CHAPTER 1

STATUS OF WOMEN IN PRE-ISLAMIC ARABIA
Chapter I

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1.1. Introduction

There is huge literature that bears legitimacy about the plight and miserable condition of women before the emergence of Islam in the Arab World. In fact, socio-economic condition of women was no better than animals before Islam in the Arabian society. It was only among certain well-known families or tribes that women enjoyed certain rights e.g., the women in the Tribe of Quraish enjoyed certain rights, like Hindun, the wife of Sufiyan and Khadija bint Khuwaylid were among the leading women of that time who enjoyed the freedom of speech and expression and the right to marry with their free consent. Khadija bint Khuwaylid was also a leading business lady of Mecca at that time. However, this was the case regarding the women from Mecca only which was a big commercial city and centre of trade and civilization. The position of women of Madina, which was a rural, agrarian and nomadic society, was quite different. At Madina, the position of women was not much favourable. For example, widow could not inherit the property of her deceased husband as she herself was considered a part of her husband’s estate.\(^1\) Men, in pre-Islamic Arabian society, considered women nothing more than the mere chattel. Before the advent of Islam, women had faced a long period of subordination, dependence and degradation. Female infanticide was practiced on a large scale. Arabs considered female child not only a source of economic burden but also a social stigma and shame for the family and tribe and therefore, the female children were buried alive as soon as they were born.\(^2\)

Women, in pre Islamic Arabia, could be bought and sold, divorced for no reasons and could even be inherited like any other property of a deceased man and a son could marry his father’s widows except his own mother. A man could have unlimited numbers of wives and he could divorce them without any fault of theirs, whenever he wanted to do so. There was no concept of women’s education. Women could not have any share in the inheritance. Females’ consent for marriage did not matter and in their own marriage they had no say and only their father or guardian could give them in marriage to any person whom he wished. They could not earn as they had no such right to go outside their homes; though some evidences of

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\(^2\) Raja Aquil, “Change and Muslim Women” in *International Journal of Humanities and Social Science* 24 Vol. 1(21) (Special Issue - December 2011).
business women are also traceable like that of Khadija bint Khuwaylid, but that is very rare. Majority of the women had to depend on their male-counterparts for their sustenance and maintenance.³

Hence, one can say that women in the pre-Islamic Arabia had no identity of their own and they were denied even of their existence by their men. At that particular time, came forward the Islam to their rescue and introduced radical changes in all spheres of the Arabian social system through Holy Qur’an and the Holy Prophet (PBUH). The fundamental reforms in customary law introduced by the Holy Qur’an were designed to improve the overall status of women and thereby, Islamic Law made a successful attempt to make women spiritually and intellectually equal to men. The only distinction that Islam makes between men and women is in the physical realm based on the equitable principle of fair division of labour and no difference is made between them except that. Hence, Allah’s Commandments, in the form of Qur’anic teachings, raised the status of women in the society back in the seventh century Arabia and Muhammad, the Holy Prophet (PBUH) of Islam upon whom the Holy Qur’an was revealed, did his job of reforming the society conscientiously.⁴

1.2. Position of Women in pre-Islamic Arabia

It is usually said that if you want to measure a civilisation then try to find out the status and position that is held by its women. In order to understand the effect of Islam on the status of women, one must first of all go through the knowledge of the conditions in which women used to live in the pre-Islamic Arabian society and only then one can truly trace out the reforms brought about by Islamic Laws to improve the status of women and provide them with the basic rights which are necessary for living a dignified life in the society. It cannot be denied that pre-Islamic Arabian customs form an integral part of the Islamic legal history therefore, like any other legal system, the ground work of the Islamic legal system, is to be found in the customs and usages of the people among whom it developed.⁵ Hence, in order to have a better understanding of the status of women in the Pre-Islamic Arabia, it becomes imperative to understand the organisation of the tribal society of Arab and prevailing legal system of that time. And it is almost impossible to fairly address women’s position in the pre-

⁵ Supra Note 3 at 26.
Islamic Arabia without having an understanding of the tribal system, for it was the tribal structure and customs that had the greatest impact on women’s rights.\(^6\)

In the South-West of Asia, there is a Peninsula known as Arabia. It is just like a table-land surrounded by Syro-Babylonian plain in the North, by Persian Gulf and the Sea of Oman in the North-East, by the Indian Ocean in the South, and by Red Sea and Gulf of Suez in the South-East. A vast sea of sand engulfs the whole peninsula, punctuated by bare rocks devoid of vegetation and occasionally, by oases of plain trees and fields that look like islands amidst the surrounding desolation.\(^7\) The Arabian society was divided into tribes which was the main unit of that society before Islam. Each tribe consisted of a group of kindred clans; every clan was made up of members of a (hayy) which was an encampment of tents; each tent represented a family. The bond of blood connected together all the members of the same tribe, who submitted to the authority of one chief (Sheikh). The tribe’s chief was usually selected by the clan elders from one of the prominent families who acted as an arbitrator to the internal conflicts. ‘Banu’ was the title with which they prefixed their joint names. The fact that certain clans prefixed their names with feminine names is perhaps an indication of an ancient matriarchal culture that existed in Arabia long before Islam. Group solidarity (‘asabiyya) was the spirit of the tribe. It signified unconditional loyalty to fellow tribesmen. “Be loyal to thy tribes”, was the motto of the time.\(^8\) The clan’s claim upon its members was strong enough to make a husband give-up his wife.\(^9\)

The tribe was automatically considered as a unit, and regarded every other tribe as an enemy, unless they had forged alliances to protect one another. There was no centralized infrastructure to protect people and their property. In order to survive, every individual had to be affiliated with a tribe. Laws and customs in this tribal society varied from one area to another. For this reason, one finds different accounts of women’s status during the days of jahiliya.\(^10\) On one hand, one finds the examples of women like Khadija bint Khuwaylid and Hindun who held high social positions while on the other hand, the proofs of women can be found who had not even the basic rights like the right to marry with their free consent or the right to hold property or the right to inherit it even from their fathers or husbands. There are

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\(^6\) Supra Note 4 at 29.
\(^7\) Syed Khalid Rashid, *Muslim Law* 3 (Eastern Book Company, Lucknow, 2009).
also numeral evidences that prove the deteriorated status of women in the hands of their respective tribes. A detailed study the degeneration of the status of women in the pre-Islamic Arabian society has been provided under the following sub-headings.

1.2.1. Pre-Islamic Arabia and Female Infanticide

The position of women in pre-Islamic Arabia was totally deteriorated. In pre-Islamic times, the Arabs used to be disheartened and annoyed with the birth of daughters. Their traditions allowed the father to bury his daughter alive for actual poverty, or for expected poverty, or out of fear of a disgrace that she might bring upon them when she grew up. Some pre-Islamic laws gave the father the right to sell his daughter if he wished so, while others allowed him to hand her over to another man who would either kill her or own her if the father killed the other man’s daughter.\footnote{Yusaf Al-Qaradawi, “The Status Of Women In Islam”, available at: \url{http://www.iupui.edu/~msaiupui/qaradawisstatus.html} (Retrieved on August 26, 2015).} Arabs used to commit the dreadful practice of female infanticide on a large scale before the coming of Islam and it was not a new thing nor was it limited to one group of tribes. It was a well-known proverb that \textit{the dispatch of daughters is a kindness and the burial of daughters is a noble deed}.\footnote{Supra Note 1 at 293.} In the words of Smith, this dreadful practice is described as:

\begin{quote}
“In Arabia, as among other primitive people, child-murder was carried out in such a way that no blood was shed, the infant was buried alive. Often the grave was ready by the side of the bed on which the daughter was born.”\footnote{Supra Note 3 at 25-26.}
\end{quote}

Arabs considered daughters as a distinct drain on their resources, who costed them much more than sons, without being a source of strength in the battlefield. Further, they took it as disgrace and loss of prestige in having their daughter married to another man and preferred death to being called ‘father-in-law’.\footnote{Supra Note 10 at 90.} Baby girls used to be buried alive as soon as they were born. Arguments as to the reason why such a horrendous act prevailed in the culture are plenty. Some of them are that the father did not want his daughter to live and one day become poor and bring shame to his family and tribe, because poverty was culturally unacceptable. Since there were so many tribal wars at that time, which often ended in having the women of the defeated tribes become slaves and concubines for the winning tribe, a father who lived in fear of bringing such a shameful future upon his tribe was inclined to kill his daughter as soon as she was born. In this way, he thought he protected himself and his tribe from the
shame that could come upon him if ever his tribe was defeated in a battle. Some tribes believed that girls were the angels of God, and therefore killed them so that they would join their God. The Holy Qur’an has recorded this fact in the following words:

“And they assign daughters for God! -Glory be to Him! -and for themselves (sons, -the issue) they desire!”

In pre-Islamic Arabian social system, one of the most barbaric and inhumane common customary practice was that girls were buried not only as infants, in an unthinkable action by their fathers, but some girls were even buried at older ages. The Holy Qur’an describes this phenomenon of female infanticide in the following words:

“When news is brought to one of them, of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has had! Shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! What an evil (choice) they decide on?”

Similarly, the Holy Qur’an describes the feeling of the father during the period of ignorance (jahiliya) at hearing the news of the birth of a daughter in the following words:

“What! Has He taken daughters out of what He Himself creates, and granted to you sons for choice? When news is brought to one of them of (the birth of) what he sets up as likeliness to (God) Most Glorious, his face darkens, and he is filled with inward grief!”

According to Omar Ibn Khattab, the second Caliph of Islam, there were two things in the period of ignorance (al-jahiliyya) that made him cry and laugh. The one that made him cry was when he took a daughter of his to bury alive and, while he was digging in the ground, she would wipe the dust off his beard, not knowing what would happen to her. The one that made him laugh was when he used to make Gods out of dates and put them by his bed to guard him while he was asleep but then eat them in the morning when he woke up.

Arabs of al-jahiliyya used to think of different ways to kill their daughters. Some of them would ask their mothers to dress their daughters in their best clothes and decorate them with jewellery as if the father were taking them out for a visit. Instead, he would have found a well in the desert and taken his daughter and thrown her alive in the well and then filled the well

15 Holy Quran XVI:57.
17 Holy Qur’an, XLIII:16-17.
18 Supra Note 2 at 24.
with dirt.\textsuperscript{19} But after the advent of Islam, the \textit{Qur’anic} teachings condemned and banned the practice of female infanticide completely and declared it as a great sin.

\textbf{1.2.2. Pre-Islamic Arabia and Marriage}

Marriage, in pre-Islamic Arabian society, was a loose institution and no strict rules were to be followed for it being valid. Every marriage was valid until it did not hurt any tribe in one way or the other. Marriage, in pre-Islamic Arabian society, was a matter of personal discretion for men. The main reason behind this was the variation of customs from one tribe to another. Needless to reiterate that the pre-Islamic Arabian society was a tribal society where tribes were the main entity and focus of concern, members of every tribe worked hard and provided all the necessary labour that was required for the development of the tribe. So, marriage was also directly or indirectly related to the development of one’s tribe as it was a source for increasing the number of members of the tribe and ultimately increasing its strength and power.\textsuperscript{20} Marriages were solemnised at the will of the man or the family only and women had no say in their marriages. Also, there existed many multiple and loose form of unions and promiscuity which could hardly be called marriages in the true sense. Temporary marriages, in many forms, were also quite common among the Arabs.\textsuperscript{21} A man was allowed to keep as many concubines as he wished or could afford. Authoritative source mentions two reasons for Arab’s practice of keeping concubines: \textsuperscript{22}

1. The first reason was that most of the childless wives preferred their husbands to live with a slave girl than marrying another woman and when the slave girl gave birth to a child, it was identified as the child of the wife of the master of that slave girl.
2. The other reason for which the practice of keeping concubines was so much common was that marriage was more costly than keeping slave girls as concubines.

Woman in pre-Islamic Arabia was never a free agent in her marriage. It was the father or other male guardian who gave her in marriage to any one whom he wished and her consent was of no importance. There was no limit of number of wives that a man could have.\textsuperscript{23} A man could marry two sisters at the same time. Just like the denial of woman’s right to express her opinion on any important matter regarding her life, she was also not allowed to give utterance

\textsuperscript{19} \textit{Ibid}.
\textsuperscript{20} \textit{Supra} Note 8 at 32.
\textsuperscript{21} \textit{Supra} Note 3 at 25-26.
\textsuperscript{23} A. A. A. Fayzee, \textit{Outlines of Muhammadan Law} 10 (Oxford University Press, New Delhi, 2003).
to her own will or desire in the matter of being given in marriage. Her father or elders of the family could give her away in marriage to whomsoever they liked. She could not refuse or even protest against the decision of her marriage if she did not like the decision of the elders and her objection in this particular matter was considered extremely undesirable and most inappropriate. It was usually justified by saying that due to her immaturity and lack of wisdom, giving her a free hand in the matter of her marriage is against her own interests and her father or guardian, being more experienced and having better knowledge of men, was less likely to take erroneous decision in this matter and moreover, he was her well-wisher and could not deceive her.\(^{24}\)

It is evident from the authoritative source material that the women of Mecca were relatively at better position in terms of marriage than that of the women of Madina although the marriages by capture and purchase were practiced in Mecca too. The Bedouin women had a better position in this regard and enjoyed more freedom and asserted themselves more strongly than the women of the sedentary tribes. The reason for such a liberated position of Bedouin tribes’ women in matters of their marriages, as compared to the women of sedentary tribes, was being their nomadic lifestyle due to which the strict seclusion of women was impossible. Their nomadic lifestyle allowed for the development of a more independent female character and these women, in spite of living in polygamous families, could choose their husband freely and could also leave him if not treated well.\(^{25}\) But this was the case only within certain tribes and majority of women were not allowed to choose the husband of their own choice or were not even consulted while choosing a groom for them. They had no say in their own marriage and it was the father or guardian who selected the groom for them and gave them in marriages to anyone whom he wished. Abdul Rahim describes four types of marriages that were common in the pre-Islamic Arabia:

\textbf{1. Nikah-e-Aam:}

This form of marriage was almost similar to the present form of marriage which has been approved by Islamic Law after effecting necessary reforms therein. In this form of marriage, the man used to ask another man for the hand of his ward or daughter to him in marriage and then married her by paying her dower.\(^{26}\)

\(^{24}\) Dr. Muniruddin Qureshi, \textit{Status of Woman in Islam} 173 (Reference Press, New Delhi, 2003).

\(^{25}\) \textit{Supra} Note 1 at 122.

2. **Nikah-e-Istebza:**

This was a custom according to which the husband sent his wife to a famous man (naming him) for sexual intercourse and remained away from the company of his wife until she conceived from that man. Upon the appearance of her pregnancy, she could return back to her husband. This form of sexual activity originated for fulfilling the desire of securing a noble seed for the glorification of his clan.\(^{27}\)

3. **Nikah-ul-Jama:**

Under this form, several men (less than ten in number) used to visit a woman for sexual intercourse with her. In case, she conceived and delivered a child, she was entitled to call them and they could not refuse to come. She would then tell them that she had delivered a child of so and so (naming him, whomsoever she chose). The child would then be ascribed to that man whom she named and he was not allowed to disclaim the paternity of that child.\(^{28}\)

4. **Nikah-e-Baghaya:**

Under this form, a number of men used to visit a woman for having sexual intercourse with her and she was customarily bound to entertain them and was not allowed to refuse any one. These women were basically prostitutes and used to fix flags on the doors of their tents to invite men for sexual intercourse. If a woman got pregnant and delivered a child then those who frequented her would be assembled and physio-gnomists used to decide that to whom the child belonged.\(^{29}\)

Imam Bukhari has mentioned other forms of marriages also like marriage by purchase and by capture that were prevalent in Arabia before the emergence of Islam. In marriage by capture, the man used to carry away a woman of his choice by force by parting the woman’s hair with his spear and by lifting her over the threshold. Such woman and her children (if any) automatically became the members of his tribe and he had complete authority on her except that he might not sell her in an open market. In the custom of marriage by purchase, the man used to pay a certain sum of money to the father or the brother or to the nearest kindred of the woman whom he wished to marry and could take her away in marriage. In this form of marriage, he also paid a certain amount of money to the woman herself and it was commonly

\(^{27}\) *Ibid.*  
\(^{28}\) *Ibid.*  
\(^{29}\) *Ibid.*
As mentioned above, taking two sisters, simultaneously, in marriage was a frequent custom in pre-Islamic Arabian society and such form of marriage was termed as *nikah-bainul ukhtain*. Arabs could inherit their step-mothers like any other property after the death of their fathers and could marry them as a matter of right. This custom was termed as *nikah-bil-um*. There was also another custom under which they could exchange their wives by concealing their marriages and defending this with the plea that there was no harm in the concealment of marriage and this custom was known as *nikah-ul-khadan*. *Muta* marriage was also a part of the pre-Islamic Arabian culture. Keeping slave girls for having sexual intercourse with them was also a common practice and there was no specific number of how many slave girls one could have. It totally depended upon the means, opportunity and the inclination of men who wanted to keep them. Another interesting thing of being noteworthy is that, in pre-Islamic Arabian society, the marriage with the wife of one’s adopted son or his daughter was not permissible as the institution of adoption was a legally recognised custom which created a sort of relationship like that of a biological connection between the adopter and the adoptee. But Islamic Law prohibited this custom by declaring that there is no blood relationship between the adopted son and the adopter and hence, no natural relationship can be created among them.

Out of all these forms of sexual activities that were prevalent in pre-Islamic Arabia, only the first form i.e., *nikah-e-aam*, up to some extent could be regarded as a marital relationship and all the other were just the forms of prostitution that were recognised by the customs. Therefore, one can say that the relationship of sexes, which were prevalent in the pre-Islamic Arabian society, was not in a well-regulated form and was totally in an uncertain state.

### 1.2.3. Pre-Islamic Arabia and Polygamy

The institution of polygamy existed since the ancient times throughout the world on a large scale and pre-Islamic Arabia was no exception to the same. In pre-Islamic Arabian society, unlimited numbers of polygamous marriages were performed and there was no strict rule for its regulation. An Arab man could have as many wives as he wanted to have and there was no condition to be fulfilled for entering into such marriages. Polygamy, in pre-Islamic Arabia, was totally an unregulated and unrestricted institution and the number of wives that a man

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31 *Supra* Note 3 at 28-29.
32 Dr. Mufti Samiya Tabasum, *Status of Muslim Women in India* 7 (Regal Publications, New Delhi, 2013).
could marry was dependent upon his personal choice and resources. This was not only the case of the members of the pagan tribes of the Arabian society that they entered into polygamous marriages but the native Christian and Jews of Arabia were also a polygamous community.\textsuperscript{33}

Even the Holy Prophet’s (PBUH) immediate ascendants i.e., Qussi bin Kalab (his great great-grandfather), Hashim (his great-grandfather) and ‘Abd al-Mutlib (his grandfather) had a number of wives.\textsuperscript{34} Authentic evidences of the history prove that many of the closest companions of the Holy Prophet (PBUH) were polygamists and had number of wives. Those include Abu Bakr (R.A.) and ‘Umar (R.A.), the daughters of both of whom were married to the Holy Prophet (PBUH). Those, who refused to accept the teachings of Islam, like Abu Jehl, Abu Lahab, ‘Utba, Umaiya, Abu al-Bukhari, etc. were all polygamists and had a number of wives. In fact, one hardly comes across a name among the people who were Holy Prophet’s (PBUH) kith and kin, companions, followers, opponents or enemies and were not polygamists and had only one or two wives.\textsuperscript{35}

Thus, it is evident from authentic historical sources that polygamy was an order of the day throughout the history of Arabia and there was no limit to it. It was a system of unrestricted, unprincipled and undisciplined polygamy that prevailed throughout the length and breadth of the pre-Islamic Arabian society and also remained into existence even long after the Holy Prophet’s (PBUH) declaration of prophet-hood. In fact, it was indeed a very complicated net of polygamous relationships that was prevalent all around the world and it was not restricted to any particular region or religion.\textsuperscript{36}

\textbf{1.2.4. Pre-Islamic Arabia and Dower}

The concept of dower that existed in pre-Islamic Arabia was totally different from what we understand by it today. The amount of dower was not paid to the bride but to her father or brother as they considered it their right for the services they gave for her upbringing and look-after.\textsuperscript{37} Woman in pre-Islamic Arabia was not entitled to claim her dower because she

\textsuperscript{34} The facts relating to the polygamous marital status of the ascendants of the Holy Prophet (PBUH) are found in numerous biographies of the Holy Prophet (PBUH).
\textsuperscript{37} Supra Note 3 at 29.
had no right over it. The Arabs practically used to deprive their women of dower in the following ways:

1. The guardian of woman regarded her dower as his own property and took possession of whatever she was given as dower. Though, Arabs usually regarded daughters as a disgrace to themselves and the news of their birth used to overwhelm them with grief and shame but from this angle, it was a source of happiness also to them that her dower would increase their wealth. That is why they called the daughter *al-nafijah*—the means of increase, and on her birth they were congratulated: “Happy birth to you of the one who will increase your wealth”. Since they accepted only camel as dower, this meant that on marriage she would get camels for them as her dower and that would thus increase their wealth of camels.\(^{38}\)

2. It was also a common practice that on the death of a person, his son from a different mother would cast a sheet of cloth over his widow and would declare himself the owner of that widow also as a part of inherited property. This declaration confined only his claim over that woman. Neither any other person could claim her nor could she herself do anything against the step-son’s will or claim. If he was serious about marrying her, he could do so against the dower earlier paid to her by his deceased father. And in case, he consented to give her in marriage to any other person, her dower would be only his, thereby totally depriving her of her legitimate right.

3. At times, taking advantage of the weak position of women in pre-Islamic Arabia, they were given less than the usual dower in vogue. A’isha says that an orphaned girl under the care of a person, if she was beautiful and had property of her own and the guardian wanted to marry her, he would do so in preference to other suitors, and against much less dower than others were ready to pay her.

4. During the period of *jihiliya*, there was yet another stratagem of getting rid of a woman’s dower which has been called ‘*shighar*’ in *hadith*. This was a clever trick played on poor helpless women in as much as a person gave his daughter or sister in marriage to another person on the condition that he, in turn, would give his daughter or sister in marriage to him. And in this cross-marriage, neither of them paid any dower (one cancelling another).\(^{39}\)

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\(^{38}\) Ahmad Muhammad Al-Haufi, *Al-Mar’ah fi al-Sab’ar al-Jahili* 151 (Cairo, 1954).

5. There was yet another custom by which a man would deprive his wife of her right to have dower and it was in the form of a marriage called *zawaj al-badal* (i.e., mutual exchange of wives). Under this custom, a man would offer to forgo his wife to another man by asking him to forgo the latter’s wife in his favour in return. This exchange took place without offering any *mahr*.

6. Another form of marriage, by which a woman’s right to her dower was taken away from her, was *nikah al-zainah*. Under this form of marriage, a man would marry a woman who was captured during war without the recitation of *khutba* and the payment of any amount of *mahr* to her and the woman had no choice but to marry him as she had no right to refuse such marriage because she was his captive.

Dr. Mufti Samiya Tabasum describes in her book ‘*Status of Muslim Women in India*’ the position of women with regard to their *mahr* in the following words:

“*Mahr* in *jahiliya* period was considered as a bride price, just as in other tribal societies. At times, the marriage guardian would spend it on buying those things which the bride would take along with her to her husband’s house. And sometimes, he would keep the entire amount for himself without spending any of it. This was because he thought it was his right to do so.”

There was no upper limit up to which the *mahr* of a woman could be fixed. It could be fixed taking into consideration the financial status of the person concerned and also the social status of the bride. The amount of *mahr* varied from a few camels to many pounds of gold. e.g., the grandfather of the Holy Prophet (PBUH), Abd al-Muttalib, gave 100 pounds of gold and also 100 she-camels as dower to his wife, Fatimah bint Umru. While Harith bin Salil gave, by way of dower, 1000 dirhams and 150 camels to his wife, Zaba bint Alqama. The Holy Prophet (PBUH), on the other hand, is reported to have given 20 young camels or 500 dirhams or about 100 grams of gold to his wife, Khadija by way of *mahr*.

### 1.2.5. Pre-Islamic Arabia and Divorce

The Arabs of *jahiliya* period were well-acquainted with *talaq*, as they were acquainted with the institution of marriage and the practice of divorce was very common in pre-Islamic Arabian society. In the pre-Islamic Arabian society, a man could divorce his wife for any

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41 *Id.* at 564.
42 *Supra* Note 32 at 15.
reason. For instance, even if the wife spoke highly of her people, her husband would divorce her and Hassan bin Thabit has been recorded by the historians to have divorced his wife for the same reason. Also, a man could divorce his wife only on the ground that he did not find the love in her for which he was looking, or there was lack of friendship and intimacy between them. Historians report that A’asha divorced his wife for the said reason only. Sometimes divorce took place on the ground that the woman a man married, by thinking that she was young and beautiful, turned out to be old and ugly. The instance of such a divorce is that of Lajham who divorced his wife after he came to know that she was not like he thought of her while marrying her as he married a woman Bani Faq’as thinking that she was young and beautiful. This shows that during the pre-Islamic era, divorce was a power for the dissolution of marriage which was mostly in the hands of men but exceptionally, women too could persuade their husbands to grant divorce in their favour and that was based on certain terms and conditions. The instance of such a divorce is that of Al-Hujjal al-Samhi, who, on becoming poor, divorced two of his wives. On the other hand, the women of high status could stipulate the condition of the right to initiate divorce at the time of marriage and they would live with their husbands as long as they liked and if they liked, they could initiate divorce under the power given to them.

Abdul Rahim mentions at least four forms of divorces that were prevalent in Arabian society during the days of Jahiliya. These were talaq, khula, ila and zihar. Smith describes in his book ‘Kinship and Marriage in Early Arabia’ the system of talaq in pre-Islamic Arabia in the following words:

“In Arabian society, the husband exercised his right to divorce his wife, known as talaq, unconditionally at any moment with a triple formula, a right he still enjoys under Islamic Law, though admitted as unpleasant but still lawful.”

An eminent companion of the Holy Prophet (PBUH), Ibn Abbas, is reported to have said that during the jahiliya period, men had absolute power over women in matters of dissolution of marriage by way of talaq. Under this form of divorce, a man had unlimited and unrestricted power to divorce his wife and was absolutely free to divorce his wife and release himself from marital tie without any responsibility on his part. He could divorce his wife at any time.

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45 Supra Note 43 at 14.
47 Supra Note 43 at 14.
48 Supra Note 40 at 554.
49 Supra Note 1 at 269.
he wished to do so and was not required to assign any reason for the exercise of divorce and he was not under any obligation to follow any particular procedure for divorcing his wife. The use of the word ‘talaq’ was enough to break the marital relationship and this word was commonly used for this purpose. He had the discretion to decide that whether he wanted to dissolve the marriage absolutely and set woman free to remarry again with someone else or he just wanted to do the same on temporary basis. He could revoke the divorce and resume marital connection with his wife whenever he wished to do so.\textsuperscript{50} Arabs were allowed to divorce their wives as many times as they wanted to and take them back and sometimes, a man would divorce his wife ten times and take her back and again divorce her and take her back and so on. Sometimes, the husband would renounce his wife by means of what was called a suspensory divorce.\textsuperscript{51} According to Ibn Zayd, a man, in the pre-Islamic era, could divorce his wife a hundred times and still take her back without any restrictions if he so wished.\textsuperscript{52} According to another source, a man had the power to divorce his wife and take her back as many as a thousand times.\textsuperscript{53}

\textit{Ilā} was yet another form of divorce which was prevalent in pre-Islamic Arabia by which a man could impliedly divorce his wife. Under this form, the husband used to swear that he would have nothing to do with his wife. Some people regarded this as an act of divorce which resulted in causing immediate separation while according to others, it was regarded as a suspensory divorce only. Sometimes, an Arab could divorce his wife by comparing her with the back of his mother, sister or aunt and this would result in an irrevocable divorce which was known as \textit{zihār} (literal meaning of which is ‘back’).\textsuperscript{54} This meant that he treated his wife like his mother, sister or aunt who was related to him within the prohibited degree of relationships for marriage. It becomes important to mention here that \textit{zihār} fell into the category of the worst and the most stringent form of divorce prevalent in the pre-Islamic Arabian society.\textsuperscript{55}

Dr. Mufti Samiya Tabasum mentions another form of \textit{talaq} called the ‘\textit{al’ādīl} under which a woman was restricted from marrying again with any other man without the permission of her former husband. This seemed to be a means of making money by the former husband of the

\textsuperscript{50} \textit{Supra} Note 38 at 210.
\textsuperscript{51} \textit{Supra} Note 26 at 6.
\textsuperscript{52} \textit{Tafsir al-Tabari}, Vol IV at 547.
\textsuperscript{53} Al-Razi, \textit{Tafsir al-Kabir}, Vol. II 373 (Cairo).
\textsuperscript{54} \textit{Supra} Note 26 at 6.
\textsuperscript{55} \textit{Supra} Note 32 at 10.
woman from the one who wanted to marry such a divorced woman. Under this form of divorce, a woman was forced by her former husband not to remarry. A man if, while after marrying a free-woman, could not carry on with her, could divorce her with the condition that she would not remarry anyone without his permission. In case, someone wanted to marry such a woman then he had to seek the prior permission of her former husband by offering him something in persuasion for marriage. It was up to the former husband whether to permit his former wife for remarriage or not and if he agreed then she could marry another man otherwise she had no right to go against his restriction put upon her.56

As already mentioned earlier that in pre-Islamic Arabia, sometimes wives of noble families (both among the Arabs and the Jews) would reserve, at the time of marriage, the power to divorce themselves but this was an exceptional case only and not a frequent custom as the ordinary women could not even think of laying down such a condition because it was hardly available to women of other contemporary societies.57 These wives could exercise this power and pronounce separation by merely shifting the position of their tent for instance, from the West to the East or from the direction of Yemen to that of Syria and this used to act as a sufficient intimidation of the fact that the wife doing so had repudiated her marriage with her husband.58 When the husband would see that, he understood that his wife had divorced him and he would not go to her. This trend was popular mostly among the Bedouins in villages who used to live in the tents made of wool and among them, these tents were regarded as the property of women.59 But there are certain other instances provided in Ibn Habib’s ‘Kitab al-Muhbir’, which prove that there were some other women also who were known for having the exclusive right of divorcing their husbands if they wanted to do so and were in full control of their own affairs. The first instance of such a woman was that of the mother of ‘Abd al-Muttalib (Holy Prophet’s (PBUH) grandfather) Salam bint ‘Umru, who would never marry a man without the condition that she had to be given the full authority of divorcing her husband, if she disliked anything in him. Another instance of such a woman, who kept and controlled the power of dissolution of marriage in her own hands, was that of Fatima bint al-Khaushab, who was known for having more children than any other woman and entering into contracts of marriage at the fastest possible pace.60 But this was the case with only a handful of women and generally, the wife, among the Arabs, had no corresponding right to release

56 Sunan Abu Dawud, Vol. II.
57 Supra Note 32 at 8.
59 Supra Note 43 at 102.
60 Ibn Habib, Kitab al-Muhbir 398-399 (Hyderabad, 1942).
herself from the bond of marriage. But her father or guardian, by a friendly arrangement with her husband, could obtain a separation by returning the dower if had been paid or by agreeing to forego it if not paid. Such an arrangement was known as *khula* and by this, the marriage tie would be absolutely dissolved.\(^{61}\) As regards *khula* or divorce at the request of the wife, it only yielded power as women were considered as husband’s property and as such could not act on their own. So, one can speak of *khula* as a friendly arrangement between the husband and wife’s father or guardian, by which the later repaid the dower and got back his daughter.\(^{62}\)

Some evidences show that *talaq* (triple divorce), after which, a wife was prohibited from enjoying the conjugal relations with her husband nor could she wed another man, could be exerted from the husband by the kin of the woman who could have other plans for her. In pre-Islamic Arabia, a man could take a pregnant divorced woman under an agreement with her former husband. In this way, the wife in pre-Islamic Arabia was treated totally as her husband’s property and his heirs could prove their claims over his divorced wife.\(^{63}\) Hence, one finds that women generally had no right to divorce in pre-Islamic Arabia. Divorce was, in fact, used by men as an instrument of torture against their wives. Men divorced their wives out of a sudden caprice or whim. They could arbitrarily accuse their wives of adultery, dismiss them and leave them with such notoriety as would deter other suitors while they themselves would go exempt from any formal responsibility of maintenance or legal punishment.\(^{64}\)

1.2.6. Pre-Islamic Arabia and Plight of widow

A widow is the woman who loses her husband, who used to support her in one of her life stages. It does not mean that she has lost all her rights to enjoy life and to live it in a dignified way because the death of the husband does not mean the end of widow’s life. But history shows that throughout the world, widows had suffered the most in the hands of the society and they had always been forced to live the rest of their lives in the chains of this new title of ‘widowhood’ e.g., custom of ‘*sati*’\(^{65}\) prevalent in ancient Indian society. And the same was the case with the Arabian society with no exception. The condition of widows, in pre-Islamic

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\(^{61}\) Supra Note 26 at 6.
\(^{62}\) Supra Note 1 at 92.
\(^{63}\) Id. at 94.
\(^{65}\) ‘*Sati*’ was a custom in which the widow was also burnt alive along with the body of the deceased husband on the same funeral pyre because it was thought that she had no right to live if her husband is dead and she too would have die along with him.
Arabia, was worse than any other woman there. They were not only deprived of their right to inheritance but were also treated lower in status than animals. If a man died and had more than one wives, his first son from the other wife had the right to marry his step-mother. This is because she was considered a commodity to be inherited. He could even get her married to any man whomsoever he wanted to for an amount of dower and also to deprive her of any share of inheritance in her deceased husband’s property.66 This maltreatment was not restricted up to this extent only and widows were deprived of their basic necessities too which was even extended to food also and there were some food items which they were not permitted to eat, e.g., milk.

A widow had to remain celibate for one complete year before she could get married again. She was banned from cleaning herself or combing her hair, and was supposed to stay in the worst corner of her house. Only after one year of seclusion and living in such unsanitary conditions, was she permitted to leave her house. However, she was forced to go out in that miserable, unclean and unkempt condition. The story had it that a dog would die because of her bad breath if she sighed on his face.67

Widows and their children live with a shattered psyche for a long time. Of all the problems associated with widowhood, economic burden is the most intimidating. It is the duty of the woman to care and provide for her children.68 But widows, in the pre-Islamic Arabia, were exploited to such an extent that all of their husband’s property was used to be taken by the relatives of their deceased husbands and they were left with nothing in their hands and so they were unable even to maintain themselves and their children. It is said to be reported by one of the companion of the Holy Prophet (PBUH) that the wife of Sa’ad bint Rabiy came with her two daughters by Sa’ad bint Rabiy to the Messenger of Allah (PBUH) and complained of her brother-in-law, who took all the property left by her husband who was martyred in the Battle of Uhud and left her with no resources to get her daughters married. The Holy Prophet (PBUH) asked her brother-in-law to hand-over the daughters of Sa’ad bint Rabiy the two-third of the property and one-eighth to his wife.69

67 Supra Note 2 at 23-24.
69 Reported by Abu Daud, *Ibn Majah, Tirmizi*. 
1.2.7. Pre-Islamic Arabia and Women’s Right to Inheritance

Women, in the pre-Islamic Arabia, were not allowed to inherit the property of their ancestors. The reason behind this was the then existing tribal culture of the Arabian society. Only men were allowed to inherit the property of their ancestors. All this was due to the reason of women’s being unable to participate in wars, as the Arabs considered men as a source of bringing honour to their tribes by being stronger and better fighters. This was the rule of most of the tribes that women had no right to inherit from their fathers or husbands or any member of the family.

“No one could inherit us except who carries a sword and protects the head.”

This saying from *al-jahiliya* excluded women from inheritance because they did not participate in wars, nor did they carry swords. In other words, only men who waged war and carried swords could inherit.\(^{70}\) This formed the basis of excluding not only of the women, from inheritance of property, but also the minors of both the sexes, old age persons and invalids and this also led to the preference of paternal on the maternal lines.\(^{71}\)

In cases where a woman did have the right of inheritance, it was usually among the tribes where there were still traces of an ancient matriarchal culture, and that too was based upon the condition of woman’s remaining with her tribe even after her marriage. In such cases, whatever she inherited, passed on to her children who belonged to her kin and stayed within the tribe. In other types of marriages, where the woman had to leave her tribe after her marriage due to the reason of her husband being the member of another tribe, then if she had any right in the inheritance, it used to be reduced as much as possible, since her inheritance would fall into the hands of another tribe. In Madina, the position of women in this regard was much worse as compared to the women of Mecca. Here, a woman could not inherit because she herself was considered as a part of her husband’s estate to be inherited by his heirs after his death. In fact, when Islam entitled to the sisters and daughters a share in the inheritance, men of Madina protested against the rule. On the other hand, Mecca being a city of trade and commerce was more advanced and hence were its laws with regard to inheritance. The reason behind this could be, perhaps, its commercial contacts with other civilizations like Palestine, Persia and Rome and their influence upon it. The perfect example of this is Hazrat Khadija (R.A.) who afterwards married the Holy Prophet (PBUH). She

\(^{70}\)Al-Muqaddim, *Al Mar’a Bayna Takriim al Islaam wa Ihaanat al Jahiliyya* 57 (Dar ibn Aljawzi, Cairo, 2005).

belonged to Mecca and was a wealthy widow who lived a perfectly independent life and was engaged in the trade of lucrative caravan.\textsuperscript{72}

The women were not only deprived of their right to inherit the ancestral property but were, by themselves, the subject-matter of inheritance being considered as a part of a husband’s estate which was to be inherited by his heirs after his death.\textsuperscript{73} It was most prevalent custom in pre-Islamic Arabia that a son would inherit his father’s widow(s) and could marry his stepmother(s) by himself. It was also very common that a son would marry his stepmother(s) with any man of his choice in order to deprive her of her share in the inheritance (in case she had any).

1.3. Social Reforms Brought by Islam

Before any other religion or system in the world, Islam gave a woman the right to choose her life partner and marry with free consent, the right to divorce in an unhappy marriage, the right to dower, the right to inherit, the right to vote and voice her opinion, the right to trade, invest and improve herself financially, the right to own, buy and sell property, the right to seek knowledge and have a good education, the right to work and has even gone further to oblige the males to maintain her in every stage of her life, whether it was a father, brother or husband. It is their duty before Allah to take care of her, to spend on her, to provide her with the food, clothing and shelter that she needs, to provide her with a good education, to protect her from anything that can harm her and to never hesitate to put their lives in stake for her, if the need calls them to do so. Islam not only does not oppress women, but actually liberates them, having given them those rights back in the 7th century which others have only gained in this century i.e., the right to own property and wealth and to maintain that in her own name even after her marriage, the right to vote, and the right to divorce.

From the start of the \textit{Qur’anic} revelation, Islam restored the rights of 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, suited to their unique abilities and strengths. Islam freed women from the shackles of oppression that were,

\textsuperscript{72} \textit{Supra} Note 1 at 80-200.
\textsuperscript{73} \textit{Supra} Note 9 at 27.
previously placed upon them. Prophet Muhammad (PBUH) defended and reinforced women’s rights throughout his mission even till the very end.\textsuperscript{74}

Islam as a new religion had appeared on the globe in the early years of 7th century A.D. in the historic Arab city of Makkah, now situated in Saudi Arabia, in a dark period of history when nothing but ruin, squalor and desolation remained of what were once great civilizations, when oppression, exploitation and the right of might prevailed, when the rights had ceased to be recognized, when superstitious and hedonic cults were followed at many places and man was still terrified of the forces of nature and gave a very low place to himself in the scheme of creation. Islam symbolizes justice and equality. Its principles eradicate injustice and exploitation from every sphere of life. Islam is not only concerned with the spiritual aspects of its followers but also with the respect of human rights and dignity.\textsuperscript{75}

\textit{Shari’ah} is an important part of Islam. It is often defined as ‘Islamic Law’ causing one to assume that it consists mostly of criminal rulings and penalties. However, \textit{Shari’ah} encompasses much more than the conventional understanding of law. While \textit{Shari’ah} provides the legal framework for the foundation and functioning of a society, it also details moral, ethical, social and political codes of Muslims at an individual and collective level. \textit{Shari’ah} or Islamic Law is the code of conduct for Muslims and is based on two main sources: Holy \textit{Qur’an} and \textit{Sunn’ah}. The Holy \textit{Qur’an} is the main basis of \textit{Shari’ah}. It states the principles while \textit{Sunn’ah} of the Holy Prophet (PBUH) provides the blue print of how to apply them.\textsuperscript{76}

\textit{Shari’ah} provides a good deal of rights to women and these rights have occupied prominent place in the scheme of Islamic affairs from the inception of Islamic message. It is no longer history to state that Prophet Muhammad (PBUH) upgraded the status of women from what it used to be and made them equal with their male counterpart throughout the period of his prophet-hood. These rights, under \textit{Shari’ah}, have been laid down without any ambiguity or question. The change brought about by Islam for enhancing the status of woman in society has been discussed by the authors of Encyclopaedia of \textit{Seerah} in the following words:

\begin{quote}
\textquote{“It is Islam which revolutionized this state of affairs not only legally and practically but also intellectually. Islam has indeed}
\end{quote}

\textsuperscript{74} Syed Hamid Mohsin, \textit{Islam- Facts vs. Fictions; Treading the Veils of Misconceptions} 162 (Salam Centre, Bangalore, 2014).
\textsuperscript{75} \textit{Supra} Note 7.
\textsuperscript{76} Syed Hamid Mohsin, \textit{Islam for You} 118 (Salam Centre, Bangalore, 2013).
changed the mentalities of both the man and woman. The concept of giving the woman her rights and a place of honour in society has in fact been created in man’s mind by Islam. The slogans of women’s right, women’s education and women’s emancipation, that one so often hears these days, are in fact an echo of the revolutionary call raised by the Holy Prophet (PBUH) of Islam, who changed man’s way of thinking for all time to come. It was the Holy Prophet (PBUH) of Islam who first taught the world that woman is as much a human being as man”.  

Regarding women, Islam gives detailed commandments that symbolize equality and justice. It 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. Islam gives dignity and protection to woman with respect to her feminine characteristics. 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. In Islam, a woman enjoys the same status as that of a man. There is no difference between man and woman as regards status, rights and blessings, both in this world and in the hereafter. If Islam stresses the division of labour between the sexes rather than sexual equality, it is because 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 Islam, are not the duplicates of one another, but the complements.  

In Islam, man and woman have the same spiritual nature. Men in Islam are one degree higher in responsibility and not in superiority. Thus, Islamic Law has upgraded the status of women to a higher degree than it was in the period of jihiliya by granting her a number of rights and privileges. In fact, there is no aspect of woman’s life that has not been covered under Islamic Law in order for women to be treated fairly, kindly and justly with respect and honour. Islam honoured women as daughters, and encouraged raising them well and educating them. Islam stated that raising daughters will bring a great reward. For example, the Holy Prophet (PBUH) said:

77 Supra Note 35.
78 Maulana Wahiduddin Khan, Women in Islamic Shari’ah 38-39 (The Islamic Centre, New Delhi, 2010).
79 Dr. Zakir Naik, Rights of Women in Islam- Modern or Outdated 19 (Adam Publishers and Distributers, New Delhi, 2010).
“Whoever takes care of two girls until they reach adulthood, he and I will come like this on the Day of Resurrection,” and he held his fingers together.81

The Holy Qur’an condemned the hard-heartedness of the Arabian parents towards their female child and granted her the right to live and declared that whoever lays hands on this right of her (to live), will have to account for this felony of his.82 Islam abolished the evil and cruel custom of burying the female children alive or killing them in infancy. Poor people in pre-Islamic Arabian society used to get disheartened upon hearing the news of the birth of female child and disposed them off by killing them because they were considered as an economic burden on their families. Islamic Law came to their rescue at a time when the whole Arab was in darkness and declared their thinking as evil and sin and abolished this cruel custom. The Holy Qur’an forbids the evil practice of female infanticide in the following words:

“And kill not your children of fear of poverty. We shall provide for them as well as for you. Surely, the killing of them is a great sin.”83

The Holy Qur’an says regarding the birth of daughters:

“To Allah belongs the kingdom of the heavens and the earth. He creates what He wills. He bestows female (offspring) upon whom He wills, and bestows male (offspring) upon whom He wills.”84

“But He bestows both males and females, and He renders barren whom He wills. Verily, He is the All-Knower and is Able to do all things.”85

Allah has declared the slaying of daughters as such a heinous crime that on the Day of Judgement, He would not even talk to their murderers. Allah would simply take evidence of the girl-child who was buried alive and would punish her murderer very severely.

Allah says in the Holy Qur’an:

“And when the female (infant) buried alive (as pagan Arabs used to do) is questioned: For what sin she was killed?”86

Islam considers the birth of a female child as a blessing and a protection against the parents from the hell-fire. The Holy Prophet (PBUH) said:

81 Reported in Musnad Ahmad.
82 Supra Note 24 at 169.
83 Holy Qur’an, XVII:31.
84 Holy Qur’an, XLII:49.
85 Holy Quran, XLII:50.
86 Holy Quran, LXXXI:8-9.
“They (female children) will be a shield (for parents) for Hell.”

A’isha (R.A.) is reported to have said:

“I have seen none more resembling in manners, guidance and conduct (in another narration-in talk and speech) of the Holy Prophet (PBUH) than Fatimah (A.S). Whenever she (A.S.) came to him (PBUH), he (PBUH) used to stand up for her and then take her by the hand, kissed her and would make her sit in his seat.”

The Holy Prophet (PBUH) is reported to have said:

“The person who is put to a test because of the birth of the daughters and then he treats them generously, they will become a means of rescue for him from Hell.”

He (PBUH) also said:

“If anybody has got a female child, and then does neither bury her alive, nor treats her unjustly, nor prefers his children (meaning male children) to her, Allah will admit him in Paradise.”

Imam Bukhari has mentioned a hadith reported by A’isha (R.A.):

“A woman came to me, while there were two of her daughters with her. She was begging of me, but found nothing from me except one date which I gave her. She divided it between her two daughters and she herself did take nothing out of it. Then she got up and went away. The Holy Prophet (PBUH) came and I informed him (of it). He (PBUH) said: Whoever suffers for anything on account of these daughters and (still) treats them with kindness, they will be a shield for him from Hell.”

At another place, the Holy Prophet (PBUH) said regarding the maintenance of a daughter, who has been divorced by his husband, in the following words:

“Shall I not teach you the best form of charity?- (maintaining) your daughter who has been returned to you, who has got no earning member except you.”

It is, thus, well-established from the above verses of the Holy Qur’an and the Traditions of Holy Prophet (PBUH) that daughters have been accorded a high status in Islam and so no one must kill them or treat them while holding a grudge in his/her heart. On one hand, the

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87 Reported in *Bukhari*, *Muslim*.
88 Reported in *Sunan Abu Daud*.
89 Reported in *Sahih Muslim*.
90 Reported in *Sunan Abu Daud*.
91 Reported in *Sahih Bukhari*.
92 Reported in *Ibn Majah*.
perpetrators of this heinous crime were threatened with hell-fire and on the other hand, those abstaining from it and treating their daughters on an equal footing with the sons were given the glad tidings of entry to heaven. But the practice of killing daughters continues till date and not only in pre-Islamic Arabia, but in the twenty-first century also, still many Muslims blame their luck or curse their wives for producing girl child and do not regard them as a blessing from Allah. People, in modern era, have started using different means to commit female infanticide and various reports are available which prove that the crime of female infanticide is committed on a large scale even by the Muslim families. It is shocking to note that how can a Muslim claim to be in love with Allah and His Prophet (PBUH) and at the same time committing such a heinous crime against Allah’s will.

Along with the above moral backings, Islam also instructed men to respect the right of woman to live, just like that of men, and for any breach of this ordinance armed her with qisas\textsuperscript{93} (retaliatory punishment- like for like) for which the Islamic State was made responsible. This law covers both man and woman.\textsuperscript{94} The Holy Qur’an says regarding the right to life as under:

\begin{quote}
"And We ordained therein for them: “Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.” But if anyone remits the retaliation by way of charity, it shall be for him an expiation. And whosoever does not judge by that which Allah has revealed, such are the Zalimun (polytheists and wrongdoers- of a lesser degree)."\textsuperscript{95}
\end{quote}

All his life, the Holy Prophet (PBUH) has worked to raise the status of daughters and promised high rewards for those who bring up daughters and do not prefer sons over them. He (PBUH) himself set a good example by holding his daughter Fatimah (A.S.- as reported by A’isha (R.A.)- in high esteem and respect and by according her the best treatment. Regarding the maintenance of daughters, the author of \textit{al-Hedaya} notes that it is the duty of a father to provide for the maintenance of his infant children, and the mother is bound to suckle her infant at breast in absence of a nurse. But the duty of a father of maintaining his male children is only restricted until they have not gotten any means of their own but in case of daughters, he is duty bound to maintain them till their marriage, irrespective of the fact that

\textsuperscript{93} ‘Qisas’ means that if somebody is oppressed or suffers an excess, he or she has the right to seek redressal, so much so that if some innocent person is murdered, his or her relatives have the right to retaliate and take the life of the murderer.
\textsuperscript{94} Supra Note 24 at 170.
\textsuperscript{95} Holy Qur’an, V:45.
they have got their own means and can maintain themselves. If the father is poor and incapable of earning, the mother, if she is rich, is bound to maintain her children.\textsuperscript{96}

Not only the right to life but also by declaring the right to education as the most basic right, it was the Islamic Law that opened the doors of education for women by removing all the impediments and promoting its cause. Education is so basic for the human existence that no society or community can progress without it. It is impossible to progress without education as the progress of a human being is totally associated with it, whether he be a man or a woman. If man is not equipped with knowledge, neither would he be elevated in knowledge nor will he be able to progress materially. But, history bears testimony that for a sufficiently long time period, education remained the domain of men only and women were kept away from its access as it was not deemed necessary for them. Among men too, it were only some specific classes who could get benefitted by it. All along this period, the women lived in the darkness of ignorance and were far from the high pedestal of learning and knowledge.\textsuperscript{97}

Given that knowledge and information forms the very essence of human sustenance, it is no surprise that the ‘right to education’ is considered to be of a sacrosanct nature.\textsuperscript{98} The importance of seeking knowledge in Islam can be understood from the fact that the very first verse that was revealed to the Holy Prophet (PBUH) instructed him to read. And some other verses that were revealed to him (PBUH) soon after the first one also instructed the same. Hence, the Holy Qur’an says:

\textit{“Read: In the name of your Lord Who has created (all that exists)- Has created man from a clot (a piece of thick coagulated blood). Read! And your Lord is the Most Generous- Who has taught (the writing) by the pen- He has taught man that which he knew not.”}\textsuperscript{99}

The Holy Prophet (PBUH) made it obligatory for every Muslim male and female to acquire knowledge.\textsuperscript{100} According to another hadith, he is reported to have exhorted his followers to search for knowledge though they may have to go as far as China for the same.\textsuperscript{101} In another Hadith, the search for knowledge is reported to be described as expiation for one’s sins.\textsuperscript{102}

\textsuperscript{96}Charles Hamilton, \textit{The Hedaya- Commentary on the Islamic Laws} 297 (Kitab Bhavan, New Delhi, 1994).
\textsuperscript{97}Supra Note 24 at 172.
\textsuperscript{98}Rajashree Rajasekaran, “Education as a Human right” 2(3) IJRA 297 (2014).
\textsuperscript{99}Holy Qur’an, XCVI:1-5.
\textsuperscript{100}Reported in Ibn Majah.
\textsuperscript{101}Reported in Baihaqi.
\textsuperscript{102}Reported in Tirmizi.
Allah has also commanded His Messenger (PBUH) in the Holy Qur’an to pray in these words:

“… and say: “My Lord! Increase me in knowledge”. »103

Islam drew the attention towards female education by declaring it an act of reward in the Hereafter. Islam made obligatory the seeking of knowledge and educating themselves for all the humans with no difference between man and woman. The Holy Prophet (PBUH) said that:

“Seeking knowledge is obligatory upon every Muslim”104

The word ‘Muslim’ here has been used in the generic sense with no special reference to men only and no differentiation has been made between males and females. Islamic Law has made it obligatory for every man and woman to acquaint himself/herself with knowledge and education because it is not acceptable to it that half of the humanity should remain ignorant, stupid and inactive and live under the command and domain of the other half. There is a great saying which clearly lays down the importance of educating a female in the society:

“Educate a man, you educate a person. Educate a woman and you educate a family. Educate a family and you educate the Ummah.”

Hence, the injunctions of the Holy Qur’an and Sunn’ah, with regard to the seeking of knowledge and education, are equally applicable to men and women. Islamic Law has declared the right to education as a natural right of both the sexes and so, its access should not be restricted to anything else than the innate talent and human predisposition. Islam considers it a case of utter stupidity, deceit, injustice, ignorance and barbarity to preclude women from the means of expressing their innate talents.105

It should be noted that when it comes to seeking knowledge and education, Islam does not make any distinction between religious and non-religious education. In fact, it encourages its followers to enlighten themselves with the knowledge of both, i.e., knowledge of their religion as well as of other branches.106 Often Muslims (not all but most of them) claim that under Islamic Law, women are entitled to educate themselves with the religious education

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103 Holy Qur’an, XX:114.
104 Reported in Al-Tirmidhi.
only. But this is not true and, in fact, Islam wants women to enlighten their hearts with knowledge of every kind to make their lives better by enhancing their mental and psychological maturity that is brought about through education only. Thus, one can say that every woman is duty-bound under Islamic Law to enlighten herself with the knowledge of religion, science, mathematics, history, politics, business, law, physical education, crafts and skills, etc. so as to enable her to train her mind in logic and knowledge of the exact nature of things.\textsuperscript{107}

Further, it is also evident from many books of \textit{ahadith} that the Holy Prophet (PBUH) always took very keen interest that women should seek knowledge. In fact, he (PBUH) himself used to teach them and always encouraged his companions also to teach the women of their household. The wives of the Holy Prophet (PBUH) and other learned women companions also used to teach women and played a great role in the spread of learning the knowledge of the Holy Qur’an. Islamic history is full of the names of such women who taught others the knowledge and contributed a lot in the development of the society by various means. A’isha was well-versed in the commentary of the Holy Qur’an (\textit{Ilm-e-tafsir}) and had a great knowledge of \textit{hadith}. Among others, Umm ‘Atiyah, Asma’ bint Abi Bakr, Umm Hani and Fatimah bint Qais were also great narrators of \textit{hadith}. In jurisprudence, A’isha had few equals and Umm Salamah also gave many legal decisions. Among others, Safiyah, Hafsah, Umm Habibah, Juwairiyah, Maimunah, Fatimah Zahra, Umm Sharik, Umm ‘Atiyah, Asma’ bint Abi Bakr, Haila bint Qanif, Khoulah bint Tuwai, Umm al-Darda’, ‘Atikah bint Zaid, Sahlah bint Suhail, Fatimah bint Qais, Zainab bint Abi Salamah, Umm Aiman and Umm Yusuf need special mention. Apart from the knowledge of the Islamic sciences, there were many women companions who had a great knowledge of other things. For example, Umm Salamah had complete knowledge of hidden knowledge (\textit{Ilm-e-asrar}). In the subject of speech, Asma’ bint Sakhan was famous and in interpretation, Asma bint Umis was well-known. In the fields of medicine and surgery, the names of various women companions like Rufadah Aslamiyah, Umm Muta’, Umm Kabshah, Hamnah bint Jahsh, Mu’adhah, Laila, Umaimah, Umm Ziyad, Rubayyi’ bint Muawwidh, Umm ‘Atiyah and Umm Sulaim were quite well-known.\textsuperscript{108}

Thus, it is established that during the life time of Prophet Muhammad (PBUH), there was no priority for men over women in relation to education. Women were allowed to learn all

\textsuperscript{107} Supra Note 105 at 161.

\textsuperscript{108} Ibn Sa’d, Musnad acrd Isabah.
branches of knowledge and they were allowed to choose any branch which interested them. But the high status granted to women by the Qur’anic reforms, which prevailed during the early Islamic period, did not last for long. Firstly, certain pre-Islamic customs reappeared; secondly, various social attitudes infiltrated Islamic culture from conquered people, and were assimilated as norms and then identified with Islam.\(^{109}\) The status of Muslim women started getting deteriorated. The Islamic ideal of women’s education and intellectual development was thus distorted, confused and actively opposed and the result was a disaster. The illiteracy of Muslim women reached the peak and became a widespread phenomenon in the world of Islam. Consequently, women throughout the Muslim world became ignorant not only of outside affairs, but also of their legal rights in terms of marriage, divorce and inheritance. Very often, due to their ignorance of these rights, they were cheated, deceived and misled. This rendered Muslim women unable to claim and defend the rights guaranteed to them by Islam.\(^{110}\) Females were not allowed to seek knowledge after a certain level and some people went even to the extent of banning Muslim women’s education. This ban on the education of Muslim women, however, has no legal foundation in either the scripture or the Sunn’ah. Neither the Holy Qur’an nor the sayings of the Holy Prophet (PBUH) prohibit or prevent women from seeking knowledge and having education.\(^{111}\)

No doubt, Islam has provided right to education for females but its implementation in the society has been restricted by some selfish people for their own personal means. The jurists are of the opinion that for both man and woman, basic knowledge of the faith is essential. If the woman is ignorant, it is husband’s duty to inform and educate her or make some alternative arrangement for her education. If the husband fails in this duty, she would herself seek and attain that much needed knowledge, for, it is her legal right. For this purpose, she can go out of her house too if necessary, but of course within the moral limits prescribed by Islam. The husband has no authority to stop her from such a pursuit of knowledge.\(^{112}\)

Not only this, Islam wants a woman to lead her life honourably and in a dignified manner in the society and that too with her own separate identity. Islam treats woman as an independent personality, apart from being a wife of someone and hence, grants her the right to have her own identity and also the right to protect her identity. Islamic Law does not force a woman

\(^{109}\) Supra Note 106 at 230.

\(^{110}\) Ibid.


\(^{112}\) Supra Note 24 at 172-173.
to change her identity after being married to her husband and allows her to keep her maiden name. In the words of Syed Ameer Ali:

“On her marriage, she does not lose her individuality. She does not cease to be a separate member of society.”\textsuperscript{113}

Hence, Islam wants her, over and above, to keep her maiden name even after her marriage and no one can force her to change her identity and she has the right to retain it. Thus, in Islam even after marriage (unlike other religions where a wife has to change her identity and is known by the surname of her husband along with her name), a wife retains her identity while she is with her husband. And when her husband divorces her or he dies and she marries another man, then there is no such nuisance of re-changing her names after the third or fourth times. Hence, her first name (father’s/birth) i.e., maiden name would remain her identity till her death.

Further, Islamic Law protects women from being dishonoured in any way as the attacks on the honour and dignity of a woman have been a common practice and due to her weakness, she has been unsuccessful in protecting them. There are two forms of attack on her: \textit{qazaf} (slandering) and fornication. ‘\textit{Qazaf}’ means to question the honour and dignity of some woman and tarnishing her fair name by accusing her of dissoluteness and fornication. According to Islamic Law, it is a great crime and a moral sin and as a legal measure against it, Islam has imposed severe punishment of eighty cuts of the lash for calumniating a woman with illicit sex and such a person shall be debarred from appearing as a witness. Allah says:

\begin{quote}
And those who launch a charge against chaste women and produce not four witnesses (to support their allegations), flog them with eighty stripes - reject their evidence ever after: for such men are wicked transgressors.\textsuperscript{114}
\end{quote}

Further, where a person is found guilty of forcibly raping a woman and in case he is unmarried, shall receive hundred cuts of the lash as punishment under Islamic Law and shall be stoned to death, if he is married. However, if the woman as his partner cooperates with him, she shall be liable to the same punishment.

Islam also gave the woman the right to marry with her free consent and a marriage contracted without her free consent is held to be invalid. Further, she was given her share in the property of her near relations. She was also protected from being maltreated in a bad marriage by

\begin{table}[h]
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\textsuperscript{113} & \textit{Supra} Note 33 at 222. \\
\textsuperscript{114} & \textit{Holy Qur’an}, XXIV:4. \\
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granting her the right to initiate divorce and get rid of from the unwanted bond of marriage if she was kept in the same against her wishes. Many other reforms were also brought by Islam in the existing un-Islamic customs to safeguard socio-economic rights of women which have been dealt in detail by the researcher in chapters III and IV of this research work.

Therefore, it can be summarised that Islam regards woman as an equal partner of man in his life. She performs different roles in the society along with the man. As a mother, she is regarded as the most respectable creature on this earth and it is said that paradise lies beneath her feet. As a daughter, she is the most precious asset a man can ever hold during his life as she opens up the doors of paradise for her parents. As a wife, she completes the half of her husband’s religion. She is the most beautiful companion of man who is a source of comfort for him and in the company of whom, he can find solace. Islam also recognises women’s individuality and separate existence apart from being a daughter, mother, wife or sister. This proves that 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.

1.4. Conclusion

The socio-economic status of women in pre Islamic Arabia was very low. 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. They had no say in their marriage, dower was not their personal property and they had no share in inheritance of property of their deceased relations. In fact, they themselves were considered as property to be inherited by the deceased man’s heirs.

It was Islam then that came to their rescue and that for the first time, gave them a status which the world had never thought of even to this day. Islam granted all the fundamental rights to women at a time when there was no such concept. They have been given fair liberty in matters of marriage and divorce. Islam removed various domestic and conjugal hardships by prohibiting unlimited polygamy. Islam enhanced their status in the society by giving them the right to seek knowledge and educate themselves with every field of knowledge that is considered as beneficial to the humankind. They were given the right to choose their life-partner with their free consent, without any pressure from the family members. They were also given the right to keep their maiden name even after their marriage thus, not losing their
identity after becoming the wife of a man. 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 a subject for accusation and talks. The husbands have also been prohibited to blame their wives maliciously and without any strict proof of the same.

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 alikeness; it means equality of status. 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 and a comprehensive study of the Holy *Qur’an* and *ahadith* shows that Islam has enjoined women with equal rights like that of men and they enjoy same status like them. Hence, it is clear that Islam considers women 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.