CHAPTER-I
INTRODUCTION

STATUS OF WOMEN DURING JAHILIYAH (PERIOD OF IGNORANCE)

The status of women in Islam can be properly understood only when we know their status during jahiliyah (the period of ignorance or the pre-Islamic period). The reason is obvious. No revolution can remove all traces of the past. Continuity is always there and it is this continuity which maintains an organic relationship with the past. The total severing of ties with the past, even if attempted, cannot succeed. As we will see in the subsequent chapters, whatever was reformed, or prohibited by the Islamic revolution that prevailed during the jahiliyah in respect of women, it was crept back into Islamic Shari’ah through adapt (i.e. pre-Islamic Arab practices). In fact, in many cases, the Shari’ah provisions were based on the adapt in the absence of other provisions.

What was the status of women in pre-Islamic society? Was it better or worse than in the Islamic period? The theologians maintain that women enjoyed no rights whatsoever and were treated not better than a commodity. Not only were they enslaved, but they could also be inherited as a possession. The Holy Qur’an prohibited this practice. Also after inheriting a woman from her father, a man would marry her. The Qur’an strictly prohibited this too. According to Maulana Muhammad Ali, “Among the pre-Islamic Arabs, when a man died his elder son or other relations had a right to possess his widow or widows, marrying them themselves if they pleased, without settling a dowry on them, or marrying them to others, or prohibiting them from marriage altogether.”

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1 The *Holy Qur’an* 4:19, translated in English by Abdullah Yusuf Ali, First Published in India, 2009, by Royal Publishers & Distributors Pahari Bhojla, Jama Masjid, New Delhi. The references taken by the Research Scholar is mainly based on this translation.
2 Ibid, 4:23
3 *Holy Qur’an*, English trans. with Arabic text by Maulana Muhammed Ali (Lahore, 1978), f.n. 554 to verse 4:19, p. 194
The Qur'an also mentions that the Arabs in *jahiliyah* used to bury their daughters alive.\(^4\) That barbaric custom of burying infants alive, comments a noted Qur'anic commentator, Muhammad Asad,\(^5\) seems to have been fairly widespread in pre-Islamic Arabia, although perhaps not to the extent as has been commonly assumed. The motive were twofold: the fear that an increase in female offspring would result in economic burdens, as well as the fear of the humiliation frequently caused by girls being captured by a hostile tribe and subsequently preferring their captors to their parents and brothers.

It was not that there was no opposition to this barbaric custom in those days. One of the staunchest opponent of this custom was Zayd ibn 'Amr ibn Nufayl, a cousin of 'Umar ibn al-Khattab, the second Caliph after the Prophet.\(^6\) Another was Sa 'sa 'ah ibn Najiyah al-Tamimi, grandfather of the noted Arab poet Farazdaq. He also became famous for opposing female infanticide.\(^7\)

However, the Prophet of Islam said that one to whom a daughter is born and who does not bury her alive, does not humiliate her, nor prefers a son to a daughter, will be sent by Allah to paradise.\(^8\) Another tradition of the Prophet makes hell fire prohibited to one who has to go through trials and tribulation due to a daughter and yet who does not hate her and behaves well towards her.\(^9\)

This was undoubtedly a great improvement in the status of women. Islam used both inducements and the threat of hell fire to dissuade Arabs from burying their female infants alive. This becomes all the more important when we remember that even in communist China people still prefer sons to daughters and even started

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\(^4\) The Holy Qur'an 81:9 translation as referred in supra Introduction 1 f.n.1
\(^5\) The Message of the Qur'an (Gibraltar, 1980), p.933, f.n. no. 4 to verse 41:9
\(^6\) Bukhari, *Fada 'Ashab al-Nabi*; on the authority of 'Abd Allah ibn 'Umar cf. Muhammad Asad, ibid., p. 993
\(^8\) Sunan Abi Da'ud, Kitab al-Adab, bab Fadi man *'ala Yatama.
\(^9\) Sahih Bukhari, Kitab al-Adab, bab Rahmat al-Walad wataqbiilihi
burying daughters alive when the one-child norm was enforced by the government in the early 1980s.10

Then we are also told that in the pre-Islamic period there was no restriction on the number of wives a man could have. The tribal chiefs and leaders had many wives in order to build relationships with other families. This practice of wooing other families and forging political alliances through marriage was practiced in other feudal societies too on a very wide scale. Even the Bedouins desired to have a large number of wives. The noted commentator on the Qur’an, Imam al-Tabari, tells in his exegesis that a person belonging to the tribe of Quraysh on an average married ten women. He says there were people who married ten women. He says there were people who married four, five, six or even ten women and asks who could stop him from marrying more than the others.11

When the Islamic revolution took place there were many men who had wives from the Banu Thaqif.12 Islamic historians even name them. Then came the Qur’anic revelation:

“And if you have reason to fear that you might not act equitably towards orphans, then marry from among (other) women such as are lawful to you – two, or three, or four; but if you have reason to fear that you might not be able to treat them with equal fairness, then (only) one – or (from among) those whom you rightfully possess. This will make it more likely that you will not deviate from the right course.”13

Thus the permission to marry more than one and up to four wives must be seen in this context. It was a drastic reduction in the number of wives one could take.

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10 There have been reports in the press about burying of female infants in China. This occurs when a girl is born to parents who are forbidden from having a second child due to the one-child norm enforced in China, thus barring the possibility of begetting a son, Tabari, Jam‘l al-Bavan (Cairo, 1957-69) vol. VII, pp. 534-5.
12 Qur’an 4:3 translation as referred supra p.1 fn 1
However, this is only one possible justification for polygamy in Islam. But it is a contextual justification, not a normative one, and hence its applicability must be seen as dated, not for all times to come.

When this verse was revealed many who had more than four wives (Al-Harith bin Qays had eight, Naufal bin Muawiyah had five) the Prophet advised them to opt for four and divorce the rest.\textsuperscript{14} Thus it would be seen that Islam did not take any initiative in allowing more than one wife; on the contrary, it discouraged it, restricted it and reluctantly permitted up to four wives in the then prevailing situation. So it would be unfair to accuse Islam of needlessly allowing more than one wife.

There were instances in the pre-Islamic period of men marrying five hundred, or seventy-three to ninety women.\textsuperscript{15} These figures may be exaggerated but they are indicative of the trend. I do not agree with those who tend to justify polygamy on the basis of biology,\textsuperscript{16} yet we cannot see anything out of context. It must be related to the situation in the period immediately preceding Islam.

This also brings us to the question of marriage. What was the form or forms of marriage? It must be admitted that the predominant form of marriage in the Pre-Islamic period was contractual. There was never any concept of sacramental marriage in Arabia. Islam retained this form with certain improvements. However, in the \textit{jahiliyah} period there were many forms of marriage. We will describe these so that we can have an idea as the status women enjoyed in those days.

The most popular mode of marriage was one that became prevalent after the Islamic revolution, as pointed out above. Its essential elements were \textit{mahr} (dower money given to the bride) and \textit{ijab-wa-qubul} (i.e. proposing and accepting). It was

\begin{itemize}
  \item \textsuperscript{14} \textit{Al-Qurtabi, Al-Jami 'al-Ahkam al-Qur'an} (Cairo, 1969-70), vol. V, p. 17 see also \textit{Nayl al-Awtar}, vol. V, p.160
  \item \textsuperscript{15} \textit{Kitab al-Aghani} (Cairo, 1929)
  \item \textsuperscript{16} Asghar Ali, Engineer. \textit{Islam Women and Gender Justice} pp. 101-2.
\end{itemize}
known as zawaj al-ba'alah.\textsuperscript{17} Thereafter it came to be known as nikah. This word clearly indicated marriage in the usual sense and it used to take place after mahr was paid by the bridegroom to the bride. This form of marriage was undoubtedly the best and was in keeping with the dignity of the woman.

Generally, in this form of marriage a man wanting to marry a woman would send a proposal to her father, brother, uncle or cousin. The rule implicitly accepted was that a man would send his proposal to a woman of equal status, a man of high status to a woman of equal status and a man of lowly social origin to an equally humble woman.\textsuperscript{18} On the day of the wedding people of the tribe would collect, animals would be slaughtered and orations delivered. This is what happened on the day of the wedding of the Prophet with Lady Khadijah.\textsuperscript{19}

It would be interesting to quote from the khutbah (address) delivered by the Prophet’s uncle, Abu Talib, on the day of his (Prophet’s) wedding. Abu Talib said:

Praise be to Allah who created us from the progeny of Ibrahim, and that Ismail cultivated and that made us in charge of His House (i.e. Ka’ba) and made us leaders of the Arabs. Then my brother’s son, this Muhammad bin Abdullah, no one can be weighed with him but the balance of nobility, excellence and intellect will tilt in his favour. Though he is deficient in wealth, wealth is not permanent and he has asked with enthusiasm the hand of your daughter Khadijah and he is her match and he has given twenty young she camels as dower and I, people of Quraysh, make you witness to this.\textsuperscript{20}


\textsuperscript{19} Tarikh Tabari (Cairo, 1967-69), vol. II, p. 281.

\textsuperscript{20} Ithiyan Diniyyah and Sulayman Ibrahim, \textit{Muhammad Rasulullah} (Cairo, 1958, p. 93 see also Ibn al-Jawzi, \textit{al-Wafa’ bi Ahwal al-Mustafa} (Cairo, 1966), p. 145.)
This description of the Prophet’s wedding is interesting as it underwent very little change in Islam. It clearly shows that at least one of the prevalent forms of marriage was contractual and that it was retained after the Islamic movement came into being. Of course, there were certain anomalies like the father, grandfather, uncle or elder brother exercising the exclusive right to give the bride away in marriage or the wali (i.e. a marriage guardian) taking away the mahr amount, etc. These were removed. However, one must add here that there is no proof or anything on record to show that the women were forced or compelled against their will to marry men they did not like.21

Another form of marriage was known as nikah al-dayzan. This provided that when a women’s husband died, his eldest son would be entitled to marry. If he was willing to marry her he would throw a cloth over her and would inherit her as his woman; if he desired, he could marry her or prevent her from marrying anyone else until she died. On her death, he would inherit her wealth. Or, she could free herself from him by paying him suitable compensation or he could marry her off to one of his brothers on payment of fresh mahr.22 This form of marriage – inheriting one’s father’s wives – was strictly prohibited by the Qur’an (verse 4:19).

“O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them,-except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good”.

Yet another form of marriage was muta’ marriage. This was a kind of temporary marriage in which the period of its validity was specified. After this period was over the marriage was dissolved automatically. According to the Sunni Muslims,

21 Jawwad Ali, supra 17, p. 532.
the Prophet prohibited this form of marriage after having allowed it during certain battles (ghazawat). However, the Twelver Shiʿas believe that the mutaʿ marriage was never prohibited by the Prophet. They maintain that the Qur’anic verse 4:24 permits it. "Also (prohibited are) women already married, except those whom your right hands possess; thus hath Allah ordained (prohibitions) against you: except for these all others are lawful, provided ye seek (them in marriage) with gifts from your property—desiring chastity, not lust. Seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, ye agree mutually (to vary it), there is no blame on you, and Allah is All-Knowing, All-Wise".

This form was generally resorted to during long journeys such as on trade caravans. The children of such marriages were generally known through their mothers and not their fathers as the latter would go away after the period of marriage expired. However, they did have the right to inherit their father’s property.

There was also a form of marriage known as zawaj al-badal (i.e mutual exchange of wives). One man would ask another to forgo his wife in his favour and in turn would forgo his wife in latter’s favour. This exchange took place without offering any mahr.

Zawaj al-Shighar was a form of marriage like any other common form except that no mahr was offered as the man would marry his daughter or sister to a man who would marry his daughter or sister to him. The Prophet prohibited this form of marriage; he is reported to have said ‘la shighar fir al-Islam’ there is no shighar form of marriage in Islam. This form of marriage, as can be seen, is very close to zawaj

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24 The Shiʿas maintain that the word famastamt ʿatam hints at mutaʿ (marriage)  
26 Ibid  
28 Sahih Muslim, p. 139.
al-badal. There is no mahr paid in both cases. Muslim jurists consider it invalid but some of them Hanafis for example allow it provided this name is used and mahr mithl (i.e. analogous mahr) is paid.²⁹

Another interesting form of marriage was known as zawaj al-Istibd’ә. In this the husband would ask his wife to have sexual intercourse with another man in order to get pregnant. He would refrain from going near her until she has conceived from that person. Generally, people used to send wives to men known for their bravery, generosity, etc. The child born was considered a gift from him.³⁰ It must be said this form of marriage was extremely rare among the Arabs. Usually only when a man was impotent he would resort to it.

Some people maintain that this form of marriage was practiced in respect of slave girls. These slave girls were sent to well built, strong persons so that they would conceive and give birth to healthy children who they could either employ themselves or sell in the market. Thus it was a kind of business and the motive was to make a profit, nothing more.³¹

When a man captured a woman during war and wanted to marry her it was known as nikah al-za inah. She could not refuse to marry him as she was his captive. There was no recitation of khutba nor was any mahr paid.³² Similarly this slave girl, if she bore children he could either free them, or accept them as his children or simply keep them as slaves.³³

It would be interesting also to note what categories of relations were excluded from being eligible for marriage. The Arabs had evolved certain norms in this respect. A father could not marry his daughter nor could grandfather marry his granddaughter.

²⁹ Fath al-Bari (Cairo, 1301 AH)
³¹ Supra 17 p. 539
³² ibid., p. 564
Similarly, it was not permissible for a mother to marry her own son. A grandmother could not marry her grandson either. Nor could a brother marry his sister. Thus the Arabs prohibited marriage with mothers, daughters, sisters, paternal aunts and maternal aunts.34

Similarly, marriage with one’s brother’s daughter or sister’s daughter was not permissible but the children of the two brothers or two sisters or a brother and sisters could marry among themselves. These prohibited degrees of marriage were enforced strictly. Ibn Abbas (a companion of the Prophet) and others went as far as saying the Arabs in *jahiliyah* prohibited what Allah had prohibited, i.e. marrying one’s father’s wives and marrying two sisters together at a time.35

There is one more interesting thing to note. The Arabs in the pre-Islamic period did not approve of marriage with the wife of one’s adopted son or his daughter. But Islam did not find anything wrong with such marriages. The Qur’an maintained that there is no blood relation between the adopted son and the adopter and thus the adopter does not become his natural father. The Qur’an says, “Call them (adopted sons) by (the names of) their fathers; this is more equitable with Allah; but if you know not their fathers, then they are your brethren in faith and your friends …”36 The Qur’an also says: “So when Zaid dissolved her marriage tie, we gave her to thee as a wife, so that there should be no difficulty for the believers about the wives of their adopted sons, when they have dissolved their marriage tie. And Allah’s command is ever performed.”37

It should be noted that Zaid was the Prophet’s slave whom he liberated and then treated him as his own son. He was very much attached to the Prophet. He refused to go back to his own parents and chose to remain with the Prophet. He was married to a woman called Zainab. However, they were later divorced and the Prophet

36 The Qur’an 33:5 supra f.n.l
37 Ibid., 33:37. Supra f.n. 1
married Zainab. As the Arabs prohibited marriage with one’s adopted son’s divorced wife, there was a fur ore among the people. Hence this verse was revealed to say that an adopted son is not a real son and should not be treated as such.38

Now we come to the question of divorce during jahiliyah. The Arabs were well acquainted with talaq as they were acquainted with the concept of marriage. This has been so since time immemorial. Talaq meant divesting oneself of all the rights one had over one’s spouse and separating her from oneself.39 When someone wanted to divorce his wife he would say, “Go back to your parents”, or “I separate you”, or “your rope is on your shoulders” or “liberate you” or some other similar words.40

The historians of ja hiliyah have recorded the reasons for divorce. In those days divorce could be given for any reason, even if the wife spoke highly of her people. Hassan bin Thabit divorced his wife for this reason – or if a man did not find in her the love he was looking for, or if they could not develop friendship and intimacy. A’asha divorced his wife for this reason.41 There are also instances of men marrying a woman who they thought was young and beautiful but who turned out to be old and ugly. Hence they found no way out other than to divorce her. This happened with Lajham who married a woman Bani Faq’as thinking she was young and beautiful.42

During jahiliyah granting divorce was in the hands of men. In certain circumstances women could persuade their husbands to allow them a divorce. For example, there was the case of Al-Hujjal al-Sahmi who when he became poor called his two wives and divorced them.43 It would be interesting to note that in Islam also the divorce, according to the jurists, lies in the hands of the husband, not the wife, though the Qur’an does not categorically give such a privilege to the husband. This is

38 This story is found in all the standard commentaries on the Qur’an.
41 Al-Asbahani, Al-Aghani (Cairo, 1929), vol. III, p.14
42 Asghar Ali Engineer, Islam Women and Gender Justice, Dr. Muhammad Byuni Mahrad , p.171
43 Al-Aghani, , vol. IX, p.5.
inferred from the Qur'anic verse 2:237, in which it has been said that the marriage tie is in the hands of the man (bi yadihi ‘uqdatun nikah). It would be seen that it is Arab’ adapt which has influenced the Muslim jurists’ view in such matters.

During jahiliyah, too, there were women who stipulated the condition at the time of marriage that would have the right to divorce; they would live with their husbands as long as they liked and would initiate divorce when they liked too. This was because of their high status in society.44 However, ordinary women could hardly think of laying down such conditions. It may be said here that such freedom, even to women of high status, was hardly available to women of other contemporary societies.

There was an interesting method of divorce prevalent among some Bedouins who lived in tents made of wool. The method was to change the direction of the entrance to the tent. This was resorted to by women, generally. If a woman, desired to divorce her husband she would change the direction of the entrance to the tent, for instance from the west to the east, or from the direction of Yemen to that of Syria. When the husband saw this he knew that his wife had divorced him and he would not go to her. This was so because among the Bedouins in villages the tent was the property of women.45

There were some women who had the exclusive right to divorce and who controlled their own affairs. We read in Al-Muhbir that Salam bint ‘Umru, mother of ‘Abd al-muttalib (the Prophet’s grandfather), would never marry unless her husband allowed her full authority; if she disliked anything in her husband, she would divorce him. There was another women, Fatima bint al-Khaushab, who was known for having more children than any other woman and entering into marriage contracts at the

45 Al-Aghani, vol. XVI, p. 102.
fastest possible pace. Similarly, Al-Muhbir tells us of several other women who freely divorced their husbands and remarried.46

However this does not mean that the Arab women did not exercise caution in divorcing their husbands. They would not go for divorce unless they were left with no other option; they would not break the marriage tie foolishly. Their self-respect and dignity lay in their own hands and they would never put them at risk, as borne out by the following incident. A man from the family of Abu Talib told his wife in anger, “Thy matter is in thy hands” (i.e. I divorce you). The wife replied “By God, I was in your hands for twenty years; I guarded these years and gave you the best of company. I did not waste a single moment any day and fulfilled all my duties.” He admired what she said and so made up with her.47

Islam also retained the woman’s right to divorce. She could stipulate it as a marriage condition (talaq al-tafwid). She was also given the right to divorce known as ‘Khula’, i.e. she could free herself from the marriage bond if she so desired. She could ask for ‘Khula’ for lack of maintenance or maltreatment by her husband, or if he disappeared for a long period. She was also given the right to annul the marriage, if she was married in childhood, on reaching the age of puberty, or to go ahead with it.48

Ibn Abbas, an eminent companion of the Prophet, tells us that during jahiliyah men had an absolute right over women in matters of divorce. After one or two divorces a man could take back his wife if he so wished but after the third divorce he had no rights over her.49 The Qur’an does not mention this form of divorce, but unfortunately the Muslim jurists borrowed it from Arab adapt. This form of three divorces came to be practiced most widely. However, Ibn Zayd tells us that in the pre-Islamic period a man could divorce his wife one hundred times and still take her

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47 Ibn Tayfur, Balaghah al-Nisa (Cairo, 1908), p. 132.
back.\textsuperscript{50} Al-Razi also says that a man could divorce his wife a thousand times and yet could take her back.\textsuperscript{51}

During \textit{jahiliyah} a man who had divorced his wife thrice could marry her again only after she had married a stranger. In \textit{talaq al-ba’in} a man could take back his wife after a fresh \textit{nikah} but after Islam this was made conditional on her marrying another man and only then could she acquire legitimacy to marry her former husband. In \textit{jahiliyah} they used to pronounce three divorces in one sitting but as far as Islam is concerned the jurists differed on this. Most of the jurists think that two or three divorces can take place in one sitting itself, whereas some others maintain that only one divorce takes place regardless of how many times it is pronounced.\textsuperscript{52} The three divorces in one sitting has re-emerged as the most controversial issue among the conservatives and modernists.

Another form of divorce widely prevalent during the pre-Islamic period was known as \textit{zihar} (literally meaning ‘back’). The man would tell his wife she was like his mother’s back, like her womb, like her thigh, like her sexual organ or like the back of his sister or aunt.\textsuperscript{53} This meant that he treated the wife like his mother, sister or aunt.

The Qur’an prohibited the practice of \textit{zihar}, it says:

\begin{quotation}
\textit{“Those of you who put away their wives by calling them their mothers, they are not their mothers. None are their mothers save those who gave them birth, and they utter indeed a hateful word and a lie. And surely, Allah is Pardoning, Forgiving.”}  
\end{quotation}

\textsuperscript{50} Tafsir al-Tabari, vol. IV, p. 547.  
\textsuperscript{51} Al-Razi, Tafsir al-Kabir (Cairo, n.d), vol. II, p. 373.  
\textsuperscript{52} Al-Haufi, p. 211 and also Tafsir al-Tabari., vol. IV, pp. 538-600.  
\textsuperscript{54} Tafsir al-Tabari, vol. XXVIII, p. 7. H.Q 58:2
And for doing such a hateful thing the Qur’an laid down punishments for those who indulged in it. It said,

“And those who put away their wives calling them their mothers, and then go back on that, which they said, must free a captive before they touch one another. To this you are exhorted; and Allah is aware of what you do.”

The Qur’an further says:

But he who has not the means should fast for two months successively before they touch one another, and he who is unable to do so should feed sixty needy ones. That is in order that you may have faith in Allah and His Messenger. And these are Allah’s limits.

Naturally, this punishment was prescribed with a view to discouraging this practice, which was an absurd one. There were some practices in jahiliyah which were based on superstitions and the Qur’an abolished them and prescribed punishments in order to discourage them as in the case of zihar.

It should be remembered that zihar was among the worst and most stringent kinds of talaq. Even the muzahir were forced to marry off his wife to someone else. Islam was categorical in prohibiting zihar as a wife could not become a mother simply by making such a declaration, just as an adopted son could not become real son just by adoption. The Qur’an says:

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55 The Qur’an 58:3. Translation supra f.n.1
56 Ibid., 58: 3-4.
57 Ibid., 58:4. Translation as in supra f.n.1
Allah has not made for any man two hearts within him, nor has He made your wives whom you desert by *zihar* your mothers, nor has He made those whom you assert (to be your sons) your sons. These are the words of your mouths.59

In another form of *talaq* called al-‘ila’ a man takes a vow to leave his wife for a period of time, may be a few months, a year or two years, during which he does not go near her as a sort of punishment. But Islam limited the period of waiting to four months. There is no question of increasing it. Thereafter either one should divorce his wife or take back the oath.60 The pronouncement of the Qur’an on Ila is as follows:

“Those who swear that they will not go to their wives should wait for four months; then if they go back, Allah is surely Hearing, Knowing.”61

In the ‘Khula’ form of divorce, already referred to, the woman had the right to ask for liberation (literal meaning of ‘Khula’) if she was maltreated, or felt tortured in staying with the husband or if the husband refused to leave her either out of greed or in order to humiliate her or because he had spent too much money to acquire her.62 Islam retained ‘Khula’. Allah says in the Qur’an:

“And it is not lawful for you to take any part of what you have given to them (i.e. women), unless both fear that they cannot keep within the limits of Allah. Then if you fear they cannot keep within the limits of Allah there is no blame on them for what she gives up to become free thereby.”63

During *jahiliyah* there was another form of divorce called ‘al ‘adl which literally meant forcing the women not to marry. A man who married a free woman and then could not carry on with her could divorce her on the condition that she would not remarry without his permission. When somebody wanted to marry her, he would

59 Tafsir al-Tabari, vol. XXVIII, pp. 6-7. See also Al-Haufi., p. 212.
61 Al-Haufi, p. 213.
62 The Qur’an 2:226-27. Translation as in supra f.n.1
offer something to her former husband and persuade him to obtain his permission. If he so chose he would give his permission, otherwise he would refuse and not allow her to marry.\textsuperscript{64} But Islam categorically banned the practice of ‘adl. The Qur’an says:

\textit{“And when you divorce women and they end their term, prevent them not from marrying their husbands if they agree among themselves in a lawful manner.”}\textsuperscript{65}

There is a controversy whether there was \textit{iddah} (waiting period) after divorce during \textit{jahiliyah}. Some researchers say there was such a period while others maintain there was none. A woman carrying a child in her womb would marry and go to live with her new husband and give birth to the child in his house. The child so born was known after the man she had later married though it was known that she had conceived it from her former husband. It was Islam which fixed the period of \textit{iddah}.\textsuperscript{66}

In \textit{jahiliyah} the period of waiting (\textit{iddah}) after the husband’s death was one year. The widow used to be confined to a small room (\textit{hafsh}), was prohibited from touching things, could not apply collyrium to her eyes or even pare her nails or comb her hair until one year had passed. Naturally, her physical condition worsened. She would be given an animal – as ass – goat or bird – to rub her skin with, after which she could return to normalcy.\textsuperscript{67}

Islam abolished all this. It also reduced the \textit{iddah} period to four months and ten days. The Qur’an says:

\textit{“And (as for) those of you who die and leave wives behind, such women should keep themselves in waiting for four months and ten days; when they reach their term, there is no blame on you for what they do for themselves in a lawful manner.”}\textsuperscript{68}

\textsuperscript{64} The Qur’an 2:229, supra f.n.1
\textsuperscript{66} The Qur’an 2:234 See also verse 4:19. Supra f.n.1
\textsuperscript{67} Tafsir al-Qurtabi, vol. III, p. 194.
\textsuperscript{68} The Qur’an 2: 234. Supra f.n.1
However, if she were pregnant then her waiting period would last until delivery of the child. The Qur’an also ended all the other superstitious practices associated with widows, as described above.

During *jahiliyah* a divorcée was given nothing by way of maintenance. She was not entitled to a house or anything else in *talaq al-ba’in* (i.e. irreconcilable divorce). The child was invariably related to the father. It was the Prophet who said that *Al-waladu li ‘i firash* (the child is of the mother). In the pre-Islamic period the father would claim that the child belonged to him and the child would be ascribed to him just on the basis to this claim alone. Similarly, if the slave girls who were compelled to have sexual relations with their masters gave birth to children, the masters would hardly ever claim them but the children would be ascribed to them if they died without claiming the children. The same principle applied to their heirs. If they wanted they would ascribe the child to the master or else it remained disinherited. The ‘ulama differed about the amount of inheritance for such a child.

As for inheritance, according to Muslim historians a woman was treated like a commodity. She had no right to inherit from either her husband’s or her father’s property or any other relative’s property. Instead, she herself was an object of inheritance. In the pre-Islamic period it was generally thought and accepted that inheritance was not meant for women and small children and that it was for those who wield weapons and capture booty, i.e. for the men only.

During the Prophet’s time Aus bin Thabit died leaving behind two daughters and a small son. Aus’s cousins came and took away his entire property as neither wife nor daughters or son could inherit it. Aus’s wife went to complain to the Prophet, pleading her inability to feed her children since the entire property belonging to her

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70 Ibid., 65:4; See also *Tafsir al-Tabari*, vol. V, pp. 81-2.
71 Sahih Muslim, vol. IV, p. 195.
72 Ibid.
husband had been taken away by his cousins. At that time, the following Qur'anic verse was revealed:

“For men is a share of what the parents and the near relatives leave, and for the women a share of what the parents and the near relatives leave, whether it be little or much – an appointed share.”

And also the following verse:

“And they ask thee a decision about women. Say: Allah makes known to you His decision concerning them; and that which is recited to you in the Book is concerning widowed women, whom you give not what is appointed for them, nor to the weak among children, and that you should deal justly with orphans.”

Then came the verse of inheritance:

“Allah enjoins you concerning your children: for the male is the equal of the portions of two females; but if there be more than two females, two-thirds of what the deceased leaves is theirs; and if there be one, for her is the half. And so for his parents, for each of them the sixth of what he leaves, if he has a child; but if he has no child and (only) his two parents inherit him, for his mother is the third, but if he has brothers, for his mother is the sixth, after (payment of) a bequest he may have bequeathed or a debt. Your parents and your children, you know not which of them is the nearer to you in benefit. This is and ordinance from Allah. Allah is surely Ever-Knowing, Wise.”

This was a revolutionary step as far as women were concerned. Maybe women were not so totally deprived of inheritance in the pre-Islamic period as Muslim

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74 The Qur’an 4:7 translation as in supra f.n.1
76 The Qur’an 4:11; See also Tafsir al-Razi, vol. IX, pp. 203-18.
historians have previously thought, but it is undeniable that men had a far greater share than women and that there was no fixed share for women. They depended on the arbitrary decisions of the men folk. But the Qur’an removed all certainties and fixed a share in inheritance for women which, while less than that for men needs to be seen in its totality.

That there was some share for women during jahiliyah is indicated by what Ibn Habib and also Ibn Hazm tell us about Amir bin Jashm, who left by way of inheritance for his male children twice as much as that for female children, thereby following the injunction of Islam. There are other indications as well those women did on many occasions inherit possessions. However, what Islam did was to remove all ambiguities and it fixed a compulsory share in inheritance for women. It was undoubtedly a great improvement over the jahiti position. Dr. Byumi Mahran maintains that the pre-Islamic period women did inherit though their share may not have been substantial. The women also had a right to property, as did Egyptian women. They could take part in selling and buying and the women of the towns, as compared to the Bedouin women, had a better status and commanded greater financial resources in their own right. Dr. Byumi Mahran, gives the example of Saiyyidah Khadijah, the first wife of the Prophet, who commanded great resources and owned several trade caravans which used to travel during winter as well as summer. She used to have a partnership in trade with men and it was in this capacity that she entrusted her trade caravan to the Prophet before Allah entrusted him with Prophethood. As the Prophet was a man of great honesty and integrity, she used to give him much more than she gave to others by way of a share in profits.

Then there is also example of Asama’ bint Makhramah, who used to deal in perfumes (‘itr). She would buy perfumes in Yemen and sell them in Medina. This

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78 Dr. Ahmad Muhammad al-Haufi, Al-Mar’ah fi sh ‘ar al-jahiti (Cairo, 1954), p. 266.
lady lived until the time of second Caliph, Hazrat ‘Umar bin al-Khattab (AD 634-644) and perhaps until later. There was another women selling ‘itr in Mecca. Her ‘itr became highly popular and men used to apply it before going to war and even consumed it as they went to battle. Many more examples from the pre-Islamic period can be quoted.

Thus we see the status of women during the pre-Islamic period was not bad as was made out later by the Muslim historians. Women of a higher status commanding greater resources were held in great esteem and certain customs and rules did not apply to them as in our own society today. There are instances of women ignoring father’s decision and opting for marriage to men of their choice. There is the case of Hind bint ‘Atbah bin Rabi‘ah.

We now come to the question of mahr, also known as sadaq. Then, as now, a man would ask for the hand of a woman from a man, pay sadaq (dower money) and marry her. Most of the Qurashites and other tribes followed similar customs. In fact, we should remember that in the jahiliyah period some women lived an independent life and were free to make their own decisions as did the first wife of the Prophet, Khadijah. Their independence derived from their financial status.

As for mahr during the pre-Islamic period, it was given to the family of the woman for asking her hand in marriage. In fact, there was some difference between mahr and sadaq. The former was paid to the marriage guardian (i.e. wali) and the latter to the bride herself. Mahr in jahiliyah was considered 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.

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81 Al-Aghani, vol. I, p. 64.
83 Ibid., pp. 239-42.
84 Ahmad al-Haufi,., p. 151.
This was because he thought it was his right to do so. However, Islam prohibited the bride’s people from taking anything from the *mahr*. It was designated as the bride’s property. The Qur’an says: “And give women dowries as free gifts. But if they of themselves be pleased to give you a portion thereof, consume it with enjoyment and pleasure.”

Usually, during the pre-Islamic period the father used to take away the amount of *mahr* and the daughter who bought a lot of wealth by way of *mahr* was known as *Al-Nafijah*. Whenever a daughter was born the people used to congratulate the parents saying, “*hanian laka al-nafijah*” (congratulations for a daughter who will bring wealth) or “May Allah grace you with more such wealth bringers”. This shows that in *jahiliyah* the father used to add the *mahr* amount to his own wealth. There were contradictory practices in regards to *mahr*. At times *mahr* was also referred to as *Al-Hulwan*, i.e. a kind of fee or brokerage. It was deducted from the *mahr* amount of the daughter, sister or any other woman for that matter though it was not approved of by the Arabs. Many Arab women would say as a matter of pride that their husbands did not take their share while marrying off their daughters.

Thus we see that there was no common practice in regard to *mahr*. Some gave the entire amount to the daughter; some even added to it to honour their daughter and others took away either the entire amount or part of it.

Also, there was no fixed limit for *mahr* in the pre-Islamic period. Mostly it depended on the financial status of the person concerned and the social status of the bride. At times the *mahr* used to be as high as 100 or 150 camels. ‘Abd al-Muttalib, the grandfather of the Prophet, gave 100 she-camels and 100 pounds of gold by way

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86 The Qur’an 4:4 supra f.n.1
87 Al-Haufi, p. 151
89 *Al-Aghani*, vol. VIII, pp. 78, 185.
of mahr to Fatima bint Umru, and Harith bin Salil gave 150 camels and 1000 dirham by way of mahr to Zaba bint Alqama.⁹⁰

In some regions like Kindah, people used to ask for an exaggerated amount by way of mahr. They would not marry off their daughters to anyone for less than 100 camels and, in some cases, 1000 camels. The king of Kindah, when he married Umm Inas, granted her by way of mahr that he would fulfil all the desires of her qaum (her tribe, her people) whatever they might be.⁹¹ The Prophet, on the other hand, is reported to have given Khadijah, his wife 20 young camels, or 500 dirhams or about 12 awqiyah (about 100 grams) of gold.⁹²

**ISLAM AND THE INDIVIDUAL DIGNITY OF WOMEN AFTER COMING OF PROPHET MOHAMMAD (PBUH)**

Holy Qur’an makes it abundantly clear that women have their own individual status and are not to be treated as an adjunct of their fathers, husbands or brothers. They enjoy all their rights as individuals, not merely by virtue of being a mother, wife or daughter though such status would be considered for purposes of their inheritance. A woman in Islam enjoys respect not because she happens to be a mother or one who gives birth to children, but because she is a complete human being. Being a mother is incidental to her existence as an individual.

Motherhood for a woman is undoubtedly a noble calling but even more important is her individuality. The Qur’an while recognizing this fact: does not compromise with her individual rights.⁹³ In verse 2:223 it observes:

> *And mothers shall suckle their children for two whole years, for him who desires to complete the time of suckling. And their maintenance and their clothing must be borne by the father according to usage. No soul shall be

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⁹⁰ Ibid., vol. XIX, p. 131.
⁹³ The Qur’an 65:6.
burdened beyond its capacity. Neither shall a mother be made to suffer harm on account of her child, nor a father on account of his child; and a similar duty (devolves) on the (father’s heir). But if both desire weaning by mutual consent and counsel, there is no blame on them. And if you wish to engage a wet nurse for your children, there is no blame on you so long as you pay what you promised according to usage.”

In the above verse it would be seen that a mother’s individual right as a woman has been emphasized by saying that “Neither shall a mother be made to suffer harm on account of her child, nor a father on account of his child.” Thus the Qur’an very clearly recognizes a woman’s individuality. The Qur’an expresses it differently when it says, “For men is the benefit of what they earn, and for women is the benefit of what they earn.” This too is a clear enunciation of a woman’s individuality, dignity and rights. Even if there are certain contextual statements in the Qur’an indicating that men have a slight edge over women, in the socioeconomic sense it does not, in any sense, detract from the woman’s individuality. If she has more income than her husband or father, she has a right over it and is not obliged, in the legal sense, to hand over to her husband or father. If her husband is poor and she is rich, she is least obliged to spend anything on him. If the husband himself has given her something by way of dower (mahr) it is hers and he cannot take away anything from it, except with her consent. Thus the Qur’an says, “And give women their dowries as a free gift. But if they of themselves be pleased to give you a portion thereof, consume it with enjoyment and pleasure.”

The Qur’an, in order to leave no doubt about the individuality of women, declares that women will be judged on their merits and men on theirs. If women earn religious merit, they will be duly rewarded for it and if men earn religious merit, they

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94 Ibid., 4:32 translation as referred in supra f.n. 1
95 Ibid., 4:4.
will be duly rewarded for it and if men earn it they will be justly rewarded for it. The Qur'an puts it as follows:

“Surely the men who submit and the women who submit, and the believing men and the believing women, and the obeying men and obeying women, and the truthful men and the truthful women, and the patient men and the patient women, and the humble men and the humble women, and the charitable men and the charitable women, and the fasting men and the fasting women, and the men who guard chastity and the women who guard their chastity, and the men who remember Allah much more and the women who remember—Allah has prepared for them forgiveness and a mighty reward.”96

It can be seen from the above verse that the Quran does not make the slightest discrimination between women and men in any respect. Both are promised “mighty rewards” for their and secular virtues.

The Prophet was the repository of the quranic wisdom and value orientations. He could not have made statements which were injurious to the quranic spirit even if he considering practical situation in his times. The Prophet, who was also a great reformer, could not have altogether ignored the social situation of his days. A reformer cannot succeed if he becomes idealistic in an abstract sense. He has to strike certain acceptable compromises in a way which does not injure the basic spirit of his reforms, or vision.97

The Prophet had a great sympathy for women, he behaved very kindly towards them, and personally he was even inclined to give them the right to retaliate against husbands. He did react in this manner when a daughter of his companion came to him complaining that her husband had slapped her unjustly. The Prophet gave her the right to retaliate but he was restrained by a subsequent revelation, as his personal

96 Holy Quran 33:35 supra f.n 1
97 Asghar Ali Engineer, Rights of Women in Islam,
inclination was too radical for his times. However, it is certainly indicative of the Prophet’s approach towards the woman’s plight. Even in his last sermon delivered at the time of Hajja al-wadda’ (the last pilgrimage) he said: “Treat the women kindly. They are your helpers and are not in a position to manage their affairs like taking part in public life or undertaking enterprises, themselves. Fear Allah concerning women, for verily you have taken them on the security of Allah and have made their persons lawful unto you by words of Allah.98

The Quran had already declared the doctrine of equitable treatment of women in ringing words: “lahumna mithlul ladhi ’alayhinna’ (their rights are equal to their obligations)99. Once this status was conceded to the women by Allah, no one could, in theory at least, take it away from them.

Though there is nothing in the Quran to the effect that women must remain subservient to their husbands and do everything to please them, this became the norm in later society.100

Islam recognizes a woman’s individuality and does not regard her as a mere adjunct of her husband. She is expected to submit uncritically to her husband but can assert her rights as a free individual. The Prophet even granted a woman a divorce just because she did not approve of her husband’s looks. There was no other reason. Similarly, for every marital obligation, she has been given conjugal rights which are enforceable in any Islamic court. She does not have to meekly submit to her husband nor does she have to seek his pleasure at the cost of her personal dignity. She is not made into a mere instrument of sexual pleasure for her husband. Of course, she has marital obligations towards her husband; she must allow him his conjugal rights but against this she can also demand the same treatment from her husband. Her husband, having taken her as his wife, cannot deprive her of her sexual satisfaction. If her

98 Ibid.
99 Holy Quran 2:228 supra n.1
100 Asghar Ali Engineer, Islam and Individual Dignity of Women.
neglects her, or if he turns out to be impotent she can, if she desires, seek divorce. She can also seek divorce if he fails to provide her with a reasonable amount of maintenance.¹⁰¹

The Prophet Mohammed (PBUH) abolished all evil things like polyandry which is un-Islamic and un-quranic. He gave the Muslim Women her own respectable status before and after marriage. He prohibited the female infanticide and insisted for education of women and gave equal status to Muslim man and woman. He laid down his good practices called Sunnah for his followers and Shari’ah which came out of the verses of the Quranic injunctions. He restricted polygamy from multiple marriages to only four on the condition of equal treatment between the wives and totally abolished polyandry which was the common practice before his prophet hood. He stressed the Muslim Women for Purdah to cover the rest parts of the body without hands and face to protect their piety.

Islam has also given right to Muslim Women to divorce, which is known as *Khula*. Though this word has not been used in the Quran, a woman, according to it can buy her freedom from her husband by giving *fidyah*, i.e compensation. And this right is absolute. Thus, the Quran says.

“Then if you fear that they cannot keep within the limits of Allah, there is no blame on them for what she gives up to become free thereby.”¹⁰²

Commenting on this verse Maulana Muhammad Ali said, “these words give the wife the right to claim a divorce, if she is willing to forgo the whole or part of her dowry.”¹⁰³

The Prophet enforced this right in the case of Jamilah who wanted to free herself from husband though she found no fault in his behavior towards her except

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¹⁰¹ Ibid
¹⁰² Al-Quran 2:229.
¹⁰³ Holy Quran, Lahore, 1973,P-98
that she did not like him. According to Sahih Bukhari, the Prophet (PBUH) allowed her khula by returning the orchards, which her husband had given her by way of Mahr. But unfortunately the orthodox ulama deprive her of this right also by insisting on consent of her husband. This approach is not in keeping with the Sunnah of the Prophet (PBUH). Her right to Khula should be absolute particularly when they fear they cannot keep within the limits of Allah i.e. they cannot fulfill the marital obligations.

Divorce is a recognized institution in Islam though it is not encouraged. Both man as well as woman has right to divorce. The Quran has made very fair provision for divorce. It stipulates arbitration. Thus the Quran says.

"And if you fear breach between the two (i.e. husband and wife), appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, Allah will effect harmony between them."\(^{104}\)

The very concept of arbitration is quite modern and this was stipulated 1400 years ago by the Book of Islam. However, it is highly regrettable that such fair provision of the Quran is ignored by Muslims and they resort to triple divorce in one sitting which was part of pre-Islamic customary law. The Mohammad’s (PBUH) Shari'at has allowed divorces only when it becomes impossible to save the marriage and except divorce no other way is available. Men have exhorted to love their wives and should treat them with goodness and respect and should put up with their strong manners and tantrums. Women have been exhorted to be obedient men, should love them and be loyal to them. Then it was said about divorce that nothing on earth enrages Allah than divorce. Then it was said about women that those of them who ask for divorce without any strong reason and without trying all possible remedies, they shall not enter paradise. The Holy Prophet (PBUH) used to be so angry with the

\(^{104}\) Al-Quran 4:35
news of any divorce that his companions often thought that as if business of divorcing needs to be punished by putting a person to death.

Then along with more exhortations against divorce, the Prophet found other ways of sustaining marriage. He required that affecting a divorce should be spread over three stages. After first divorce if the couple reconciles they can again live together as husband and wife. After second divorce too, they can effect reconciliation again and live as husband and wife. But if divorce is given third time again then it becomes evident that this marriage cannot be sustained and it is better that there is complete separation. All these injunctions about divorce are quite in keeping with moderation and human nature. Allah says about these injunctions that these Allah’s limits and one should not transcend these limits. And if those people who object to the concept of divorce in Islam if they try to understand it in a proper way, they would realize that this injunction is from one who has created human nature.

Unfortunately at least in India triple divorce has become the most prevalent form of divorce among the Sunni Hanafi and Shafi Muslims. In fact triple divorce is un-Quranic and is rejected even by Hanbalis and Ahle-Hadi’th among the Sunni Muslims and all Shiah sects. Triple divorce being unjust to women was not practiced during the Prophet’s (PBUH) time and also during the time of the First Caliph Hazrat Abu Bakr and for two and half years during the reign of 2nd Caliph Hazrat Umar. It was during the later part of his reign that triple divorce in one sitting was enforced again on account of its misuse by some Arabs. Triple divorce has never been a part of Islamic teachings. It was, in fact, part of the Arab customary law. Even according to Shah Walliyullah, a great Islamic thinker with social vision of eighteenth century India it is unfair to apply the Arab customary law to non-Arab people. Many Shari’ah provisions include some aspects of the Arab customary law prevailing in the pre-Islamic times. Abolition of triple divorce on which there is no unanimity among Muslims will give great relief to Muslims woman. Many men misuse it either to
harass their wives or divorce them most arbitrarily leaving them in lurch. Millions of women are suffering today because of its validity.¹⁰⁵

The Prophet of Islam, Muhammad (PBUH) was the first crusader and vehement advocate of the human rights of women. He came to this world as a liberator, protector and guarantor of women’s rights in order to rescue her from the depths of degradation, exploitation and humiliation, and admonished man in his farewell message. You have rights over your women and your women have right over you’ which underlines the tremendous importance he assigned to his mission as a protector and guarantor of women’s conjugal, legal, marital, social, economic and other rights to elevate her status and social dignity.

The Prophet Mohammad (PBUH-peace be upon him) had married to eleven¹⁰⁶ women not for the sake of fun or lust but to keep example for the future generation. One was such a minor girl who had not attained the age of puberty and that girl was only twelve years of age at the time of marriage and she was daughter of one of the Caliphs- Hazrat Abu Bakr Sidiq and marriage was consummated after she attained the age of majority. Her name was Hazrat Aisha Sidiqua(RA- Rehmatullah-Allaih ). Second wife was Hazrat Khadijah (RA) who was widow and prophet was an employee looking after her business and she was attracted to Prophet for seeing his honesty and proposed him for marriage.

The background behind the multiple marriages was only to protect the Muslim Women from the evils of Arab and the later the multiple marriages were restricted to only four but that too only when relation between the co-wives will be equal.

¹⁰⁵ Shah Waliyullah, *Abolition of Triple Divorce*.
EQUAL RIGHTS OF MEN AND WOMEN AND THE ISLAMIC VIEW

POINT:

Islam preaches Allah created man and woman from a single being and created mates for men of the same nature, and has placed love and affection in between them. Both of them are assigned rights and obligations in equal measures. The Holy Qur’an declares:

“O mankind, reverence, Your Guardian-Lord, Who create you, From a single person, Created, of like nature, His mate, and from them Twain, Scattered (like seeds), Countless men and women:- Reverence God, through whom, Ye demand your mutual (rights), And (reverence) the wombs (women) (That bore you): for God, Ever watches over you.”

It adds:

“O, mankind, we created you from a single (pair) of a male and a female, And made you into Nations and tribes, that ye may know each other (Not that ye may despise each other). Verily, The most honoured of you, In the sight of God Is (he who is) the most Righteous of you…”

However, in Pre-Islamic Arab Society, equality between the sexes was unknown species. The society was male-dominated. The males wallowing in power economic, social and political had established a number of customs and practices through which absolute domination was enjoyed by them over the women. Men had the power of taking decisions about the affairs of life to the complete exclusion of the women folk. The dominant philosophy of life was that the exclusive function of the woman was to carry on the orders of the man and, she was not allowed to question the advisability thereof. She was considered a sub-human beast or a chattel used to fulfill

107 Holy Qur’an: 4:1
108 Holy Qur’an: 49:13
sensual needs and required to perform menial and worthless jobs. She was a bonded labourer who lived only to be exploited by man in whatever manner he deemed fit. She did not live to enjoy life or exercise human rights and privileges.\textsuperscript{109}

Women were not regarded as full human beings and were inherited like any other property in case of the death of the husband or master, any number of wives could be kept or thrown out at will. They had no rights of property and had nothing to say in the matter of divorce. Their economic rights were non-existent and their fate wholly depended upon the sweet will of their husband’s, fathers or guardians. A man could divorce or take back a wife any number of times.\textsuperscript{110} All customs and traditions worked to the disadvantage of women who were treated no better than playthings to be loved or destroyed at will.\textsuperscript{111} Girls were often killed after birth, and wives and slave girls were used for enrichment without any thought about their welfare. Misery and sorrow was mostly the share of a woman whenever she incurred the displeasure of her lord and master. Women were literally at the mercy of men and were treated as expendable. Women have been “victimized”, through the ages and continued to be the subject of debate. The ancient Romans, Arabs, Frenchmen and Athenians have expressed their views about the subordinate position of women. A sample enumeration discloses such views as:

i. Woman is the abdominal creation of the devil;
ii. She does not have a human soul, hence no life in the Hereafter;
iii. Woman’s deeds are not acceptable to God;
iv. Being a means of satanic seduction, she should be physically tortured;
v. Death, poison, fire and the serpent are lesser evils compared to her;
vi. Girls should be buried alive to wash away the scars of disgrace

\textsuperscript{109} Martyr Muhammad Jawad Bahonar, MMJ, “Islam and Women’s Rights”, 33 (Tehran-Iran 1964)
\textsuperscript{111} Fyzee, Outlines of Muhammadan Law, Ed. 1974. p.146
vii. Woman is a human being, but created to serve man.112

Islam enjoined its followers to remove pain, destitution, social and economic disabilities from the lives of the women by granting them a status equal to men, within their respective spheres.113 These rights and privileges granted to women, prevented males from oppressing and exploiting them. In Arabia, during the pre-Islamic period, human sacrifice, child infanticide, superstition and inhumanity were common and the female suffered the most. The Holy Qur’an, prohibited infanticide. It says:

“For when the birth of a daughter is announced to any one of them, dark shadows settle on his face”, and he is said, “He hideth himself from the people because of the ill-tidings; shall he keep it with disgrace, or bury it in the dust? Are not their judgments wrong” 114

And when this female child that had been buried alive shall be asked for what crime she was put to death…..115 in another place, The Holy Qur’an, clearly says:

“Kill not your children For fear of want: We shall, Provide sustenance for them, As well as for you, Verily the killings of them Is a great sin”, 116

It is clear that all measures of curbing population growth on the ground that to sustain the increasing numbers will be impossible is condemned by the Holy Qur’an, Sustenance is the concern of the creator and is not the exclusive domain of human effort. Thus in modern time, attempt to birth control for fear of the shortage of food

112 Supra n. 4, at 34. Before the advent of the Islam Bahonar civilized societies recognized woman as a human being but deprived her of many human rights. They even did not consider her to be a citizen of the state, nor granted her any personal rights. A girl was required to accept any one selected by her guardians as her husband. She was only the means of fulfilling the carnal desires of man and was maintained for this purpose. She was used for work on farms and at home on the one hand, and on the other, to satisfy man’s sexual passions, beyond this she had no significant legal protection. See Kidwai supra n.5.
114 Holy Qur’an, 16:52
115 Holy Qur’an, 81:8,9
116 Holy Qur’an, 17:33.
and other amenities of life is against the Shariah. Islam made the killing of female children the greatest sin.

However, Islam evolved a system in which relations between men and women are premised on a notion of equality but because of biological and psychological differences male is to undertake the difficult tasks of the “protector” of the family. The Holy Qur’an provides for the equality of men and women in its specification of legal rights guaranteed to every individual from cradle to grave. Unlike the situation in the West, where it was impossible for a married woman to hold property on her own, to contract with another persons or to dispose of her property without the consent of her husband, the Qur’an proclaims the right of every women to buy and sell, to contract and to earn, and to hold and manage her own money and property.

The Holy Qur’an, ordains:

“And in no wise covet, Those things in which God, Hath bestowed His gifts, More freely on some of you, Thank on others; to men, Is allotted what they earn, And to women what they earn: But ask God of His bounty. For God hath full knowledge of all things”.

In addition to these rights, the Qur’an further grants woman a share in the inheritance of the family and warns against depriving her of that inheritance rights. In this regard the Holy Qur’an says:

“From what is left by parents, and those nearest related, there is a share for men, and a share for women, whether the property be small or large-a determinate share”.

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120 Holy Qur’an, 4:32
121 Holy Qur’an, 4:7
In the same chapter, the Holy Qur’an ordains:

“Allah (thus) directs you, As regards your children’s (inheritance); to the male, A portion equal to that of a female: If only daughter their share is two thirds of the inheritance; If only one, her share Is a half”. 122

The Holy Qur’an clearly warns people against depriving woman of her inheritance rights. It says:

“O, ye who believe, Ye are forbidden to inherit Women against their will, Nor should ye treat them with harshness that ye may”123

The Holy Qur’an specifies that the dower (mahr) of her marriage should belong to her alone and never be taken by her husband, unless offered by the woman as a free gift.124 In respect of the economic rights of women, in Islamic society, the Holy Qur’an says:

“It is not lawful for you, (Men), to take back, Any of your gift (from your wives), Except when both-parties, Fear that they would be unable to keep the limits ordained by God.”125

The Holy Qur’an further clarifies the position of wife and says:

“And among His signs Is this, that He created for you mates from among Yourselves, that ye may Dwell in tranquility with them, And he has put love and mercy between your (hearts)”126

In another place the Holy Qur’an ordains:

122 Holy Qur’an, 4:11
123 Holy Qur’an, 4:19
124 Holy Qur’an, 4:44 which reads: “Last though not turned they vision to those who were given a portion of the Book? They Traffic In error, and wish that ye should lose the right path”.
125 Holy Qur’an, 2:229
126 Holy Qur’an, 30:21
They (women) are a vestment (garments) for you, and you (men) are a vestment (garments) for them.127

It is clear that the above mentioned verses specify the equality of the two sexes. The Holy Qur’an not only recommends, but is even insistent upon the equality of men and women as an essential characteristic of Islamic society. The claim of Chief Justice Y.V. Chandrachud128 and other western critics that Islam degraded women is denied emphatically by the Qur’an. There is no doubt that the Qur’an gave financial independence and economic security for women.129 Islam also brought a great social revolution and had given official recognition to female rights and had acknowledged the equality of the rights of men and women.130

The above quoted verses establish that men and women have equal rights and privileges. These verses address “O, Mankind”, or “O, believers” and therefore cover all human whether male or female. Both men and women are expected to follow Islam, and be faithful and obedient believers.

Islam has removed the stigma of “wickedness”, and “impurity”, which had been attached to women. The Prophet (PBUH) promoted respect for women. He once said, “the most precious thing in the world is a virtuous woman”131 The Prophet (PBUH) in his last famous farewell sermon represented the epitome of Islamic attitude towards women and said:

“Verily there is a right of your wives on you and a right of your's on them. Take heed of the good treatment enjoined on you with regard to wives, for they are

127 Holy Qur’an, 2:187
128 See C. Justice Y.V. Chandrachad opinion in Shah Bano Case and observed: “Women are one such segment. No tree Swantantra Marhati”, said Manu (not Apostle of Allah) the lawgiver. The women does not deserve independence. And, it is alleged that the “fatal point in Islam is the degradation of women”. To the Prophet is ascribed the statement, hopefully wrong, that “woman was made from a crooked sils, and if you try to bend it straight, it will break; therefore treat your wives kindly”.
130 Ibid.
131 Supra n. 9
like captives with you, possessing Nothing for themselves, while you have taken possession of them as a deposit of God, and made lawful and enjoyment of their persons by an order of God. So fear God with regard to wives and take heed of the good treatment enjoined on you with regard to them”. 132

The Apostle of Allah declared that:

“O people, your wives have certain rights over you and you have certain rights over them... Do treat your women well and be kind to them for they are your partners and committed helpless. Remember that you have taken them as your wives and enjoyed their flesh only under God’s trust and with his permission”. 133

Imam Hanbal, also attached paramount importance to the kind of treatment of women and said that, “the best among you is the one who is the best towards his wife”. 134 According to Sahih Bukhari, “the woman is like a rib, if you try to straighten, you will break it” 135 Muhammad Qutub, a great scholar of Shariah has very rightly observed that “man and woman both are physically and spiritually a screen, a cover for each other”. 136 The analysis of the above Qur’anic verses and precepts of the Apostle of Allah makes it evident that the man is maintainer and protector 137 of women with kindness, love and tranquility. It means Islamic law had brought important changes in socio-economic status of male and female, providing 'standard', of behaviour for the believers in the field of marital relationships.

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134 Ibid.
135 Supra n. 32 at p.224.
137 The Holy Qur’an, 4:34 ordains: “Men are the protectors and maintainer of women Because God has given the one more (strength) Than the other, and because They support them Therefore the righteous women are devoutly obedient, and guard’, In (the husband’s) absence, What God would have them guard”.

The most significant feature of the Divine Commands, in the area of marital relationships from a legal and interpretative angle, is the existence of ‘controlling clauses’ in almost all verses relating to conjugal relationship. The words, ‘justice’, ‘equality’, ‘liberality’, ‘kindness’, ‘equitable terms’, ‘unable to keep the limits’, ‘reasonable scale’, ‘can keep the limits’, ‘undue advantage’, ‘most virtue’, ‘treated unfairly’, ‘just and reasonable manner’, ‘term Honourable’, ‘according to means’, ‘reasonable amount’, ‘righteousness’, and ‘deal justly’, as ordained by Allah have been used to lay down the ‘standard’, according to which a particular verse is to be understood. Logically speaking, only that interpretation will be valid and permissible which has arrived at in consonance with these standards. Secondly, these verses lay down overall ‘standard’ which shall exclusively control all the rules derived there for from the regulation and control of marital relationships.

This set of instructions removed a number of practices which were grossly unjust to the women and reduced them to mere play things at the hands of dominant males.

Shariah is entirely Mercy and the Grace of Allah ensures justice and liberality in due proportion. In fact, oppression and injustice have no place in Islam. Thus it will be sheer folly to assume, that separation could be validly used, to perpetuate injustices and miseries. A rule which produces injustice instead of justice, misery instead of happiness and pain instead of pleasure cannot form a part of Shariah howsoever may be the argument. Therefore, Islam does not differentiate between the virtuous dutiful man and woman possessing the same qualities.

In an Islamic society a woman’s duties include complete obedience to her husband, staying in his home, managing that home, observing general cleanness of the home, taking custody of children and bringing up such children with sound Islamic and moral education. She ought to please and satisfy her husband in all
perspectives. The Holy Prophet (PBUH) is reported to have said: “Whoever among woman is dead, and she had earned the blessings and pleasure of her husband, will surely enter paradise.” Legal Islamic manuals are replete with injunctions on how a woman can please her husband. Prominent among such injunctions is that she should not go out of her matrimonial home without Prior Permission from her husband. The Muslim scholar is supported this argument by the Prophet’s tradition, that in deciding a case between Ali, b. Abi Talib and Fatimah and Holy Prophet (PBUH) allotted home duties to Fatimah and duties for earning to Ali.

In this regard Mrs. Faruqi, an Islamic Scholar quoted an American writer as he states “women should obey and respect their husbands, while the latter should love their wives and observe their respective rights.

ROLE OF MUSLIM THEOLOGIANS:

Firstly all Muslims do not behave according to what theologians or ulama say or even according to the teaching of Islam; secondly, social customs, traditions and social milieu exert their own pressure. It is difficult to ignore all this. Thirdly, there are multiple interpretations of Quran. Fourthly, modern world-view also plays an important role in determining one’s point of view as well as behaviour.

The question of Muslim women, their social status and rights cannot be understood without keeping the following things in mind. First of all it must be noted that Quran makes clear pronouncement in favour of equal rights for both sexes (2:228). However, this vision of Islam for sexual equality could not find practical implementation for number of reasons. Those who embraced Islam, however, sincere

140 Supra n. 33 at p.83
141 Sabiq al 174 Prophet Muhammad (SAW) is reported to have said if a woman obey her husband, she will be requested to enter paradise through the gate of her choice.
143 Asghar Ali Engineer, The Rights of Women in Islam,
they might have been, were product of a fiercely male-dominated society. The quranic pronouncements on the other hand, were an ideal which required very different cultural milieu. From sociological viewpoint it was not immediately implementable.\textsuperscript{144}

The scriptural understanding is always mediated through culture. The Arab culture was patriarchal and had set its own understanding of women's position. Thus the quranic pronouncements of sexual equality was understood and implemented through mediation of Arab culture. What is worse, Islam spread through deeply feudal societies like those of Iran, parts of Roman empire and India. The ulama certainly could not transcend cultural norms of these societies. Thus, Shariah formulations came into existence mainly in Iraq, Egypt and of course Medina. Iraq and Egypt were confluence of ancient cultures with age-old traditions of their own. These milieus greatly influenced the Muslim theologians in their understanding of the quranic pronouncement of sexual equality.\textsuperscript{145}

To meet the demands of their societies they selectively used the quranic verses and certain sayings of the Holy Prophet (PBUH) to formulate Shariah approach to women problem, their status and rights. This became medieval religious heritage, which no one could question. However, under pressure from modern social norms these quranic pronouncements are being rediscovered by modernists and a debate is raging in the Muslim world today about rights of women in Islam.\textsuperscript{146}

**MUSLIM WOMEN AND THE PRESENT LAW:**

The Muslim woman in India has become a subject of interest in academic and social circles for her human rights. Though the Muslim women's movement is very weak, their voices are heard in other women's outfit where they openly criticize and expose inconsistencies of Muslim Personal Law. They have some real grievances

\textsuperscript{144} Ibid
\textsuperscript{145} Ibid.
\textsuperscript{146} Ibid
against Muslim males in matters of divorce and maintenance of their wives. Certain provisions of Muslim Personal Law, they feel, are discriminatory against women and they favour men. They question legality of triple divorce and polygamous marriages, recognized by the Muslim law, in the context of Indian Constitution and other laws. However, the general principles of Muslim Law cannot be challenged.147

The Muslim Law is a pioneering family law in our country. It recognizes the distinct personality of a Muslim woman independent of her father, husband and other male members of her family. The dictum that “husband and wife constituted one person and the husband was that person,” never applied in case of Muslim woman. The progressive principles taken here are drawn from an eminent advocate Danial Latif of Muslim Law.148 According to this article, Muslim marriage is a civil contract where woman retains her full legal personality to acquire, hold and dispose of her property without any intervention of her husband; she continues her identity with her father’s family; she has a right to demand from her husband protection of marriage ties and mehr. The husband has no right to claim any dowry from his bride. The woman has right to remarry after divorce or widowhood. Moreover, the wife has option to put appropriate terms and conditions to secure her matrimonial rights. She may also impose a condition that husband shall not remarry a second wife during her life time and that she shall have right to divorce herself at will or subject to conditions specified in the marriage contract (Nikahnama). And further it may include a condition in every marriage contract that wife shall not be required to observe purdah (veil), nor shall she be hindered in the pursuit of her studies or any other activity or association reasonably connected with, or required in the interest of, her business, profession or vocation. This is the deal situation for the law of marriage and divorce.

The article of Mr. Danial Latif was followed by an Annexure—the Muslim Personal Law (Shariat) Application (Amendment) Bill, 1969 which intended to reform the

147 Khurram Shah Durrany, *Muslim Women and the Law*, in Islam Women and Gender Justice by Asghar Ali Engineer,
Muslim Personal Law as contained in Section 2 of Shariat Act, 1937 as:

"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, zihar, lian, khula and mubarat, maintenance, dower, guardianship, gifts, trust and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

Need for Reform and Codification:

Most of the provisions of Muslim Personal Law are uncodified. They are scattered in religious and legal texts of jurisprudence which are beyond common scholars reach for they do not understand language. The Holy Quran and Hadith are fundamental religious texts and have the status of divine commands. The rest of the literature has no such sanctity.\(^{149}\)

It is believed in the orthodox religious circles that entire Muslim Personal Law is God-given and hence immutable. It cannot be reformed or codified. This position is not correct. The Muslim Personal Law has not only been reformed or codified in other countries but it has been codified in our own country. Some of the provisions of Shariat have been totally replaced during the British Rule. The laws relating to Muslim Wakfs have been codified and amended several times since 1913. The present Muslim Wakf Act, 1995, is the reformed law. The Dissolution of Muslim Marriage Act is the reformed and codified law. But the law of talaq is not codified. It must need immediate attention of the Muslim leadership to reform and codify the

\(^{149}\) Khurram Shah Durrany *Muslim Women and the Law*, as cited by Asghar Ali Engineer, in *Women and gender justice*
Muslim Law of Marriage and Divorce, as the Parliament has codified, the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act has very limited scope but it serves good purpose.\textsuperscript{150}

The Muslim society is conscious of the plights of divorced Muslim women. The intellectuals, activists and even religious leaders realize that the practice of irrevocable triple divorce is wrong and polygamous marriages are exploitative. The intellectuals like Danial Latif and Asghar Ali Engineer work for a better law of Marriage and Divorce.\textsuperscript{151} Maulana Mahfoozur Rehman speaking for Islamic Fiqh Academy (India) said that the husband who has wrongly divorced his innocent wife should be made to agree to pay more money and face rigorous imprisonment for six months (ishtarat-e-fin nikah by Mujahidul Islam Qasmi). But the suggestion of the Maulana will not serve any purpose without a properly codified law. The Muslim Law of marriage and divorce is inconsistent with constitution, secular laws and the codes of other communities. This inconsistency can be removed only by agreeing to the State securing a uniform civil code for all of its citizens as provided in Article 44 of the Constitution or by making such efforts as to have gender justice laws in matters of marriage, maintenance, divorce etc.\textsuperscript{152}

\textbf{FATWA:}

\textbf{Introduction:} The word “Fatwa” has become more widely known in the non-Muslim world ever since the former Iranian spiritual leader Ayatollah Khomani issued a fatwa on the life of Salman Rushdie in 1989 over his novel, the \textit{Satanic Verses}. Although prior to that date Islamic scholars were giving Fatwas, after 1989 the number of Fatwas issued by the Islamic Clergy has increased by leaps and bounds. In the absence of a central authority in Islam, every Muslim religious person who considers himself a Mufti, has been issuing Fatwas in India. There does not seem to

\textsuperscript{150} Ibid.
\textsuperscript{151} Asghar Ali Engineer, \textit{Islam Women and Gender Justice}
\textsuperscript{152} Ibid.
be any limit on the variety of subjects over which Fatwas are issued. A number of such Fatwas have been causing problems to those who are religious and believers. Muslim women of the middle and low-income families are the most affected by irresponsible Fatwas.

According to the Islam web, “Fatwa is a juristic opinion/decree given by a scholar on any matter or incident from the Shariah point of view. Although it is not binding from judicial view point, but it should be followed by the inquirer”\textsuperscript{153}. Thus, a fatwa is an Islamic religious ruling, a scholarly opinion, on a matter of Islamic law, in response to an Istifa, which means a request seeking legal opinion. Fatwas are most frequently issued in response to questions about matters relating to everyday life in accordance with religious law, such as proper diet, gender relations, or the use of new technologies etc. As we consult a lawyer over legal problem to clarify our doubt, Muslim consult a mufti (one who is authorize to issue fatwa) when faced with a doubt on what is prohibited and what is permissible in Islam\textsuperscript{154}.

According to the \textit{Usu-al-fiqh} (principles of jurisprudence), a fatwa must meet the following conditions in order to be valid:

1. The fatwa is in line with relevant legal proofs, deduced from Quranic verses and ahadith; provided the Hadith was not later abrogated by Prophet Muhammad(SAW)
2. It is issued by a person (or a board) having due knowledge and sincerity of heart.
3. It is free from individual opportunism, and not depending on political servitude; and
4. It is adequate with the needs of the contemporary world.

\textsuperscript{153}Shazia Shaikh, \textit{Islamic Glossary: Fatwa,} Jr. Research Fellow,  
Being a mere legal opinion, a fatwa is not binding. It is only advisory in nature and it is up to the persons seeking opinions whether they want to follow the advice tendered or not. Since there is no priesthood in Islam, there is no question of its infallibility. In some cases fatwa has not been accepted. But in India Muslims, particularly the poorer sections living in villages are more prone to accept fatwa irrespective of its adverse consequences on them, as opposed to the upper middle class Muslims living in urban areas. It is therefore, apparent that socio economic conditions play an important role in community’s attitudes towards Fatwas.55

There have also been some controversial fatwas, like the one against Taslim Nasreen, the exiled Bangladesh writer pronounced by the Majlis Bachao Tehreek, which offered unlimited financial rewards to anybody who would kill her or the fatwa issued by a Maulvi in Midanpore (West Bengal) on the address code of Sania Mirza, tennis star of India, which aroused a lot of discussion in the society and raised people’s doubt about relevance of Fatwas in modern times. Is is just an opinion? Then why is it depicted as compulsory? What are the factors associated with it?

The media also plays an important role in this context, by giving wide and often undue coverage to this kind of Fatwas. Conservative attitude of the mullahs is also responsible for the issue of unsubstantiated and controversial Fatwas. Their unwillingness to come out of their traditionist approach and their reluctance to accept changes adds further complications as, for them, everything modern is western and they refuse to differentiate between the two. It is also observed that fatwa has also been used as a license to justify and unjust act under the guise of religious rulings, especially by those who are not authorized to issue fatwa or those not possessing sufficient knowledge of Islamic law. In all such cases the Fatwa loses its sanctity and spreads chaos in the society.

Types of Fatwa:

Fatwa’s could be broadly classified into three main types, each fulfilling a different social viz., judicial, political, and private. Private Fatwas are those that are issued in response to questions by individuals seeking clarification or doubts on matters relating to religion or rituals. This type of fatwa is concerned with those parts of Shariah that deal with man’s relation to God; the ibadat. In this context, the role of the Mufti’s is very important in modern times with new problems, unimagined earlier, arising every day. One peculiar feature of this type of fatwa is that it is asked by only a single person and there are no opponents or contestants since it is a matter of concern between God and the individual.¹⁵⁶

Political Fatwas are those where a Sultan or other ruler or political entity asks for a statement, mostly in support of some action that he/intends to take. It was for this reason that the Islamic rulers in the middle ages started appointing muftis to their control. However, although the Rulers appointed muftis as advisers, their main purpose was to legitimize their actions and draw popular support through fatwa.¹⁵⁷ In India, Aurangzeb (also known as Alamgir-I) brought out the Fatwa-e-Alamgiri, which was a comprehensive collection of Fatwas that included both ibadat i.e. rituals and muamalat i.e. social relations¹⁵⁸.

The most common and widely prevalent forms of fatwa are the judicial ones, which are given in response to a specific case. But even in judicial matters, fatwas are issued in the form of a statement and have nothing to do with the enforcement aspect.

¹⁵⁶Vikor, Knut S, Between God and Sultan: A History of Islamic Law, pp10-11, (Professor of History of the Middle East and Muslim Africa, Deptt of Archaeology, History, Cultural Studies and Religion, University of Bergen from 2007) Foundation Books, New Delhi, 2005
¹⁵⁷Ibid, p.142
¹⁵⁸The work of compilation is reported to have taken 7-8 years and completed in 1671-72 AD. The main aim for compilation was to codify the Islamic law in a single comprehensive work based on the earlier books of jurisprudence and opinions of authoritative jurists, and to relieve the qadis, muftis as well as other persons from the tedious process of going through number of books (containing disputed and conflicting ideas) for seeking guidance on legal problems. An Analysis in the Light of Fatwa-I-Alamgiri, in Encyclopaedic Survey of Islamic Culture, (Ed.) Mohamed Tahir, vol.9, p.139 Mughal India, Anmol Publications New Delhi, (1997),
Such types of Fatwas are issued in a standard format in response to a problem, brought before mufti. The question must be put in an abstract form seeking the position in law and the mufti issues a fatwa in an anonymised form, for he need not know the actual facts of the case. It is for the judge to establish the facts in the court room. The mufti should only respond to what is stated in the question, “if those are the facts, then the law is so”. The judge will then, in the case, determine if these actually are the facts, and if they are not, then the fatwa is irrelevant and is discarded for that case even though it is a correct statement of law in itself.159

**Fatwas affecting Muslim Women**

The Fatwa department of the Darul Uloom claims that it has so far issues hundreds of thousands of fatwas since its inception and being the premier institution for Muslims in India in the matter of issuing fatwas, its rulings have the effect of influencing the lives of not only those who approach the institution with their problems but also those who pay heed to the fatwas issued. The Islamic scholars attached to Darul Ifta and who are authorized to issue Fatwas, therefore, have a great responsibility vested in them, as their Fatwas have the effect of ruling the lives of people who trust them for their scholarship. More than Muslim men, it is the Muslim women who are likely to be most affected by the Fatwas issued by the Darul Ifta. A Fatwa of the institution can make or mar their lives. They may be required to drop out of schools, not to take up employment and not seek an elected office and generally forget about improving their socio-economic status. The position is all the more serious in view of the fact that there is no appeal over the Fatwas issued by Darul Ifta. Also, apart from Darul Ifta, Fatwas are issued by a number Mullahs and Muftis in various parts of India. Are they competent to do so? There does not seem to be any mechanism for a review of such Fatwas by Darul Ifta and even if it does and finds that the fatwas issued by the local muftis are wrong, there is no way that the Darul Ifta can intervene, as it is not an “appellate authority”.

159 Supra .98 pp.142-43
Further, a number of Mullahs and Maulvis being not so well knowledgeable and impoverished could be lured into giving Fatwas that suit the person seeking a fatwa. A sting operation by an Indian TV channel has shown Muftis giving Fatwas for cash. Following the TV expose a press statement was issued by Mufti Zafiruddin Miftani, Head of the Islamic Fiqh Academy, New Delhi, and Maulana Khalid Saifullah Rahmani, an influential Deobandi scholar, denying the allegations of muftis receiving bribes to issue Fatwas. They contend that, instead the individuals concerned who had asked for the Fatwas had insisted that the muftis take the money as a gift (hadiya) or as a donation for their Madrasas after the Fatwas were delivered and that the TV program removed this part of their conversation between the muftis and the individuals, in order to present a wrong image of the Maulvis receiving money for giving Fatwas to suit the questioners.

Maulana Riyaz Nadvi, Secretary of the Uttar Pradesh Dini Talimi Council and leader of the Milli Council, argues that generally muftis do not accept money for delivering Fatwas because they consider it their religious duty to answer queries related to Islam and Islamic jurisprudence. Yet, he adds, if a mufti does accept some payment for a fatwa that he gives there is nothing wrong with that, provided his opinion is based on the Qur’an, the Prophetic traditions and the rules of Islamic jurisprudence. However, he said that delivering fatwa which goes against what the sources of Islamic law lays down or providing an opinion suitable to the questioner is a crime.  

Fatwas issued by Darul Ifta and others which have a direct bearing on Muslim women in general or in individual cases.

**Fatwa against Muslim Women’s participation in elections:**

In Indian society, Muslim women are pushed to the wall, particularly in rural areas. They are victims of first the patriarchal interpretation of Islamic laws by the

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160 Yoginder Sikand, _Media brouhaha over fatwas_.

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religious class and, second, of their low literacy level. In August 2005, the Darul Uloom, Deoband issued a in the Uttar Pradesh, forbidding women form voting, and those who wished to vote were asked to wear veils. The fatwas were issued against the backdrop of Panchayat elections. While political parties opposed the edict, the Union Law Minister, Hans Raj Bhardwaj said: “these fatwas are religious; they have no legitimacy under law. Whether such edicts are followed depends on the acceptability of the outfit issuing them”.

Asghar Ali Engineer, Islamic Scholar observed:

“The fatwa is issued without applying the mind at all. They do not even realize that hijab is not an end in itself by means of preserving one’s chastity and there are other means to do that. If a woman does not wear hijab does not mean she is morally corrupt or likely to become morally corrupt. Chastity does not depend so much on wearing or not wearing hijab but much more on her inner determination and moral training. In medieval society for reasons not to be discussed here, hijab was considered the only means of protecting her chastity. Women at that time were not publicly active and were not much educated. They were confined to household work and hardly participated in public life. Today the circumstances have changed”.

Again, in November 1995, when 45 Muslim women filed their nominations to participate in the elections to the civic bodies from the area in the vicinity of Darul Uloom, the Ulema became alarmed. They issued a fatwa banning Muslim women from participating in elections, as it will bring into contact with men. Of course, the fatwa hardly had any impact on women and conscious Muslim voters. It was rejected by them. Preventing women from exercising their franchise and seeking an elected office or placing restrictions in their franchise and seeking an elected officer or

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161 Bhardwaj Priyanka in *Asia Times*, South Asia, September 2, 2005.
162 Engineer Asghar Ali, *Fatwas, their acceptability and their relevance*
163 Muniruddin Qureshi, *Social Status of Indian Women*, vol 12003
placing restrictions in their doing so, amounts to denying them their fundamental right under the Constitution. The Darul Uloom, Deoband asserted its right to issue a political fatwa, if there is a “religious angle” to the matter. Maulana Marghoobur Rehman, Vice Chancellor of Darul Uloom Deoband, said: “If a Muslim women contest an election, it becomes a matter of our society and religion”. However, in view of the criticism, the seminary has restrained individual muftis from issuing politico-religious fatwas.

In April 2009, Abdul Khadir Rizwi, along with the heads of a few other mosques in the constituency asked the Congress Party not to field Mallika Begum, as its candidate for the 15th Lok Sabha elections and threatened that if the Congress preferred her, they would be calling upon the minorities not to vote for her.

Media reports show that the Maulana was acting at the instance of Jaleel Khan (a former Congress MLA) who could not get Congress ticket for the 2009 elections. However, the Maulana backed out when the media grilled him on his ‘authority’ to issue such a fatwa and said that he was not issuing any fatwa but was proposing to appeal to the Muslim electorate not to vote in favour of Mallika Begum since she is a woman. The Maulana said: ‘As per Islamic law, women are not eligible to contest the election’. On the other hand, the three muftis of Vijaywada, who were not associated with the threatened fatwa, said: “No individual can issue a fatwa using religion for the sake of his mean”. In response, Mallika Begum said: ‘As far as my knowledge goes, Islam has not barred women from taking part in the matters of ruling and administration’.

She seems to have told the media that local religious leaders had no power to issue such fatwa and only the Shahi Imam of Delhi had the power to do so. The entire

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164 Maulana of Canal Road Jumma Masjid in Vijaywada Town in Andhra Pradesh
165 Former Mayor of Vijaywada Municipal Corporation
166 Bid to issue ‘fatwa’ against Muslim women candidate, in Mathrubhumi, April 11, 2009.
episode brings to fore the poor knowledge of Quran of not only the laity but also the clerics.

Incidentally, does Islam, as a religion, or a Quran, prohibited Muslim women from seeking a political office by contesting in elections? In response to a question (6 April, 2004) on this aspect, Sheikh Ahmad Kutty, a senior lecturer and Islamic scholar at the Islamic Institute if Toronto, Ontario, Canada, said:

"There is nothing in the authentic sources of Islam that prevents women from running for political offices if they are confident of their expertise and credentials to make a positive difference, provided they are not doing so at the expense of their greater responsibilities of nurturing and caring for their families. Here, it must be stressed at all times that Islam considers a woman’s role as a mother to be the noblest duty she can ever perform; nothing else can replace it. However, if her involvement in politics does not come in the way of this crucial role, there is nothing in Islam to dissuade her from it".

The case of Imrana:

Among all the Fatwas that were issued in the recent past, the one that shocked both the Muslims and non-Muslim communities in India relate to the case of a young Muslim mother, Imrana. The fatwa generated a lot of controversy not only on whether it was in keeping with the Shariah but also from the human rights angle.

Imrana, a married woman with five children, was raped by her real father in law in a small town in Muzaffarnagar district of Uttar Pradesh. When she reported the incident, the village Panchayat ruled that she has to get divorce from her husband as much as she had, following the rape, become the wife of the father-in-law and as such was haram for her husband. Imrana was sent to her parent’s house.

167http://www.IslamOnline.net visited on 23-3-2011
The incident raised several questions: if a married woman is raped by her real father in law, will her wifehood change? Is she no longer the lawfully wedded wife of her husband? Will she be considered divorced and becomes haram for her husband? Will she be married to her rapist father-in-law? Whose children will the five existing be considered? Will these children be considered brothers and sisters? These questions were taken up with Darul Ifta by Mohammad Ashraf Usmani of Rashtriya Sahara (Urdu).

In response to the above questions, Mufti Habibur Rehman of the Darul Uloom, Deoband replied:

“If someone has committed adultery with the wife of his son, and if this has been proved by the depositions of witnesses or if his son confirms it or if the woman herself admits and confirms it, the wife of the son becomes haram forever for the son. If the father copulates with a woman either legally after marriage, or illegally without marriage, in both cases it becomes haram for a man (son) to keep her in his marriage”.

The Mufti said: It is mentioned in the Qur’an “And marry not women whom your fathers married”( Qur’an 4:22) i.e., it is ruled that following the rape, the son should separate himself from his wife and never go to her. The contention of the Panchayat was that the wife of the son has now become wife of the father and hence her wifehood has changed.

Prof J.S. Bandukwala, and Islamic Scholar who did not agree with the fatwa issued by the Darul Uloom said that the Ulema had erred badly. He said:

“In the Imrana case the father in law forced himself onto his daughter in law. She screamed and shouted for help. Clearly it was not with consent. The father in law is obviously guilty, while the daughter in law is the victim.
The above injunction applies only when consent is involved. The Imrana angle has to be viewed from the viewpoint of a number of other injunctions in the Quran that demands compassion and kindness to the victim. I am surprised Deoband Ulema failed to apply these Quranic commands. Certainly Imrana, her husband and her five children deserve these considerations. By declaring this marriage to be null and void, the final price for this dastardly act will be paid by the victims. That violates the spirit and the letter of the Quran.

Taking a strong objection to the protests raised by non-Muslims, Convenor, Chennai said:

"When neither the victims of the alleged rape, nor her husband nor the Muslim community, to which they belong, has any objection to the fatwa issued by the Deoband Ulema, endorsed by the Muslim Personal law Board, where is the necessity for non-Muslim individuals and organizations to interfere with the Shariat (Muslim Personal Law)? As far as the criminal case against the accused is concerned, let the law take its own course but the matter regarding the relationship between Imrana and her husband lies within the province of the Shariat and so any interference with the Shariat by those who have no faith in it is patently unwarranted and undesirable in as much as it would widen communal divide. Hence, the Council appeals to non-Muslim brothers and sisters to leave the concerned parties in peace to obtain guidance from their religious leaders and solve their problems."

If the husband’s social standing is not strong and he is not financially sound to ignore the fatwa and the opinions of the community, does it mean that the society should not empathize with the victim? The law may take its own course in so far as

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168 S.M. Pasha, Convenor, Shariat Protection Council, Chennai (Tamil Nadu),
the rapist father in law is concerned, but what about the victim? Dr. Mustafa Kamal said:169

“The ‘fatwa’ given by Deoband seminary, and confirmed by All India Muslim Personal Law Board, that Imrana, after being raped by her father in law, cannot be allowed to stay with her husband, is most retrograde, and in total violation of Islamic Shariah. Countless provisions of Quran bear ample testimony to the fact that nobody can be punished or subjected to adverse consequences for any deed which he or she was compelled to commit, and the commission of which could not be resisted despite all human efforts”.

“According to Quranic injunctions, even if a woman is forced into prostitution by those under whose custody she is, she is free from any guilt, sin or whatever might be associated with it. Had the act of Imrana been voluntary, then the situation would have been totally different. This is a gross injustice which can never be authenticated by Shariat, that a poor woman was firstly raped by her father in law, and then also deprived of her matrimonial life”.

“Such un-Islamic Fatwas are bound to project Islam as a cruel and unjust religion, and, by acting in this most heinous and negative manner, the obscurantist clergy class is ruthlessly damaging the image of Islam as the most progressive religion of the world. Such developments amply manifest that these seminaries and the Maulvi class have lost their utility in the Muslim society, and the more free hand they are given in tampering with Shariat, the more disastrous they will prove themselves for the whole social and religious fabric of the community. Now it is time when a sustained movement must be launched to keep the illiterate Muslim masses away from the nefarious ideology of these Madrasas and Maulvis, if Islam is to survive as a modern religion in the 21st century”.

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169 President All India Muslim Forum, presently working as Dean, Faculty of Law and Shariah, University of Zanzibar, Tanzania.
Muslims belonging to Shafei, Jaafari Shia and Ahl-e-Hadees schools of thought rejected the interpretation on which the fatwa is based, contending that the Quranic injunction refers only to legitimate marriage between prohibited relationship and a crime does not change the rule.

**The Case of Mukhtaran Mai:**

Pakistan court upholds Lahore High Court Judgment, acquits other five\(^{170}\). Pakistan’s Supreme Court upheld a high court’s order acquitting five of the six men accused of raping Mukhtaran Mai, who emerged as the symbol of a movement for women’s rights after she was gang raped on the orders of a tribal council in 2002. The Supreme Court—which had taken *suo motu* notice of the Lahore High Court’s verdict of 2005 and begun hearing the case—ordered that the accused who had been acquitted should be immediately freed if they were not wanted in any other cases.

A three-Bench upheld the life sentence given to one of the accused, Abdul Khaliq.

Mukhtaran Mai expressed disappointment at the apex court’s verdict, saying she no longer trusted Pakistan’s judicial system. “*I have waited and endured problems for five years. If they had to give such a verdict, why did they cause me so many problems for five years? They need not have taken *suo motu* notice if they had uphold the earlier judgment.*”

Mukhtaran Mai was allegedly raped by several persons in Jatoi Village; Muzaffargarh district in southern Punjab of Pakistan, in 2002 after a village jirga (assembly) found her brother guilty of establishing illicit relations with a girl of an influential family and permitted family members to rape Mukhtaran Mai. In June 2002, a case was filed under an Islamic law and the Anti-Terrorism Act against 14 suspects, including two members of the village council.

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\(^{170}\) The Tribune, Chandigarh, April 22, 2011
In August the same year, a lower court in Punjab awarded the death sentence to six of the accused, including the two village council members, and acquitted the other eight suspects.

In March 2005, the Multan bench of the Lahore High Court acted on an appeal filed by the accused and struck down the lower court’s order. It acquitted five of the six accused and converted the death sentence given to Abdul Khaliq, one of the main accused, to life imprisonment. Soon after, the Supreme Court took suo motu notice of the matter and began hearing the case, and acquitted five of the six accused.

In the Jammu and Kashmir Valley, where religious identity forms the nucleus of the separatist struggle, most of the top religious leaders supported the fatwa, the only exception being the Shia cleric and Hurriyat leader Moulana Abbas Ansari, who said that the fatwa does not conform to the tenets of Islam.171 Expressing grave concern over the fatwa, People’s Democratic Party’s President, Mehbooba Mufti said that “it is a misrepresentation of the religion by a particular school of thought. This is not good for the image of Islam, which is one of the most emancipated and just religious and was the first to give women their rights and a respectable position in society”.

Washington D.C. based Kaleem Kawaja172, also said that while Islam condemns consensual sexual relations between a father in law and his daughter in law and lays down strict punishment for both parties, the Imrana case is clearly different since it involves rape. Hence, rather than being punished, Imrana demands compassion and kindness in accordance with the teachings of the Quran, particularly because she from a poor family and has five young children. Kaleem Khawaja believes that the case should have been handled by the state courts, in accordance with secular laws, instead of by mullahs. Rather than seeing the problem as rooted

172 Washington D.C. based Kaleem Kawaja, President of the Association of Indian Muslims of America.
essentially in patriarchal fiqh formulations, he claims that the fatwa is based on ‘obscurantist tribal forms’. He stressed on the need for structural changes in both the Deoband Madrasa and All India Muslim Personal Law Board, in order to ‘stop the obscurantism and injustice to women in the name of Islam’. He also suggested that at least a third of the 40 member Working Committee of the Board should consist of women, and there were several learned Muslim women qualified to fill such a role.

Other Muslim intellectuals have argued that there is an urgent need for Ijtihad or contextuality sensitive re-readings of Islamic jurisprudence to meet contemporary demands, Islamic law expert Professor Tahir Mahmood insists that Imrana’s fate cannot be decided by ‘ancient jurists wisdom’ laid down by some religious jurists of Arabia over a thousand years ago. That rule, he added, may have been a pro-women provision for its times, in a society when remarriage for divorced women was easy, but in India today rules ‘need not be strictly imposed on an innocent and unwilling couples desirous of continuing in marriage’. Criticism over the controversial fatwas was also voiced by Indian Muslim scholars and commentators based in the United States and Germany, stating that the Indian Ulema were way behind their counterparts in other countries and felt a deep-rooted patriarchy underlying the Deobandi version of Islam. They have urged the Ulema to interpret Shariah laws, through a process of Ijtihad, in a more gender-equitable manner and in case the Ulema refuse to consider any such reforms, they suggest that the Muslims must struggle for the right for individuals to ‘opt for a uniform code’ in order to ensure gender justice.173

**Conclusion of Fatwa:**

Fatwas are meant to serve a useful purpose in Muslim societies. Throughout the history, Fatwas have been used to settle disputes in marriage, divorce and inheritance or to provide guidance on certain ritual matters. The function of a fatwa is to promote social harmony and was never meant to be an instrument of power.

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173 Yoginder Sikand, *Fury over a Fatwa.*
However, this concept changed when, on 14 February, 1989, Ayatollah Khomani issued a fatwa against Salman Rushdie, converting fatwa into powerful device. From simple opinions based on obscurantist law, fatwas became ideological tools that could be used rather effectively against not only the enemies but also to tighten the grip of the clergy on the society: especially women. Khomani led the way for all kinds of ignorant and semi-literate mullahs to follow. Fatwas have become an essential weapon of ideological war.

Fatwas were never meant to order the killing of any individual irrespective of the religious sentiment within which they are couched. Such Fatwas should be considered as call for extra-judicial killings and must be treated as such. Syed Noor-ur-Rehman Barkati, the Shahi Imam of Tipu Sultan Mosque in Kolkata issued a fatwa stating that “anybody eliminating Taslima Nasreen would be given Rs.100,000 and unlimited rewards if she does not leave the country immediately”. Justifying the Fatwa, the Shahi Imam said that she has “insulted Islam and continues to create problem in this country. We are forced to issue such a warrant because the government is not making use of the constitutional provisions and driving her out of the country.”

Apart from the fact that Fatwas that call death of individuals have no place in civic society based on democratic principles, such Fatwas are totally un-Islamic. In a separate incident, activists of Majlis-e-Ittehad-ul Muslimeen of Hyderabad in Andhra Pradesh tried to assault Taslima Nasreen, the Bangladesh writer in August 2007. Both the above Fatwa and the Hyderabad incident were condemned by the All India Secular Forum. The Hyderabad incident was all the more serious as the attack was led by elected legislators of MIM.

Concerned Muslims like Vikhar Ahmed deplore that “when the print media reports on issues pertaining to the delivery of Fatwas it generally treats it under the

174 Fatwas Are Calls for Murder, South Asian, August 19, 2007
broad rubric of reporting about Islam and it does this in an intensive and crass manner without recognizing the internal divisions within Islam in India. When we say “concerned Muslims”, we mean Muslims concerned with Islam getting an adverse publicity. But, not every newspaper is against Islam or is interested in giving and adverse publicity to the religion and its followers. The media is also concerned about the adverse effects of Fatwas.

Numerous verses of the Quran make it clear that men and women are equal in the eyes of God; the only thing that distinguishes people is their level of God-consciousness. Islamic law guaranteed rights to women over 1400 years ago. For example, Islam clearly teaches that a woman is a full person under the law, and is the spiritual equal of male. Also, according to Islamic law, women have the right to own property, operate a business and receive equal pay for equal work. Women are allowed total control of their wealth, they cannot be married against their will and they are allowed to keep their own name when married. Additionally, they have the right to inherit property and to have their marriage dissolved in the case of neglect or mistreatment. Also, Islam does not consider a woman and “civil temptress”, and thus does not blame women for the “original sin”. Women in Islam participate in all forms of worship that men participate in.

The Quran, in addressing the believers, often uses the expression, ‘believing men and women’ to emphasize the equality of men and women in regard to their respective duties, rights, virtues and merits. It says:

“For muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast, for men and women who guard their chastity, and for men and women who engage much in Allah’s  

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175 Vikhar Ahmed. The Fatwa in Journalism. 2006
praise, for them has Allah prepared forgiveness and great reward’. (Qur’an 33:35)

Also, “the Believers men and women, are protectors of, one of another: they enjoin what is just, and forbid what is evil: They observe regular prayers, practice regular charity, and obey Allah and His apostle. On them will Allah pour mercy: for Allah is Exalted in power, wise. Allah hath promised to Believers, men and women, Gardens under which rivers flow, to dwell therein, and beautiful mansions in Gardens of everlasting bliss. But the greatest bliss is the God Pleasure of Allah: That is the supreme felicity”.

There is unequivocal evidence in the Qur’an highlighting these as equal duties upon men and women. Prophet Muhammad’s mission stopped many of the horrible practices in regard to women that were present in the society of his time. For example, the Qur’an put an end to the pagan Arab practice of killing their baby daughters when they were born. Additionally, Islam put restrictions on the unrestricted polygamy of the Arabs of the time, and put many laws in place to protect well being of women. If women in the Muslim World today do not enjoy their rights, it is not because Islam did not give them their rights. The problem is that in many places, including India, alien traditions have come to overshadow the teachings of Islam, either through ignorance or as an impact of colonization.

The problems are compounded by Fatwas issued by Darul Ifta and other religious bodies and individual muftis. As we have seen several of such Fatwas have not met the approval of Islamic scholars both within and outside the community. Even scholars of the All India Muslim Personal Law Board, (AIMPLB) have on occasion not agreed with the Fatwas issued by Darul Ifta. The sufferers are Muslim women. What options do Muslim women have? In July 2005, a group mostly of Muslim women, many wearing the hijab, publicly protested against the extra-judicial actions of some religious bodies in Mumbai. Protesting against the unjust Fatwas
issued by the Maulanas in the case of Shah Bano, Gudiya, Imrana and others, the
protestors accused the government of being silent “because it is afraid of the
Maulanas”. The women wanted an end to Fatwas and edicts which affected their
lives.  

The protestors said that their belief in the judicial and social systems was
shaken by the Imrana episode and similar cases. “One can only imagine the
magnitude of the unreported cases where thousands of Imranas are being subjected to
the most atrocious customary practices and thousands of women are being subjected
to such fatwas which infringe on their liberty to live without fear”. The organizations
wanted that the rule of law prevail and demanded that “laws which are applicable to
women form the other communities must also be applicable to Muslim women”. They
asked for and end to the “politics of Fatwa” and to “extra-judicial authorities”. The
Muslim women were also agitated over the clerics insisting that there be no dancing
and singing at the mehandi ceremonies preceding weddings and that no photographs
be taken at weddings. They questioned: “Weddings are one time when women can
celebrate and enjoy themselves. Why should we be denied that right?

All-India Democratic Women’s Association (AIDWA) appealed to Muslim
men and women to ignore “anti-women and undemocratic” Fatwas and called upon
the community to safeguard democratic rights. The AIDWA also criticized the fatwa
issued by the Darul-Uloom of Deoband (since withdrawn) seeking to restrict the
rights of women contesting elections. The AIDWA pointed out that it was only for
the past 10 years that many Muslims were taking advantage of reservation for women
in local bodies and evincing interest in participating in pubic affairs by contesting
elections to the state legislatures and parliament even as independents. Under the
circumstances, fatwas against Muslim women’s political participation issued in the
name of religion, go against the interests of the Muslim community; especially the

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176 The Hindu, 24 July 2005
low and middle income groups. Pointing out that Bhopal was ruled by a succession of Begums who were not only extremely efficient rulers but also enjoyed the support of the Muslim clergy, AIDWA said that such Fatwas were not new and have been given in the past and treated with the contempt they deserve, Asghar Ali Engineer has rightly observed:

"Those who issue fatwas are not men of vision or great understanding of the issues involved. They do not investigate the merits of each case. They only consult the rule-book and pronounce their verdict. Mostly those who ask the opinion of the Alims (scholar) are poor and illiterate people from rural or semi-urban areas. A fatwa is to be located in its sociological moorings. A backward society consisting of illiterate and poor people have backward outlook. Their only asset is religion, which gives them some comfort in their otherwise life full of struggle and hard labour to eke out their livelihood. One cannot expect them to exercise their own intelligence in the matter. The fatwas should be criticized, but keeping these factors in mind. Mere condemnation will not do. One should also understand why such fatwas are acceptable. Those who criticize these fatwas (and rightly so) come from educated middle classes living in comforts of urban environs. They have benefit of best of education and training. But poor and illiterate whose only asset is religion cling to the traditional religion. Any pronouncement from even the imam of a mosque is divine law for them. The same thing applies to the urban poor also who are far from intellectual and material benefits of modernity and post-modernity even though they live in urban areas."

There is growing feeling for gender equality in the society in which we are living today. This is the society if microchips, internet and communication revolution, whose technologies are increasingly being explored by both men and

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177 Ignore anti-women Fatwas: AIDWA, The Hindu, August 20, 2005
Women are showing commendable talents in different fields in comparison with men and their participation level has also increased. In such a competitive society, it is but natural Muslim women do not want lag behind. They are becoming aware of their potential and conscious of their rights. Under the circumstances, the Islamic clergy have to carefully consider the social circumstances and the welfare of the community before issuing fatwas that have an adverse impact on women, which, in turn, will only harm the community.

STATUTORY AUTHORITY OF COURTS TO APPLY MUSLIM LAW:

The policy of the British Government was to enact general laws for all the affairs of Indian (whether the Muslim or non-Muslims) except their family-matters. Accordingly, the Indian Penal Code, Indian Contract Act, Civil Procedure Code, the Transfer of Property Act, etc. etc. were passed which applied (as they still are) to the Muslims as well as to Hindus etc. But the domestic affairs or the family-matters were left to be regulated by the religion-based personal laws of the respective communities. This policy was expressly laid down in several enactments such as, the Punjab Laws Act, 1872, the Madras Civil Courts Act, 1873, Oudh Laws Act, 1876 and the Bengal, Agra and Assam Civil Courts Act, 1887, etc. In these enactments it was provided that in certain specified matters the civil courts will apply Hindu law where parties are Hindus and the Muslim law where the parties are Muslims. Thus, these Acts empowered the Indian courts to apply Muslim law to the Muslims of India in respect of their family-matters. The latest enactment which authorities the Indian courts to apply Muslim personal law is the Muslim Personal Law (Shariat) Application Act, 1937, popularly known as Shariat Act.

178 The specified matters were marriage, dower, dissolution of marriage, adoption, guardianship, inheritance, will joint family property, partition etc., or any other religious usage or institution. These Acts did not include "gift", but S.129 of the Transfer of Property Act, 1882 provides that if donor is a Muslim then it is to be regulated by the Muslim Law of Hiba and the provisions of the Transfer of Property Act shall not apply.

179 Sinha R.K, Muslim Law, .
The Shariat Act, 1937

There were certain doubts in the minds of Indian Muslims regarding the application of Muslim personal law to Muslims. To confirm the policy of the British Government and to remove their doubt, the Shariat Act had to be enacted by the Central Legislature in 1937. At present the application of Muslim Personal Law is generally regulated by this enactment. Provisions of this Act regarding the application of Muslim Personal law are summarized as under: 180

Section 2 of the Shariat Act provides that in a case where both the parties are Muslims the rule for decision shall be Muslim law, if the case involves any of the following matters:-

1. Succession Intense (i.e. inheritance)
2. Special property of the females
3. Marriage (including all incidents of marriage)
4. Dissolution of marriage (including all kinds of divorces)
5. Maintenance
6. Dower
7. Guardianship
8. Gift
9. Trust and trust properties, and
10. Wakf

It is therefore clear that in respect of the above-mentioned matters, if both the parties to a case are Muslims, the court shall apply only the Muslim personal law and nothing else. A custom or usage contrary to Muslim law cannot be applied now. It is significant to note that the words, “rule for decision shall be Muslim law” in Section 2 of the Act, are mandatory, meaning thereby that the courts are not only empowered

180 Ibid
but also bound to administer only Muslim personal law in the situation mentioned therein.\textsuperscript{181}

In the case involving adoption, wills and legacies, the courts have no authority to apply Muslim law under Section 2 of the Act, because these subjects are not included in the said section. But Section 3 of the Shariat Act, provides that courts may apply the rules of Muslim law in case of adoption, will and legacies provided a Muslim expressly declares that he wants to be governed by Muslim law also in respect of these of matters in addition to the aforesaid ten matters.

The Shariat Act, 1937, was enacted by the Central Legislature and it was beyond its legislative competence to make laws for provincial (State) subjects. Agricultural lands, charities and charitable endowments, being principal (State) subjects, had to be expressly excluded from Section 2 of the Act. The question is that courts cannot apply Muslim law on these questions under the authority of the Shariat Act. But State legislature is competent to enact laws on these subjects. In most of the States of India, therefore, succession to agricultural lands is regulated by local tenancy laws and not according to the Muslim law of inheritance. However, in the States of Andhra Pradesh and Tamil Nadu, in the matters of agricultural lands, charities and charitable institutions, of Muslims are governed by Muslim personal law. The reason is that in these States an amendment in Section 2 of the Shariat Act has been made under which these matters have not been exempted from the application of Muslim personal law.

Section 6 of the Shariat Act repeals certain provisions of those earlier enactments which gave authority to the courts to apply Muslim law before the enactments which gave authority to the courts to apply Muslim law before the commencement of the Shariat Act. For example, Section 26 of Bombay Regulation Act, 1827, Section 16 of the Madras Civil Courts Act, 1873, Section 3 of Oudh Law

\textsuperscript{181} Muhammad Yunus v. Syedunnissa, (1962) 1 SCR 67
Act, 1876, Section 5 of Punjab Laws Act, 1872 and the Central Provinces Laws Act, 1875 have been repealed and are now not in force.\textsuperscript{182}

**The Cutchi Memon and Mapilla Muslims:** The Cutchi Memon and the Mapillas are generally found in the southern part of India. Formerly, in the matters of successions they were governed their own customary laws which were against the rules of Muslim personal law. This was provided under special enactments made for these communities. But the Cutchi Memons Act X of 1938, which is now in force, provides that all Cutchi Memons shall, in matters of succession and inheritance be governed by their customary laws in respect of testamentary or intestate succession. But the Mapilla Succession Act of 1918 and the Mapilla Wills Act of 1928 now provides that in matters of inheritance and wills, Muslim law shall be applied to them like other Muslims. It is however, interesting to note that like other Muslims, it is not necessary for a Mapilla to make a declaration for being governed by Muslim law also in the matters of wills and legacies. They are compulsorily governed by the Muslim personal law on these matters. But customary law of Mapilla Muslims regarding the succession of joint family property (Tarvad and Tavazhi) continues to apply to this community; this has neither been abolished by special enactments for this community not by Shariat Act, 1937.\textsuperscript{183}

At present Memons are divided into the Halai Memons of Mumbai, the Halai Memons of Porbandar and Kathiawar. The Halai Memons have been governed wholly by Muslim law from the very beginning. However, the Halai Memons of Porbandar and Kathiawar were governed by Hindu law of inheritance before the Shariat Act, 1937. Now their position is like that of Sunni Boharas.\textsuperscript{184}

**The Khojas:** The Khojas were originally a trading class of Hindus who lived in Sind and Cutch. Soon after the conquest of Sind by the Muslims, a wholesale

\textsuperscript{182} Aqil Ahmad, *Mohammadan Law*, 23\textsuperscript{rd} Ed
\textsuperscript{183} Ibid
\textsuperscript{184} Paras Diwan, *Muslim Law in Modern India*, p.9,
conversion of his community to Islam took place. His Highness, the Aga Khan, is the head of the Khojas, who call him as Hazar Imam. The Khojas believe that the Hazar Imam, being the descendent of the Prophet, is the final interpreter of religion and deserves absolute reverence. Their religious book is called the Desaavatar, which has “strong combination of Hindu articles of faith and tenets of Islam.” It has been held that the present, the Khojas are divided into three sects. The majority of them belong to the Ismaili sect. The others follow either the Ithna Ashari faith, or the Hanafi school of Sunnis the latter are in a very small minority. In Khojas and Memon’s, Perry C.J., held that Hindu law ought to be administered to the Khojas and Memons, who by their custom and usage, have been following that law, though they professed Islam.

Before the coming into force of the Shariat Act, the only areas, in which the Khojas were governed by customs, were inheritance and succession. Now, they are governed by Muslim law in regard to intestate succession, and by custom in respect of testamentary succession. This means that a Khoja can will away his entire property (under Muslim law, a Muslim can bequeath only one-third of his property, but if he dies intestate, his property will devolve in accordance with Muslim law.

The Boharas: Like the Khojas, the Boharas were also originally Hindus. At present, they are mostly Ismailis. There are some also some Sunni Boharas who belong to Gujarat. The Ismailis Boharas are an affluent class of traders and businessmen and mostly live in Western India. They are divided into the Daudis and the Sulaymanis. The head of Bohara community is known by the name of Dai-Mutlaq, who is the authoritative interpreter of their religion and the leader of the

185 Ibid, p.8
187 Fyze Outlines of Mahomedan Law, (3rd Ed) p. 68
188 Hirbae v. Sonhae, (1847) Perry’s OC 110, as cited in Muslim in Modern India by Paras Diwan p.8
community. Their holy book is known as Dai‘imu I-Illam. The Daudi and Sulaymani Boharas are governed by Muslim law. Before 1937, they were governed by the customary law of inheritance which was akin to Hindu law. Now, their intestate succession is governed by Muslim law, while testamentary succession is still governed by customary law.

There are also Sunni Boharas. They are domiciled in Gujarat. It appears that as to testamentary succession, they are governed by custom and as to other matters by Muslim law. The position of the Girasia of Broach is similar to that of the Sunni Boharas.

The Kashmiri Muslims: The Shariat Act does not apply to Muslims in the State of Jammu and Kashmir, nor has the State its own Shariat Act. In the State of Jammu and Kashmir, a custom at variance with Muslim law may be pleaded. In *Md. Akbar v. Md. Akhoon*, 1972 J & K 105 (FB), a full Bench of J&K High Court held that several customs at variance with Muslim law are recognized in the State. These customs include the right of the widow of a Kashmiri Muslim to inherit the estate of her husband during her lifetime to the exclusion of all other heirs, the right of the Khana Nashim daughter to inherit the property of her deceased father to the exclusion of other daughters, and the right of the adopted son (pisar parwards) to inherit the properties of the deceased adoptive father. The Shri Pratap Jammu and Kashmir Law (Consolidation) Act, 1977 has now stamped these customs with the character of law.

The Muslim Tribes of Punjab and Haryana: By virtue of S.5 Punjab Laws Act, 1872, the Muslim tribes of Punjab were governed by customary law in regard to succession, special property of females, betrothal, marriage, divorce, adoption, guardianship, minority, bastardy, family relations, wills and legacies, gifts, partitions

190 The work has been edited and published by Fyzee in two volumes Dar-el-Madref, Cairo, vol. I. 1951 and vol. II. 1961.
191 Bai Baiji v. Bai Sanlok, (1894) 20 Bom 53; Bai Asha v. Bai Biban, (1956) 59 Bom LR 470 as cited in *Muslim Law in Modern India*, Paras Diwan, p. 10
193 ibid
or any religious usages or institutions. The Punjab Law Act has been repealed by the Shariat Act, 1937. This means, it is submitted, that in the ten matters enumerated in S.2 of the Shariat Act, the Muslim tribes will be governed by Muslim law; as in 3 matters enumerated in S. 3, the tribes will continue to be governed by customary law till they file a declaration as stipulated there under. It is submitted that the contrary view taken by Mulla is not correct\(^\text{194}\), as S. 6 of the Shariat Act lays down that the provisions of S. 5, Punjab Law Act, are repealed “in so far as they are inconsistent with the provisions of this Act.” Thus, retention of customary law in all matters except those mentioned in S. 2 of the Act, will not be inconsistent with the provisions of the Act.

The Meo tribes of Haryana are still, in many matters, particularly appointment of heirs and adoption governed by customary law, which is akin to Hindu law. The Meo tribes were originally Hindus.\(^\text{195}\)

**Application of Muslim Law on the ground of Equity**

In the absence of any enacted law on any point, the courts apply the principles of equity, justice and good conscience. Therefore, in case where the courts have no statutory authority for the application of Muslim law, the rules of Muslim law, have been applied by them on the ground of equity and justice. For example, the Muslim law of pre-emption has not been mentioned in any enactment including the Shariat Act 1937, and the courts have no statutory obligation to enforce it. But it has always been the policy of the courts in India to apply the Muslim law of pre-emption on the grounds of equity and justice.

Article 225 of the Constitution of India provides that the High Courts will administer the same civil laws which they applied immediately before the commencement of the Constitution. The result is that at present the Muslim law is being applied by the courts of India on the basis of the Shariat Act, 1937 and the unrevealed provisions of the above mentioned Civil Courts Acts. In so far as those

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\(^{194}\) Paras Diwan, *Muslim Law in India*, p.10

\(^{195}\) Ibid
matters are concerned which have not been included in the Shariat Act, the courts are free to apply customs and usages or the provisions of the local enactments, if any.196

**Muslim Law not applied to Muslims:**

The general rule for the applicability of Muslim personal law is that where both the parties are Muslims and the case involves any of the matters enumerated in Section 2 of the Shariat Act; the case must be decided by applying Muslim personal law. But there are exceptional cases in which even both the parties are Muslims and the case involves one of the matters specified in the Shariat Act yet, Muslim law is not applied. For example, if the Muslim husband and wife have contracted their marriage under the Special Marriage Act, 1954, instead of contracting it according to Muslim personal law, the Muslim law of marriage does not apply although both the parties are Muslims. In a marriage contracted under the Special Marriage Act, 1954, mutual rights of inheritance of the husband and wife are governed by the Indian Succession Act, 1925, and not according to the Muslim law of inheritance. Similarly, in determining the legitimacy of children the courts in India apply the provisions of Section 112 of the Indian Evidence Act rather than the Muslim law of legitimacy. Further, according to the Child Marriage Restraint Act, 1929, marriage of boy under the age of 21 years and of girl under the age of 18 years is “child marriage” and has been regarded as a punishable offence. But, under Muslim law the marriage is not a child-marriage if boy and girl have attained the age of puberty (15 years). The Child Marriage Restraint Act is applicable also to Muslims. Again, according to Muslim law of maintenance a divorced wife is entitled to be maintained by her husband only during the period of Iddat i.e. a period of three months after divorce. But Section 125 of the Criminal Procedure Code, 1973, provides that such a divorced wife is entitled to be maintained by her husband as long as she remains unmarried. Criminal Procedure Code, 1973 is applicable equally to the Muslims in India. Maintenance of divorced Muslim woman is now governed by Muslim Women (Protection of Rights on Divorce) Act, 1986. However, Section 5 of this Act provides that if husband and

196 Ibid
wife mutually agree at the first hearing that their case for maintenance be decided under Section 125 of the Cr.P.C, then the provisions of Sections 125 can still be made applicable in the divorced woman’s claim for maintenance.\(^{197}\)

Thus in the above mentioned cases although both the parties are Muslims and the suits involve one of the matters expressly enumerated in the Shariat Act, yet the provisions of Muslim law are not applicable.

**Muslim law applied to Non-Muslims:**

In apply the rules of Muslim law, policy of the courts where the parties to a suit differ in religion or do not belong to the same school of Mohammedan law, the law of the defendant is applied is applied.\(^{198}\) It means that if one party to a suit is a Muslim but the other is a non-Muslim, Muslim law is applied if the defendant is a Muslim. This may amount to subjecting a non-Muslim to the rules of Muslim law. This is, however, only a general policy and in some cases the courts have refused to apply Muslim law where both the parties are non-Muslims. But in certain cases the rules of Muslim law is undoubtedly applied to non-Muslims. A married woman who renounces Islam and converts to any other religion ceases to be a Muslim. But, under Section 4 of the Dissolution of Muslim Marriage Act, 1939, such a woman (even after conversion to another religion) may obtain a decree for the dissolution of her marriage on any of the grounds mentioned in Section 2 of this Act. In this case rules of Muslim law are being invoked by a non-Muslim wife. Another example of the application of Muslim law to a non-Muslim is the availability of the right of pre-emption to a non-Muslim. The right of pre-emption is available, by customs, to those Hindus who are domiciled in Bihar, Sylhet and certain parts of Gujarat. Moreover, in certain parts of India, the law of pre-emption is regulated by special Acts which apply to Muslims as well as to non-Muslims of these areas. “It thus, appears that in some cases the courts

\(^{197}\) Maintenance of Muslim woman is governed by Muslim Women (Protection of Rights on Divorce) ACT, 1986. However, Section 5 of this Act provides that if husband and wife mutually agree at the first hearing that their case for maintenance be decided under Section 125 of the Cr.P.C. then, the provisions of Section 125 can still be made applicable in the divorced woman’s claim for maintenance (Danial Latif and others v. Union of India, J.T. 2001 (8) SC 2181)

\(^{198}\) Fyzee: Outlines of Mohammedan Law, Ed. IV, p.79
may have to apply Muslim law (though not necessarily under the obligation imposed on them in that behalf by the Shariat Act) even to case only one party to which is a Muslim.\(^{199}\)

**Object of Study:**

1. To identify the actual position of Women in Quran and Hadith and examine the laws relating to Marriage, Divorce and Maintenance in contravention to the existing position of Shariat, Sunna, and Personal law in India.
2. To make assessment as to the contribution of judiciary.
3. To identify the deficiencies which have report into the present day legal system
4. To suggest remedial measures to make justice delivery system more efficient within the existing frame work.

**Research Hypothesis:**

Due to inadequacy of relevant provisions which are not available, the women over all are sufferers and become the victims of the uncommitted faults. To allow smooth functioning in the systems which are mainly meant to give sustenance and respect to women the whole system needs to be revalidated without the pros and cons. The women of modern era are much more knowledgeable and even do not hesitate to do the hard jobs which were meant for the men folk. This present scenario gives the actual position of woman what she should be and in what form she will be given the full acceptance of the society and not treated as an inferior to men. The women will not be allowed to suffer due to the patriarchal governance and superiority of men. The Muslim woman in India has become a subject of interest on academic and social circles for her human rights. Though the Muslim woman’s movement is very weak, their voices are heard in other women’s outfits where they openly criticized and expose inconsistencies of Muslim Personal law. They have some real grievances against Muslim males in matters of divorce and maintenance of their wives. Certain

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\(^{199}\) Tahir Mahmood: *The Muslim Law of India*, Ed.1982, p.30
provisions of Muslim Personal Law, they feel are discriminatory against women and they favour men. They question legality of triple talaq and polygamous marriages, recognized by the Muslim law, in the context of Indian Constitution and other laws. However, the general principles of Muslim law cannot be challenged. The Muslim law is a pioneering family law in our country. It recognizes the distinct personality of a woman independent of her father, husband and other male members of her family. The dictum that “husband and wife constituted one person and the husband was that person”, never applied in case of Muslim woman.

Review of Literature:

It is available in the form of number of books, newspapers, magazines, articles, conventions and relevant laws in different countries. Right related Supreme Court and High Court judgments. The most unaccepted fatwas applied to affairs relating to Muslim women mostly and the results of these and problems arising out of these have been reviewed with latest cases on Muslim women with also the drawbacks and not a single benefit for Muslim women. The Internet had a substantial effect to studying international scenario as well as different words and news items without which the research would have been much more difficult. All sources of information digital or otherwise have been cited in foot notes to the main text and these may serve useful too to guide thosedeserving to undertake in depth research in any of the areas that the work contains. One word of caution: though websites and URLs being rather transient in nature, sometimes links might have lapsed the foot notes only tell of those rules that existed at the time of writing along with the date when they were accessed. The Internet had a substantial effect to studying international scenario as well as different words and news items without which the research would have been much more difficult. All sources of information digital or otherwise have been cited in foot notes to the main text and these may serve useful too to guide those deserving to undertake in depth research in any of the areas that the work contains. One word of caution: though websites and URLs being rather transient in nature, sometimes links might have lapsed the foot notes only tell of those rules that existed at the time of writing along with the date when they were accessed.
Research Methodology:

The present study adopts analytical, descriptive and evaluative methods to draw conclusions and inferences. The materials for the present study have been collected from primary as well as secondary sources. The primary sources include files, documents, reports, judicial decisions, debates, discussions held on the topic. The secondary source comprises material information collected from relevant books written by various scholars on the subject, articles published in periodicals, journals and newspapers.

The research methodology is based on both materials—theoretical and empirical. The theoretical dealt with the study of literature and judicial verdicts available on the issue and also includes the relevant provisions of codified and uncodified Muslim law, Shariat Act, 1937, Dissolution of Muslim Marriage Act, 1939, Muslim Women (Protection of Rights on Divorce) Act, 1986 and Special Marriage Act, 1954. The burning problems of the topic will be discussed with the help of relevant provisions of Verses of Holy Quran, Hadith-Al-Bukhari Sahih, Fatawa-e-Alamgiri, Constitution of India, Code of Criminal Procedure, 1973, Indian Penal Code 1860, Protection of Women from Domestic Violence Act, 2005, Prohibition of Child Marriage Act, 2006, Indecent Representation of Women (Prohibition) Act, 1986, Protection of Human Rights Act, 1993, Indian Majority Act, 1875, Dowry Prohibition Act, 1961 and Labour Laws, the information gathered from various websites and Government national policies. The empirical work comprises taking views of different people who normally dealt with the matrimonial cases. The Study also relies on judgments of the Apex Court, High Courts and of other Countries. Relevant laws of the select countries will also be discussed to see the global trend on the topic under study. The research problem has been studied in human rights perspective.
Plan of Study:

The whole study is comprised of six chapters, which are as follows:

The journey of the research starts with the present chapter first ‘Introduction’. The theme of the topic is being discussed in this chapter. The researcher is introducing the topic and is delineating the scope of her work in this chapter. This chapter throws light on the status of women before and after coming of Prophet of Islam. It covers the episodes of all past marriages with focusing the position in the present. In the same way the ways of divorce and the procedures of getting maintenance are also discussed. Overall the entire chapter depicts the advancement of the position of women over the past-before the advent of Islam. The Fatawa which mainly affect the women are also discussed with special reference to the Fatawa of Imrana and Mukhtarar Ma who has been gang-raped and Pakistan Supreme Court acquitted five accused out of six. Similar way the Fatawa relating to rape of daughter-in-law (Imrana) by her father-in-law has also been focused. Individual dignity and equal status of man and women as depicted in Holy Quran has also been explained. The Status of Muslim women in period of Ignorance (Jahiliyah period) has been studied in detail with special relevance to divorce, marriage and maintenance.

The second chapter is on “Status of Women in Islam and Marriage Laws” it deals with procedure of marriage in pre-Islamic Arabs and the marriage in the present law. It also deals with all the forms and kinds of marriage before and after the coming of Islam, because without discussing the past marriage problems, study of the topic will be incomplete. Further, the most prevalent and non-prevalent marriages has also been discussed in this chapter. More stress has been given on the prohibitions against the marriage, conditions and essentials of a valid marriage. The researcher has also incorporated such marriage ties which have no legal validity, i.e. Misyar Marriage which is prevalent in Arabs and Maitiri Karar (Friendship Agreement) in the chapter. The definition of marriage under different personal laws (Hindu law, Parsi law, Jew laws and Christian law) has also been defined. The relevant provision of
Constitution of India like ‘Right to Marry’ has also been dealt with. The bigamy and polygamy has also covered in this chapter with the consequences of conversion from one religious faith to another.

The third chapter is on “Status of Women in Islam and Divorce Laws.” Specifically relates to the divorce—talaq, the concept, meaning and definition has also been discussed. The meaning of talaq and divorce as given in various dictionaries has also been discussed. The origin and background of triple talaq has been given in detail. The divorce under different personal laws has also been discussed. The post prevalence of triple talaq and its usage in the present society has also been studied. The countries where the practice of triple irrevocable talaq has been abolished also included in this chapter. The need for change to stabilize the position of Muslim women who suffer because of this ill-fated triple talaq has also been covered in this chapter. The ways of pronouncing triple and single pronouncement divorces has given the separate heading in this chapter. Besides non prevalent forms of divorce like Ila and Zihar although these are not practiced in India has been added in this chapter. Moreover, the divorce by mutual consent of husband and wife (khula and mubarat), the unilateral power of husband to divorce wife (by single and triple irrevocable pronouncement-talaq-ul-biddat) and the divorce at the instance of wife (talaq-e-tafwiz) has been thoroughly examined, studied and brought within the precincts of the record in this chapter. The Muslim woman has given the right to dissolve her marriage on certain grounds under Dissolution of Muslim Marriage Act, 1939 along with faskh and lian have also been discussed in this chapter with certain merits and drawbacks of the Act. Besides, the dissolution of marriage due to apostasy and conversion and dissolution of foreign marriage has discussed in detail with reference to the latest cases on the issue.

The chapter fourth is on “Status of Women in Islam and Maintenance Laws” it deals with maintenance of Muslim wife and divorced women. Same has been divided into two categories i.e. maintenance of wife during the subsistence of marriage and maintenance of divorced women after dissolution of marriage. The maintenance which has been awarded under different sources like Code of Criminal
Procedure, 1973, Personal law and Muslim Women (Protection of Rights on Divorce) Act, 1986 has been studied in detail. The application of this Act only to Divorced women and not wives, with its constitutionality and inapplicability to wives has been given in full detail. The award of maintenance under Section 125-128 of Criminal Procedure Code, 1973 to both wives and divorced women with its applicability and option of the divorced women to take maintenance under this code or Muslim Women Act, 1986 has been fully examined with cases also so as to give the actual position of the destitute women after divorce for want of maintenance. Moreover, the award of maintenance beyond iddat period in the case of *Shabana v. Imran Khan*\(^{200}\) which made the revolution in the field of destitute women who has been thrown out of homes by their husbands has been discussed fully with all factual position. Furthermore the passing of Muslim Women (Protection of Rights on Divorce) Act, 1986 due to the struggle of 73 years old aged Shah Bano, has been explained with relevant provisions of its applicability to divorced women. This case history of *Shah Bano Begum v. Mohammad Ahmad Khan*\(^{201}\) has also been covered in detail with all debates while passing the Act.

The chapter fifth deals with “Empirical Study” which includes primary as well as secondary data collected after the efforts of researcher by interviewing the various segments in different States of India and by attending workshops and conferences during the course of study in Mumbai which was organized by Centre for Study of Society and Secularism and Institute of Islamic Studies Mumbai headed by Dr. Asghar Ali Engineer, a renowned Islamic scholar in this field in the month of August, 2009 and March, 2010, the topic of which was mainly on the Muslim women and her position in Holy Quran and in Law. Besides the information under Right to Information Act, 2005 has been obtained from the three session Judge courts of Malerkotla, (Sangrur, Punjab) regarding the status of divorce, maintenance and bigamy and polygamy cases, that information has also been incorporated. The specimen copy of Nikah-Nama after collecting information from Mufti Azam of Malerkotla has also been obtained. Besides the family problems of women of

\(^{200}\) AIR 2010 SC 305: (2010) 1 SCC 666 MP

\(^{201}\) AIR 1985 SC 945
Malerkotla after interviewing them is also explained in this chapter. After interviewing the Muslim women of slum area of Dindigul- Chennai, Ahmadabad-Gujarat, Bangalore and Mumbai, the whole information has been explained in this chapter. Besides secondary data which clearly shows the position of Muslim women in West Bengal, Bijnor of UP district has been added to give the actual position in these States of India. Moreover, the information from daily news papers, articles, journals and website information have been studied to understanding the chapter fully.

The **sixth chapter—the last chapter** is based on the “**conclusions and suggestions**” of the researcher. This chapter is based on the concluding remarks of the research scholar, which include the problems which prevail in present generation of the Muslim women, regarding the marriage, divorce and maintenance. To overcome such problems researcher has given her own suggestion for the upliftment of women over all. The basic suggestion which she has stressed is the education of Muslim women who are considered very backward due to lack of education. Because home is well if mother is educated and mother is educated the whole nation is educated. The researcher has also concluded that the main problem of the muslim women is due to illiteracy as she also asserted in workshop held in Bangalore on the same topic where the researcher gave forty minutes presentation in which she mainly stressed on the education and said that the present problem of the Muslim women is due to the unawareness of proper Islamic knowledge, because in our democratic country most of the ladies folk remain hidden within the four walls of the home although the government is doing a lot for educating the women in scheme like “Sarwa Shiksha Abhiyan” in which education upto eighth class has been made mandatory for all citizens of India and this Scheme is free of cost. But some Muslim women are not ready to come forth to take advantage of this scheme. Reasons behind is their stubborn husbands who always want that their wife should not leave home without their permission and it is regarded as great sin as their husbands have made them to run their life like that.