mentioned earlier, the Holy Qur’an has provided the right to work and earn for themselves to women also like that of men, after fulfilling their basic duties at home and the fruits of the work belong to the one who does the same. The Holy Qur’an lays down in this regard:

“...To men belongs what they earn and to women belongs what they earn...”\(^{20}\)

This shows that the earnings of a woman belong to her and her only and to no one else i.e., neither to her husband nor her parents and she has full right upon her earnings and she can

\(^{18}\) Holy Quran, VI:151.  
\(^{19}\) Holy Qur’an, IV:7.  
\(^{20}\) Holy Quran, IV:32.
dispose it off the way she wishes to do. At another place, the Holy Qur’an prevented all humans from taking each other’s property in the following words:

“And do not eat up your property among yourself for vanities, not use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people’s property.”\(^{21}\)

Also, Islam has made the benevolence to widows and taking care of them, as one of the noblest actions in the sight of Allah. The Islamic Shari’ah commended with the good treatment of widows. Moreover, Islam exhorted people to marry previously married women and not to leave them as a subject for accusation and talks. The husbands have also been prohibited from blaming their wives maliciously and without any strict proof of the same. The Holy Qur’an says:

“And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth. And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie. But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allah, that, (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth.”\(^{22}\)

It is crystal clear now from the text of the Holy Qur’an that the status of woman in Islam is equal to that of man and she is in no way inferior to him. But the behaviour of some people is totally irrational and partial towards the status of woman in Islam. This is due to the reason that, owing to their peculiar religious and political thoughts and views, they fail to bring themselves to recognise the excellence of Islamic Law relating to women’s rights. They subject to many objections, the rights conferred on women by Islam from the point of view of the superiority of man in Islam. They argue that the man is the guardian and supervisor of the household, he can enter into polygamous marriages, can divorce his wife whenever he wants to do so and gets double the share of woman in inheritance. But these objections are not of the recent origin and have been levied against Islam since long and though many efforts have been made since long to clear these misunderstandings against the Islamic Law but still the practice continues with greater fury.

It must be remembered that though the Holy Qur’an does not chronologically present the creation process of man and woman but it, nevertheless, does practically respect and view a

\(^{21}\) Holy Quran, II:188.
\(^{22}\) Holy Qur’an, XXIV:6-9.
woman as an important part of the whole cosmos (the same way as a man) and considers the existence of woman as urgent as that of a man. Almighty Allah gives equal rewards to everybody who performs good deeds and equal punishments for evil deeds. There is not even a single verse in the Holy Qur’an that supports and promotes discrimination on the basis of gender. But it is very unfortunate that in most societies, especially the Muslim ones, the concept of gender, which is actually a product of a social construct, tends to accord women a low status and often puts them in a non-advantageous position. This can be described in a better way with the following words of Azizah al-Hibri:

“It is worth noting that the rise of patriarchy in the Muslim world was not historically an isolated event. Muslim Arab patriarchy was greatly influenced in its development by the neighbouring Byzantine and Persian empires. In fact, during that period the whole world was in the firm grip of patriarchy. It took women endless centuries before they could even begin challenging it successfully. As patriarchal forces tightened their grip on Muslim countries, they attempted to reduce the status of women in society to that of inactive, immature, dependent beings who are neither full-fledged citizens of the State nor are capable of being in full control of their own destiny. When this status is compared to that of Muslim women during the life of the Holy Prophet (PBUH), the contrast is shocking. Early Muslim women were actively involved in every aspect of life of the nascent Muslim society. They included business women, poets, jurists, religious leaders and even warriors. Yet, it is futile to attempt to establish the liberating influence of Islam on women by pointing to these ancient historical examples alone. So much patriarchal jurisprudence and practice has developed in the interim, that we must also seriously examine these patriarchal developments.”

The above view of Azizah al-Hibri explains that the status of women in the Muslim societies today is the direct result of the patriarchal thinking of those societies from where they got influenced and thus, Islamic teachings has nothing to do with this. As Shakespeare has rightly said that the fault is not in stars, but in ourselves. Therefore, the fault lies in the interpreters of the Holy Qur’an and not in the Holy Qur’an itself. To understand the status of women under Islamic Law and the Qur’anic concept of gender equality properly, it is essential to look historically at all the verses of the Holy Qur’an dealing with women’s rights and interpret them in their proper social and historical context. If these verses are interpreted in isolation and out of their proper context, the result would be misinterpretation of women’s position in the Holy Qur’an and a misunderstanding of the Qur’anic universal goal i.e., a just society based on human equality. This type of misinterpretation fosters the theory of women’s physical and intellectual inferiority culminating in women’s legal and social subordination.

This is because of the reason that some of the conservative Muslim scholars have taken the Qur’anic verses out of their context and read them literally, ignoring the fact that the Holy Qur’an often uses symbolic language to portray deep truths. Another significantly important point to keep in view, while interpreting these verses, is the liberating thrust of the Holy Qur’an: liberating human beings from tribalism, traditionalism, sexism, racism, etc. It is important to note here that the focus of the Holy Qur’an is more on women than on men for much of the Qur’anic legislation is designed to ensure that women are treated with justice in the home and in society.  

In spite of all the rights and privileges given to women by Islam, the Muslim societies treat them with great disrespect and discrimination. This is not only the case with a few patriarchal societies but, in fact, most of the Muslim societies across the world deprive women of their rights granted to them by Shari’ah. In India also, Muslim women are completely ignorant of their rights, privileges and status under Islamic Law and thus, are leading a miserable life. They don’t even know their basic rights as women which Islamic Law provides them in their personal matters like their right to marry with free consent, right to settlement of mahr, right to education, maintenance and inheritance. The main reason behind their miserable lives is their ignorance of their status in Islam. This is the situation in whole of India and the State of Jammu and Kashmir is no exception to this miserable position of Muslim women in the society. In the State of Jammu and Kashmir, there existed customary laws which were applicable to its citizens until the year 2007. The Muslim Personal Law (Shariat) Application Act was made applicable to the citizens of India in 1937 but in the State of Jammu and Kashmir, it was passed by the State legislature in 2007 under which Islamic Law was made applicable to the Muslims of the State in their personal matters. Before 2007, the Muslims had the option of being governed either by the principles of Islamic Law or the customary law of the State. Where the parties succeeded in proving the existence of a valid custom, the court had to apply the same custom in their case even if it was contrary to the principles of Islamic Law. Under the customary law of the State, there existed many customs like the institution of khana-nashin dukhtar, khana-damad and pisar-i-parwarda which greatly influenced the rights of women under Shari‘ah and thus, discriminated especially against women to a large extent. The women were deprived even of their basic rights like the right to marriage, divorce, maintenance, dower and inheritance and much more. In this research work, the

detailed study has been made of the rights granted to women by Islam in their personal matters and their current socio-economic status under Islamic Law in the Valley of Kashmir after the enactment of the *Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007*.

**Objectives of the Study**

- The main objective of this research work is to trace out the social and economic rights which the Muslim women are entitled to under Islamic Law viz a viz rights available to Muslim women in the State of Jammu and Kashmir through customs and/or legislations.
- Another aim of this particular research work is to highlight the discriminatory nature of the customary law of the Jammu and Kashmir as well as the factors responsible for the denial of rights to Muslim women.
- An attempt has also been made to study the challenges and problems faced by Muslim women in the enforcement of their rights.
- At last, this research aims to find out whether the purpose for which the *Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007* has been passed has been achieved or not and what may be the remedial solutions/measure.

**Research Hypothesis**

The survey and perusal of fundamental sources of *Shari’ah* distinctly reveals that Islam has provided good deal of rights- social-economic and political- to the Muslim women which not only enhance their social and economic status but, at the same time, ensure them a dignified existence in the society. Despite that, one may find and is also an acknowledged fact that what has been sanctioned by the *Shari’ah* in terms of gender rights- be social or economic- do not find full expression in action in Muslim societies, especially in the State of Jammu and Kashmir. The rights granted to women by *Shari’ah* have either been denied to them or violated or not implemented in letter and spirit. In the State of Jammu and Kashmir, people were governed by Muslim Law in some matters and by customs in others until the year 2007. These customs which governed the Muslims of Jammu and Kashmir were not Islamic in nature and to a greater extent, were discriminatory to women. Though recently, the *Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007* has been passed by Jammu and Kashmir Legislative Assembly after a long struggle but still majority of the
people are unaware of such a legislation for a variety of reasons and they settle their disputes according to these customs which in ultimate analysis culminate into denial or violation of gender rights.

Research Methodology

The research methodology adopted by the researcher for carrying out this particular research is both doctrinal as well as empirical in nature. It involves the in-depth study of source materials, text reviews and the extensive literature on the particular issue and an empirical survey of selected four districts of the State of Jammu and Kashmir. The doctrinal portion of the research involves the analysis of basically two types of materials on the status of women under Shari’ah i.e., primary and secondary materials. Primary material consists of the legal texts and declarations in the form of Qura’nic injunctions and Sunn’ah on the issue of status of women. Secondary material consists of the relevant books, articles, research papers, news reports and precepts of magazines on the concerned issue. Use of internet has also been made by the researcher up to some extent for gathering the relevant information regarding the above-mentioned issue. The empirical part of the research involves the survey method of the selected districts for gathering the relevant information regarding the socio-economic status of Muslim women.

Review of Literature

A survey of the available literature on the status of women under Shari’ah has been carried out which includes several books, journals, articles, judicial cases and juristic works. Of these few articles have been referred in the bibliography. Further, research studies specific to status of women under other religions and their limitations and research dimensions for the present study have been found out. Help has also been taken from various websites. My research in this particular area of Islamic Law has a glimpse of divergent views on the status of women under Islamic Law. Various writers have given their views regarding the socio-economic status of women under Islamic Law, of which, the researcher has quoted here only few of them which are as follows:
Er. Sa’adatullah Hussaini, *Woman under Capitalistic Imperialism versus Woman in Islam*, describes the crisis created by the imperialism in the feminine world and then offers Islam as an alternative to overcome those crises. He points out that in an imperial society, women get exploited by men for their material gains and is of the view that women should revolt against this exploitation. He is of the view that Islam offers a logical ground for such a revolt as it symbolizes justice and equality. Its principles eradicate injustice and exploitation from every sphere of life. Islam completely abandons all those tactics that are being used by capitalistic imperialists to exploit woman. Islam gives dignity and protection to woman with respect to her feminine characteristics. *Muslimah* has no financial responsibility and total economic responsibility lies with men. The woman owns a full financial status that is no less than man. She has right to earn, right to possess property in the form of asset, real wealth or cash. She has full right to spend her wealth in a manner she wishes so long as it is approved by the *Shari’ah*. Whatever a woman earns, she has full right to spend it in the manner she wishes within the Islamic limits. Neither her husband, nor in-laws can force her to work (take up a job), nor they can force her to give her earnings to them. Even for earning woman, her economic responsibility lies upon her husband.

Abdul Ghaffar Hassan, *The Rights and Duties of Women in Islam*, deals with the rights and duties of women in Islam very concisely and beautifully. Maulana Abdul Ghaffar Hasan, a scholar of *Hadith* and member of the Islamic Ideological Council in Pakistan, tries to remove some of the misunderstandings, prejudicial opinions and falsehoods which circulate about the rights and duties of women in Islam. He explains the subject-matter according to the precise teachings of the Holy *Qur’an* and *Sunn’ah* of the Holy prophet (PBUH). He writes that it is the man’s duty to provide financial support to his family, and it is also a man who is required to give dower to his wife at the time of their marriage. In the castle of his home, the husband is the ruler and the wife is the pillar of support. As in any establishment, there can be only one ruler, the husband has thus been put in charge of his home, but this is a responsibility and not a privilege.

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Maulana Wahiduddin Khan, Women in Islamic Shari’ah\(^{27}\) points out the reasons for division of labour between man and woman in their household functions. He is of the view that in Islam, a woman enjoys the same status as that of a man. There is no difference between man and woman with regard to status, rights and blessings, both in this world and in the Hereafter. He argues that if Islam stresses the division of labour between the sexes rather than sexual equality, it is because of the reason that it does not countenance the idea of either sex suffering from the feelings of degradation and inferiority resulting from any imitation of the opposite sex. Man and woman, in the eyes of Allah, are not the duplicates of one another, but the complements. He argues further that Islam has never asserted woman as an inferior to man, instead it has only made the point that woman has been constituted differently than him. In his book, Maulana Wahiduddin Khan deals with the different aspects of a woman’s life and also her rights and duties under the Islamic Law.

Syed Hamid Mohsin, Islam for You\(^{28}\) writes that from the start of the Qur’anic revelation, Islam restored to the rights of the woman and ensured her full spiritual equality with man. In Islam, man and woman are described as partners in life, each having different but complementary roles and responsibilities best suited to their unique abilities and strengths. He further points out that Islamic Law freed woman from the shackles of oppression that were, previously placed upon her at a time when the whole world considered her a burden upon the resources owned by men. It was at that time that Prophet Muhammad (PBUH) defended and reinforced women’s rights throughout his mission even till the very end. He did not allow females to be looked upon as economic burden or objects of lust.

Justice (Retd.) Hakim Imtiyaz Hussain, Muslim Law and Customs\(^{29}\) is a commendable work in which author has taken great pain to trace out the history, development and application of customary law of the Valley of Kashmir. Author has taken keen interest in dealing with the important aspects of the subject. He provides leading judgments of the Privy Council, Supreme Court, High Courts as well as the Board of Judicial Advisors. He provides a detail study of the customary institutions followed by the Muslims of the Valley like khananashin dukhtar, khana-damad, pisar-e-parwarda, etc. and their effects on the rights of the parties under Islamic Law. He is of the view that women are at a lower position under these institutions as they get discriminatory treatment and their rights get affected the most under

\(^{27}\) Maulana Wahiduddin Khan, Women in Islamic Shari’ah (The Islamic Centre, New Delhi, 2010).
\(^{28}\) Syed Hamid Mohsin, Islam for You (Salam Centre, Bangalore, 2013).
\(^{29}\) Imtiyaz Hussain, Muslim Law and Customs (Srinagar Law Journal Publication, Kashmir, 1989).
the customary law. He further points out in this regard that even after so many years of independence, the majority of women in Kashmir continue to be dominated by male sex and are economically dependent, and for this plight of women the continuance of the application of customs play a significant part. The greatest drawback of the customary law in Kashmir is its bias against female sex and total uncertainty and utter confusion.

Dr. Mufti Samiya Tabasum, *Status of Muslim Women in India- Law Relating to Marriage, Divorce and Maintenance*, 30 covers various aspects relating to the status of women in the pre-Islamic Arabian society as well as in the modern age. These aspects relate to various issues like the customs, forms of marriage, polygamy, divorce, various forms of divorce and maintenance of wife under Islamic Law. Author provides direct evidence of the empowered and liberated status of women under Islamic Law by interpreting their rights in the *Qur’anic* as well as in the legal spirit. She is of the view that the Holy *Qur’an* gives equal rights to both the sexes and it does not discriminate between them in any way with regard to personal and human rights. It seems that she has devoted her comprehensive work especially to the women who are suffering badly from triple divorce and polygamy. She explains the rights of women under Islamic Law in an extensive manner and also provides the similar rights granted to women of other religions also which makes it very easy to understand the status of women under Islamic Law in a better way. The author of the book also critically evaluates the judgments of various courts in India with the view of meeting the social changes that confront the Muslim society in this country. She claims that the issues of women continue to dominate the Islamic world in particular, due to very slow change in the status of women in the Islamic world as a whole. With the exceptions of a few Muslim countries, the age old laws have not changed. These laws, which were essentially formulated by the Muslim jurists in the early centuries of Islam, were a human effort to understand the divine pronouncements in a feudal era. She is of the opinion that the problems faced by women, among minority or otherwise, in India are due to illiteracy mainly. Therefore, it becomes quite necessary that the gloom of ignorance be removed by the light of knowledge and education. It is time by now that the women must be made aware of their rights and duties so that they realize their rightful place in the society.

K. Padmaja, *The Law of Divorce: Global Perspectives*,\(^{31}\) seeks to examine the issue of divorce and the law relating to it in a global perspective. It is a compilation of various Articles authored by different authors which aptly explains the law of divorce in Indian as well as the world perspective. Mohd. Akbar Khan, in his Article “*Divorce in Islam*” writes that though it is legally recognised but divorce is not appreciable in Islam. He further views that western materialism, growing feminist movements and failure to adhere to the tenants of *Sunn’ah*, have led to an increase in the divorce rate. Divorcing women at any time, without any valid reason, was quite common among the pre-Islamic Arabs. However, Islam proved to be a boon as it discouraged frequent divorce and made it difficult for the husband to accept his wife once again after divorce. Islam also gives women the freedom to seek divorce if they are unhappy with their marriage. Under Islamic Law, both the husband and wife have to compulsorily observe and fulfil certain obligations towards each other.

Mufti Abdul Jaleel Qasmi, *The Complete System of Divorce*,\(^{32}\) points out the necessity of divorce by providing that for the perpetuity of calmness and tranquillity of society, *Shari’ah* has made permissible a distasteful thing such as *talaq*, which can be applied only in certain unfortunate cases. The reason behind allowing such a detestable act is that in some cases, after a *nikah* takes place, a person is deprived of the benefits and comforts thereof, due to their weakness, or physical or natural abilities, or inability to cope with the habits of others, or due to many other possible reasons and then instead of love, affection and strengthening of family ties, hatred, animosity and revulsion are fostered which results in one’s worldly life becoming a woeful existence. Due to this strained and difficult relation, it becomes a necessity for the spouses to separate from each other. It is for such delicate and trying occasions that Islam has permitted the concept of *talaq* so that each of the spouses may go their own ways and live their lives in a peaceful manner. He further claims that *Shari’ah* has outlined detailed laws in this respect, so that it is not used (abused) at improper occasions, in fact, it is only applied in cases of sever necessity. But the present day philosophers have established through medical and scientific means that women are weaker than men in every respect as far as their physical make up and body limbs are concerned and therefore, they are not capable of taking a decision like divorcing their spouse. The author points out that if one studies well and contemplates over all the places in the Holy *Qur’an* where *talaq* is mentioned, then it will be deduced that the exercising of *talaq* is at first prevented, and as far

as possible, encouragement is given to save from issuing talaq. It is not that men are encouraged and women are discouraged from issuing talaq against their spouses. The Commandments of Allah are for both the partners and both are allowed to separate from their partner if they are not happy in their marriage.

Mohd. Altaf Hussain Ahangar, *Customary Succession among Muslims,* 33 examines the wide spectrum of succession customs that are applicable to Muslims in Kashmir. Author also compares these customs with the existing rules applied by civil and revenue courts of Kashmir and also discusses the ways in which those are departed from the principles of Islamic Law. His work happens to be the only source material till date which surveys the entire gamut of Muslim succession customs of Kashmir along with the judicial modifications and legislative positions. He not only makes the remarkable classifications of heirs under the customary law of Kashmir but also presents the same in a tremendous way. With a number of instances, the author proves that the customs relating to the succession of property among the Muslims of Valley is a gross misrepresentation of both the customary law as well as the Islamic Law. He, further, points out that in any legal system of succession, the main consideration is the extent to which an individual has the personal right to determine the devolution of his property after his death. Islam mandates that the property should go to those whom law treats as best entitled to it and personal reference of the deceased in respect of this portion of property has no scope. By contrast, the customary law of testamentary succession in Kashmir rests firmly upon the freedom of the individual to determine the devolution of his property upon his decease and in this view of the matter, it is analogous to most of the modern western systems. Despite the fact that the custom allows an individual to transmit his whole property by way of bequest, the testamentary succession is the least practised institution in Kashmir. He further claims that for the purpose of the customary law of succession in Kashmir, the estate of a deceased Muslim comprises all the property that he owns, whether his ownership is of the substance or corpus, of a thing or merely of its usufruct or income. He also writes that there exist no distinctions of movable and immovable property or ancestral or self-acquired property but distinctions are made as regards the rights of different legal heirs over the inherited property. He states that generally women are not allowed to inherit property form their deceased relations unless they are appointed as khana-

nashin daughters. He successfully proves the discriminatory nature of customary law against women with definite evidences and court judgments.

**Badre Alam Khan**, *Economic Rights of Women under Islamic Law and Hindu Law: A Comparative Study*,\(^\text{34}\) discusses the economic right of the Muslim as well as Hindu women under their respective religious laws and the developments that have taken place under the modern legal systems. He also mentions in brief the position of women under other religions like Buddhism and Christianism and points out further the views of various Western scholars and experts of sociology that acknowledge the emancipation of women under Islamic Law. While explaining the law relating to maintenance of wife, the author has beautifully described the meaning of the term ‘*mata*’. Regarding the inheritance rights of women under Islamic Law, he writes that apart from the recognition of women as an independent human being, acknowledgment is equally essential for the survival of humanity and thus, she has been given a share in the inheritance. Before the advent of Islam, Arabs considered woman as a property which could be transferred as well as inherited by men. Out of that transferable property, Islam made her acknowledged by granting her the right in the property of her deceased relations, may he be her father, brother, son or husband or any other near relation. He further writes that her share depends on her degree of relationship with the deceased relation and at some places, she receives half the share of her counter-parts but that does not mean that it is a sign of supremacy of men over women. The author also discusses the economic activities of a Muslim woman outside her house and writes that Islam fully recognises her right to work outside the household (agricultural, business, industrial and other productive activities). He claims that women under Islamic Law are having the provision in every condition and thus, they are not having the rights of maintenance, dower and inheritance only but also the right to take up employment in a decent manner for their economic independence.

**Safia Iqbal**, *Woman and Islamic Law*,\(^\text{35}\) provides that Islam has enhanced the status of woman and showered her with ample human rights which are her natural due, and has also acknowledged her freely. She points out that due to the emancipation of woman’s status in Islamic Law, the crime rate against women is very less in Islamic societies and in support of her claim, she quotes the speech of the famous journalist, Khushwant Singh, that he made

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while addressing a workshop of journalists on the ‘Problems of Girls’ organised by UNICEF in Delhi in October 1985, in which he said that unfortunately, the crimes against women as bride burning and dowry-murders are more rampant among the Sikhs, Jains, Buddhist and Hindus while such inhumane events rarely occur among the Muslims and Christians. The reason that he gave for this is that Islam gave women a better and equal status long before other communities. She also provides a long list of rights that are available to women under Islamic Law.

Latifa Kazi, *Gender and Community: Muslim Women’s Rights in India*, claims that even after the six decades of independence, the majority of Muslim women is one of the most disadvantaged, least literate, economically impoverished and politically marginalised sections of the Indian society. Islamic scholars argue that Islam treats both men and women as equals but despite the claim that the Holy *Qur’an* bestows equal status and rights on both men and women, the reality is different. In Muslim societies, the women have lower status than their men and they do not enjoy equal rights, both in the family and outside. According to her, the inferior status of women in India is placed on their role of mother and wife and further, based on conventional pattern of sexual division of labour. She further writes that even in the sphere of production, Muslim women are treated as non-producers despite the fact that they shoulder the whole responsibility of domestic work in their families. Not only this, Muslim women are also traditionally engaged in a few household industries which does not require their going out for work, still they lack economic independence and access to education which is an important cause for their lower status and lack of initiative to fight for their rights.

**Scheme of the Study**

Apart from the Introduction part and Conclusion and Suggestions, the present research study has been divided into six chapters by the researcher namely, ‘Status of Women in pre-Islamic Arabia’, ‘Position of Women under Major Civilizations and Religions of the World’, ‘Social Status of Women under *Shari’ah*’, ‘Economic Status of Women under *Shari’ah*’, ‘Status of Muslim Women under Customary Law of Jammu and Kashmir’ and ‘Socio-Economic Status of Muslim Women in Jammu and Kashmir (Empirical Study of Districts Baramulla, Budgam, Kulgam and Srinagar)’.

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36 Latifa Kazi, *Gender and Community: Muslim Women’s Rights in India* (Signature Books International, Delhi, 2013).
In **Chapter 1**, the position of woman before the advent of Islam in the pre-Islamic Arabian society has been highlighted and also the various changes brought about by Islam for the enhancement of socio-economic status of women have been discussed. In this chapter the position of women with regard to their personal matters like marriage, divorce, dower, inheritance, polygamy, plight of widow, etc. has been provided.

In **Chapter 2**, a comparative study has been made depicting the status of women in the major religions and civilizations of the world. Further, their sufferings in the hands of men and their religious texts have also been discussed with evidence.

**Chapter 3** deals with the social rights of women under Islamic Law that have proven tremendously significant in enhancing their status in the society. In this chapter, the social rights of Muslim women with regard to marriage and divorce have been discussed in detail.

**Chapter 4** of this research study deals with the economic status of women under *Shari’ah*. This chapter includes a detailed study of various economic rights granted to women by Islamic Law like dower, maintenance and inheritance. Also, the women’s right to employment and absolute ownership over their properties have been discussed.

In **Chapter 5**, a detailed study of the un-Islamic customs of the State of Jammu and Kashmir has been made and also their discriminatory aspects especially towards women have been highlighted.

In **Chapter 6**, an empirical study has been provided which was conducted by the researcher in selected four districts of the State of Jammu and Kashmir i.e., Baramulla, Budgam, Kulgam and Srinagar, in order to examine the application of Islamic Law in the State and also to know the current position of socio-economic status of Muslim women in these Districts and the reasons behind the denial of their socio-economic rights.

And finally, in **Chapter 7**, the conclusion has been drawn in the light of the given facts and thus, appropriate suggestions have also been made accordingly.