

STUDY GUIDE

PERSPECTIVES OF WOMEN RIGHT IN ISLAM

CREDIT HOURS: 03

Code 9168



**DEPARTMENT OF GENDER & WOMEN STUDIES
FACULTY OF SOCIAL SCIENCE AND HUMANITIES
ALLAMA IQBAL OPEN UNIVERSITY, ISLAMABAD**

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COURSE TEAM

Incharge:

Mrs. Atifa Nasir

Course Coordinator:

Mrs. Aqleem Fatimah

Unit Writers:

Dr. Riffat Haque

Dr. Muhammad Zial Ul Haq

Mrs. Mamoonah Ambreen

ALLAMA IQBAL OPEN UNIVERSITY, ISLAMABAD
DEPARTMENT OF GENDER & WOMEN STUDIES

Dear students,

The course Perspective of Women Rights in Islam (9168) is a 03-credit course comprising of nine units. This study guide (reader) is a brief introductory booklet for you to facilitate you understand the basic concepts and to give you details of other readings for exploring more about the topics covered in nine units.

INTRODUCTION

The course Perspective of Women Rights in Islam (9168) is a 03-credit course prepared for BS Gender & Women Studies Program. The course aims to help you to conceptualize various perspectives that are relevant to the question of women rights and Islam. It introduces various Islamic legal laws and various international laws, treaties, and conventions to situate the standing and status of Muslim women in the contemporary world.

It intends from students to focus on comparative analysis of various concepts and perspectives i.e. Islamic versus Feminist, Islam versus other religion, monotheistic versus non-monotheistic religions. By comparing this, students will be able to understand how women rights are integrated at a larger scale. The course also provides an in-depth analysis of Islamic Sharia laws like family laws in Pakistan. It also aims to give a glimpse of how constitutional laws have influenced on Muslim women in Pakistan, and how the Muslim women struggled to make various amendments in family laws in Pakistan.

OBJECTIVES

After completing this course, you will be able to

- Know about some of the international laws on women and human rights
- Understand women rights in the context of Islamic Sharia
- Understand the Pakistani legislations that concern women rights as per Islamic sharia and their impact on Pakistani Muslim women's lives

HOW TO STUDY?

For studying material, you need to follow the given instructions

- This study guide presents an overview. You are encouraged to study at your own by studying the suggested readings given under each topic for preparation of assignments / exams. Since, BS Gender & Women Studies aims to prepare a lot of social scientists and researchers in gender and women issues. Thereby, being a researcher, the more you will equip yourself by studying available online materials, the more you will be aptly fulfill the role of a social scientist and researcher, and will successfully complete your degree.
- If you spend one hour daily to study your course, you will be able to complete your course in eighteen, 18 weeks.
- As soon as you are assigned tutors, you start working on your assignments. Try to contact your tutors if you need to understand any topic, or call to Faculty members (phone numbers are in your prospectus/on AIOU web) for guidance. Assignments are your personal notes, so always keep a copy with you before sending it to your tutor..
- In the mid/quarter of your study period, a workshop will be arranged for you, which is a compulsory component of your study. This workshop gives you more clarity about topics. You interact with your peers, internal and external resource persons in the workshop. Therefore, avail the best of information at the workshop and take notes of the lectures as well.
- Extensively use internet and library for better understanding of the topics.

TUTORS GUIDANCE

AIOU's BS Gender and Women Studies invite students to study on their own. However, we do provide students with tutors that are assigned to check their assignments. You are encouraged to contact your assigned tutors before preparing assignments for guidance. Tutors are appointed through regional office. So, if you did not get tutor information on AIOU Website than contact respective regional office for confirmation of name, email and phone number, and address of the tutors.

COURSE CONTENTS

- Unit: 1. Human Rights & Women
- Unit: 2. Woman Human Rights in Islam
- Unit: 3. Legal Status of Women in Islam
- Unit: 4. Comparison of Women Rights in Various Religions
- Unit: 5. Women Rights in Pakistan
- Unit: 6. Family Laws & Women Rights
- Unit: 7. Hudood Laws and Women's Status in Pakistan
- Unit: 8. Muslim World and Women Rights
- Unit: 9. International Human Rights and Muslim Women

UNIT-1

HUMAN RIGHTS & WOMAN

**Dr. Riffat Haque
Mamonah Ambreen**

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1.1 INTRODUCTION

Human rights are the right of people by virtue of their humanity. These are those rights, essentially to freedom and security, without which any existence would be considered less than human. The classic definitions of a human right are stated to be right which is universal and held by all persons". Cranston (1973) while defining human right states " a universal moral right, something which all men everywhere, at all time ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he/she is human". Donnelly (1985) reiterates Cranston's view by this simple yet concise definition. "Human rights are the rights one has simply because one is a human being". This formulation of what constitutes a human right. It may be argued. Begs the question of universality of human rights and whether these are after all, based on values common to all humankind? Weston (1992) makes the point that while there may be a general acceptance of the concept of human rights, such agreement does not exist with regard to its "substantive scope" i.e., its specific content.

1.2 OBJECTIVES

It is hoped after successful completion of this unit you will be able to;

- Define and explain the dignity and the Rights of Human Being
- Explain Human Rights, Women Rights and International law
- Comprehend Muslim Feminism and Women Rights in Islam

1.3 Dignity and the Rights of Human Beings

Human dignity The term "human dignity is, to know yourself. Your real worth and value, your position in the creation of Allah, your role on this earth and to know your responsibilities towards yourself, your family, to other human beings and to the world at large. In another words, 'the quality of being worthy or honourable; worthiness, worth, nobleness and excellence due to being a human.

Human Rights refers to the concept of human beings as having universal rights, or status, regardless of legal jurisdiction or other localizing' factors, such as ethnicity, nationality, and sex. Human rights are conceptualized as based on inherent human dignity, retaining, their universal and inalienable character.

The existence, validity and the content of human rights continue to be the subject to debate in philosophy and political science. Legally, human rights are defined in international law and covenants, and further, in the domestic laws of many states. However, for many people the doctrine of human rights goes beyond law and forms a fundamental moral basis for regulating the contemporary geo-political order.

Appalled by the barbarism of the Second World War, the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948.

“...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (preamble to the Universal Declaration of Human Rights, 1948)

While not legally binding, it urged member nations to promote a number of human, civil, economic and social rights, asserting these rights are part of the "foundation of freedom, justice and peace in the world". Many states wanted to go beyond the declaration of rights and create legal covenants, which would put greater pressure on states to follow human rights norms. In 1966 and 1976 respectively, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights came into force. With the Universal Declaration of Human Rights these documents form the International Bill of Rights. With the exception" of the non-deformable human rights, the four most important are:

- The right to life
- The right to be free from slavery
- The right to be free from torture and
- The right to be free from retroactive application of penal laws

The UN recognizes that human rights can be limited or even pushed aside during times of national emergency - although "the emergency must be actual, affect the whole population and the threat must be to the very existence of the nation.

International Bodies: The UN has set up a number of bodies to monitor and study human rights, under the leadership of the UN High Commissioner for Human Rights (UNHCHR). The International Covenant on Civil and Political Rights created an agency, the Human Rights Committee to promote compliance with its norms. A modern interpretation of the original Declaration of Human Rights was made in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993.

Regional Legislation: There are also many regional agreements and organisations governing human rights including the European Court of Human Rights, which is the only international court with jurisdiction to deal with cases brought by individuals (rather than states); the African Commission on Human and Peoples Rights; Inter-American Commission on Human Rights; Cairo Declaration on Human Rights in Islam; Inter-American Court of Human Rights; and Iran's Defenders of Human Rights Center.

Regional Human Rights Protection	
Regional Organization	Human Rights Instrument
The Organization of African Unity (OAU)	African Charter on Human and People Rights
The Organization of K American States (OAS)	American Convention on Human Rights
The Council of Europe	Convention for the protection of Human Rights and fundamental freedoms

1.3 Activity:
 What is your concept of human rights; compare it with UN Universal Declaration of Human Rights.

For more information about Conceptual Foundations of Human Rights, The United Nation system for protection of Human Rights and Pakistan’s Response to Human Rights at National & International Level, please read:

Reading:

1.3 a Ayesha Shahid, 2004	“Conceptual Foundations of human Rights” Press Manager, HEC print shop, 1-36
1.3 b Gopal Bhargava ,2003	“Introduction” in Meaning and Sources of Human Rights, Kalpaz Publication, Delhi pp 1-8
1.3 c webpage	U.N Universal Declaration of Human Rights, 1948

1.4 Human Rights, Women Rights and International Law

Women's rights, in international law, emerges today as an exciting, rapidly developing sub-field of international human rights protection. A major step forward in the promotion and protection of international women's rights was the drafting and rectification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The NGO forum in 1995, The Beijing Women's conference in 1995 and Beijing + 5 in 2000. Agenda for the propagated Gender Equality Development & peace in 21' century'. For further elobration read the following.

Reading:

1.4 Aiysha Madani,2005	Women Rights Issue in International Originations: A Review of Contemporary Thought in Women Rights, Proorab Academy, Islamabad pp31-46
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SAQ: What were the reasons to draft a special convention on the rights of women and children?

1.5 Muslim Feminism and Women Rights in Islam

Muslim feminist is one who adopts a worldview in which Islam can be contextualized and reinterpreted in order to promote concepts of equity and equality between men and women; and for whom freedom of choice plays an important part in expression of faith. A fine distinction is thus drawn between the Quran and the concepts of Sunnah and Shari'a which is considered by Muslims to be divinely inspired and suitable for all times, cultures and contexts, and the human fallible interpretation of these sources which can be revisited and revised as society needs.

Firstly, the Quran has an underlying ethical worldview which firmly promotes equality and egalitarianism for all human beings. This is the most fundamental, layer of human interaction. Thus, the Quran says in translation to all men and women: "verily the most honored of you in the sight of Allah is the one who is most righteous" (Al-Hujur 49:13).

Secondarily, the Quran recognizes the pre-existing problems in society and lays down time-bound and contextual measures to address these problems, and to allow human beings to move towards the underlying ethical worldview. Thus the Quran recognizes the problem of slavery and provides methods for its abolition. Muslims feminists would argue, likewise, the Quran recognizes patriarchy but provides methods for its eventual abolition. Thus, verses which appear to situate women within patriarchal structures are temporary contextual measures, rather than being universally prescriptive. Feminists in the Muslim world in the twentieth century (until the 1980's) were generally upper class women whose feminism was modeled after feminists in the West. But just as modern socio-political models in the Muslim world after the colonial period began in the 20th century, to shift from Western models of society and government to "Islamic" models, feminism in the Muslim world began to take on Islamic forms rather than adapting the Western feminist form. This has been true not merely for Muslim women but for women throughout the entire third world. Having thrown off the shackles of colonial imperialism, women of the developing world are increasingly growing resistant to the cultural imperialism marketed by the West, even in the form of feminism. Consequently Muslim women have been developing a distinctly "Islamic" feminism, just as women of color in the West have been developing "womanism" in contrast to feminism.

Women Rights in Islam: It is generally agreed that the rights granted to women in the Quran and by the Prophet Muhammad (S.W.A) were a vast improvement in comparison to the situation of women in Arabia prior to the advent of Islam. Islam treats of women in four dimensions: as mother, as daughter as wife and as separate human being, and gives them rights accordingly. The rights, of women in Islam are really God's blessings. Islam makes the family the key social unit. The position of women derives from the very premise that the family is the cornerstone of the Muslim society.

It is a great responsibility for the educated Muslim women to speed up their movement and work among all sections of the society, be they educated, semi-educated or uneducated to awaken them to the true knowledge of Islam, and to revolutionize their

lives so that they can stand as examples before all womenfolk. Islam has got the solutions to the problems of women. The need is to exert, to come out with the message to spread this message of peaceful existence with a freedom that is in absolute conformity with the will of Allah.

Reading:

1.5 Dr. Riffat Hague, 2004	“Feminism and Islam” in Journal of Gender & Social Issue, Fatima, Jinnah University Publication
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1.6 Exercise

- Q.1 Define and explain the dignity and the rights of human being.
- Q.2 Critically analyze the women rights keeping in view of International law.
- Q.3 What are the rights of women in Islam? Explain in detail.

1.7 Bibliography

Cranston, M (1973). "What Are Human Rights" 2nd ed London, Bodley Head.

Donnelly, J (1985). "The Concept of Human Rights" London, Croom Helm p 1.

Weston, B (1992). "Human Rights" New Encyclopedias Britannica 15th edn.

1.8 Further Reading

Aswal B.S (2007) "Human Rights" Cyber Tech Publication, New Delhi.

Dr.S.M. Haider (1978) "Islamic Concept of Human Rights" The book House 8 Trust Bilding, Urdu Bazar, Lahore-2, Pakistan.

Rauf, M.A (1979) "The Islamic View Of Women and Family" Robert Speller & Sons Publisher, New York.

UNIT-2

WOMAN HUMAN RIGHTS IN ISLAM

**Dr. Riffat Haque
Mamonah Ambreen**

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2.1 INTRODUCTION

The sum of Islamic teaching is to raise human dignity and honour. It relieves mankind from disgrace and provides higher and honourable place in human society. In modern times it is assumed that the significance of women rights has been enhanced all over the world in general and the Islamic world in particular. Historically, women remained subordinate to men in pre Islamic era. At that time social structure was tribal and these tribes were patriarchal, where males were completely dominated. That period of time is referred as *jahilliyah* (a period of ignorance) in Islamic literature. Tribal society had no written or revealed laws. Only customs and usage, sanctified by age-old practices, irrespective of whether they were unjust or oppressive to certain segment of society were considered as Laws. The only argument in their favour was that they have seen 'their forefathers following these practices. There were many abominable customs and usages related to women in the period of ignorance.

The Quran greatly improved the social status of women and laid down definite norms, as against mere customs and usages. During the period of ignorance there were, no norms and laws as far as divorce, marriage and inheritance and property rights of women were concerned. The Quran make it clear that women have rights similar to those of man. The Holy Prophet Hazrat Muhammad (S.A.W) not only enunciated this general doctrine of equal rights between men and women, involving them in every aspect of life such as trade, war, nursing, education, social life etc. Innumerable are the traditions of the Prophet, which show that women, like men, used to come freely in the presence of the Prophet for putting questions and addressing inquiries on all sorts of social, religious and economic matters. The Prophet used to answer their queries and enlighten them on all social issues.

2.2 OBJECTIVE

What will you learn about?

- Women status in pre Islamic society.
- Islamic reforms in women rights (Address of Holy Prophet Muhammad (S.A.W) as a women Rights. Charter).
- Authentic sources of women Rights in Islam (Quran, Hadith, Tradition).

2.3 Women Status in Pre Islamic Society

“When news is brought to one of them, of [the birth of] a female [child], his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has' received! Shall he keep this [child] despite the contempt [which he feels for it] or shall lie bury it in the dust? Oh, evil is indeed whatever they decide!” - The Quran (16:58-59).

Arabia was a vastly diverse, tribal society, and women's rights, in turn, varied according to the prevailing customs and traditions of the tribes. The atrocious practice of female infanticide has become the ultimate symbol of women's oppression in pre-Islamic Arabia. But Arabia before Islam was a society where there were no rules, except that the strong dominated the weak. It seems reasonable to expect that a natural byproduct of such society would be the oppression of women. In most tribes of pre-Islamic Arabia, it has been practiced that women were deprived of their basic rights, such as the right to choose a husband, to divorce, and to inherit from their family. In some others, they had a better position. They could marry and divorce at will, engage in trade and hold property. What dictated the status of women, therefore, were the tribal customs and traditions. In absence' of a central government, it was the tribe that served as the highest legal authority. As the Supreme bond of the land, the paternal/tribal bond overshadowed all others.

Reading:

2.3 a Haiffa.A Jawad 1998 pp.1-15	“The legal Status of women in Islam” MacMillan Press Ltd; London cited in Allied Study Material course code 873
2.3 b Al Faruqi: 1988	“Women's Rights and the Muslim Women” in Women Muslim Society and Islam. American Trust Publication. Indianapolis, U.S.A pp 1-21 cited in Allied Study Material, course code 873 pp 810
2.3 C Afsar Bano. 2003	“Before the Advent of Islam” in Status of Women in Islamic Society Anmol publication, New” Delhi p19-38

2.4 Islamic Reforms in Women Rights

The advent of Islam shifted the focus from the tribe to the individual, balanced by the concept of community and family, and instituted a system in which everyone was equal, regardless of his/her gender, race, age or wealth. Under Islam, it was the moral and religious principles, not tribal affiliations that defined women's rights. Islam acknowledged women as free human beings with full rights of their own. With freedom must come responsibilities and obligations? This has led some to argue that women were more restricted after Islam vis-à-vis Jahiliyya, which may in fact be true in a few tribes that were not as oppressive to women as others. However, Islam improved the conditions of all women, regardless of which tribe they belonged to. It restored women's dignity and elevated their status, on the whole, to be equal to that of men.

The advent of Islam brought profound changes to the Arabian society in general and to women in particular. Islam reversed or abolished the repressive and cruel practices

committed against women such as female infanticide. Where women's rights were taken away or ignored. Islam restored them, and where women enjoyed any degree of freedom, Islam not only reinforced but also enhanced it. Islamic teachings emphasized the fact that the general principles of equality freedom, independence and rights of women are not to be confined of equality, freedom, independence and rights of women are not to be confined to or defined. by social or cultural norms, but that they are ordained by Allah. The primary goal of divine law (Shari' a) is to institute justice in the land, to eliminate injustice and protect the human rights of all members of society, regardless or their gender, race or religion. Islam, therefore, sought to secure the rights of not only women, but also those of minorities such as Christians, Jews, orphans and slaves who were also subjected to abusive treatment at the time. The Islamic movement was truly a revolutionary movement in regards to women's rights. It elevated the status of women to one equal to that of men and secured their legitimate rights- rights that women, for centuries were deprived of not only in Arabia, but all over the globe. But what distinguishes Islamic emancipation of women from other revolutionary movements, such as the Industrial Revolution, is that it arose not out of evolutionary necessity but out of Divine writ and Godly justice.

As profound as the women's rights advocated by Islam may be, however, by no means are they exhaustive. The message of Islam is a universal message intended to guide all of mankind for eternity. But in order to survive and thrive, the Quran had to be addressed to understood and accepted by the Arabs of the 6th century. This concept is crucial to understanding the status of women in Islam and the extent of their rights as well as their obligations. The rights of women established in the Quran, although progressive in their essence and content were limited in their scope and implementation in order to suit the human society, which received the divine message at the time. The Quran's underlying principles, promote the equality of men and women- morally, spiritually, intellectually, socially and politically. It is this general principle that should serve as our guiding light in defining women's rights.

2.3 Afsar Bano. 2003	Status of Women in Islamic Society Anmol publication. New Delhi p13-25
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S.A.Q What type of changes Islam brought in tradition of pre Islamic society?

2.5 Address of Holy Prophet Hazrat Muhammad (SAW) as Women Rights Charter

The Prophet (S.A.W) gave a summary of his teachings in this address and we can analyze them under three main headings:

- Basic belief in one God
- Rule of law
- Justice

The Rule of Law: The Quran and the conduct of the Prophet Hazrat (S.A.W) were to serve as the basics of law and a healthy criterion in every 'aspect of human life. I leave behind me two things, the Quran and my Sunnah and if you follow these you will never go astray.”

Vendetta and private justice were abolished. The Prophet declared: “Every right arising out of homicide in pre-Islamic days is henceforth waived and the first such right that I waive is that arising from the murder of Rabiah ibn al Harith ibn al Mutallib:”

Equality of all believers without distinction of race orders. He stated: “Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood.”

Morality: Excellence of moral character is the only criterion of individual superiority in the eyes of Allah. However, every person enjoyed equality in the eyes of the Law, and in the eyes of Allah, by reason of his being a member of the human race. The Prophet (S.A.W) put it in these words: “All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non Arab has any superiority over an Arab; also a white has no superiority over a black nor a black has any superiority over a white except by piety and good action.”

Basic Human Rights: The three fundamental rights of each and every human being concerning (a) his person (b) his property (c) his honor have been upheld as sacrosanct. (protected)

As to (a) his person, the Prophet declared: “*O People, just as you regard this month, this day, this city as Sacred, so regard the life and property of every Muslim as a sacred-trust. Remember one day you will meet Allah and answer for your deeds.*”

Domestic Justice. Better Treatment of Women: The address puts it this way:

“O People, it is true that you have certain rights with regard to your women but they also have rights over you. Remember that you have taken them as your wives only under Allah's trust and with His permission. If they abide by your right, then to them belongs the right to be fed and clothed in kindness. Do treat your women well and be kind to them for they are your partners and committed helpers. And it is your right that they do not make friends with anyone of whom you do not approve, as well as never to be unchaste. O People, listen to me in earnest.....”

Reading: A translation of address of Holy Prophet (SAW) web document.

2.6 Authentic Sources of Women Rights in Islam (Quran, Hadith and Tradition)

The Quran, the final and eternal guide of the mankind, makes it very clear that man and woman are two physical forms of the same soul, hence no original difference between them. God declares in the very opening verse of the aptly entitled chapter/I/ Al-Nisa;

O men! fear your Lord, Who created you from a single being and out of created its mate; and out of the two spread many men and women. Fear Allah in whose name you plead for rights; and heed the ties of kinship. Surely, Allah is ever watched over you. (Al Nisa 4:1)

This divine declaration has spelled an end to the discrimination against woman in that the whole mankind is the offspring of a single human soul. Originally everyone man and woman — has the same descent and no one is nobler or meaner by birth. It has also made it clear that all human beings, men or women, are servants of the, One True Allah. They should therefore worship and. serve Him. Islam thus dismissed the notion that man is more honoured for being a man.

The Holy Prophet Hazrat Muhammad (S.A.W) has issued numerous instructions in the favour of women, the favour which she could not receive from the so-called modern upholders of the women's rights. The Holy Prophet (S.A.W) has said

“Allah has forbidden you, disobedience to your mothers, refusal to sanctioned rights, accumulation of, wealth from all sides and burial of living daughters” (Bukhari).
The Prophet of Islam (S.A.W) has also said:

“A man who has a daughter and he neither despises her nor buries her alive nor prefers son to daughter, Allah will admit him in Heaven.” (Abu Daud)

About Hazrat Fatima his beloved daughter (R.A.A) Hazrat Muhammad (S.A.W) has said:

“My daughter is my flesh, any trouble to her will cause pain to me”
(Bukhari, and Muslim)

The teaching of Islam revolutionized the thinking of those men who buried daughters alive and felt no shame in doing so. They began to love and nourish their daughters, those who refuse to shelter their own daughters, became the guardians of other's daughters. Traditions: As a Muslim country all the rights like Inheritance, selection of spouse etc, should be given to women according to Quran. But practically we have been following the centuries old tradition. We always refer to Islam and Quran when it comes to duties and responsibilities of women but we completely ignore it when it comes to their rights. Every year,, in Pakistan hundreds of women and girls are murdered in the name of honour. In Pakistan, honour killings are legitimized by specific local customs. In many other societies, different values are used to justify domestic violence.

Women's rights activists in Pakistan are confronted with the government that has systematically failed to prevent, investigate or punish violence against women. The constitution of Pakistan guarantees women's equality. The government made a binding commitment to ensuring women right when it ratified the Women's Convention.

Defending women's rights does not mean abandoning Pakistani culture or adopting Western values. Western societies have their own challenges in addressing domestic

violence. And Pakistani culture has its own traditions of freedom and equality to draw upon,

Reading:

2.5 a) Nazir Ahmad. 2001	Quranic and Non Quranic Islam. Vanguard Books. Ltd. Lahore. pp 156-185.
2.5 b) Aiysha Madani 2005	“The True Origin of Women Rights” in A, review of Contemporary thought in Women Rights. Poorab Academy Islamabad. Pp 81-105.

2.7 Exercise

- Q.1 Discuss the women status in, pre Islamic society?
- Q.2 How Islamic reforms brought changes in women rights?
- Q.3 Explain Address of Holy Prophet Muhammad (S.A.W) as a Women Rights Charter?
- Q.4 Elaborate that authentic sources of Women Rights in Islam is Quran and Hadith?

2.8 Bibliography

Hitti, P (1961) “History of the Arabs”. London, McMillan and Co., p27 & 72.

Nicholson, R. A (1966) “A Literary History of the Arabs”. Cambridge, University Press, p.88.

UNIT-3

LEGAL STATUS OF WOMEN IN ISLAM

Dr Muhammad Zia-ul-Haq

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3.1 INTRODUCTION

Legal status of female in Islam is one of the standards to judge the actual status of female in Islamic Law. It will provide the other side of the picture and let the students to know that what is actual status of females in Islam? Islamic Law can be implemented on a legal personality and there is no gender discrimination. In this unit an effort has been made to first understand abroad concept of legal capacity and its kinds. And then the woman's legal capacity has been discussed which clarifies that in Islam there is no ambiguity about the status of women.

3.2 OBJECTIVES

This unit aims to:

- Examine the concept of legal personality in Islamic Law
- Know the conditions of a legal person in Islamic law
- Examine the status of female in legal thoughts
- Be aware of the important safe guards for female in the contract of marriage

3.3 Concept of Legal Capacity in Islamic law

In Islamic Law, the terminology *Ahliyyah* is used for legal capacity or Legal personality. The literal meaning of the word *ahliyyah* is absolute fitness or ability. *Ahliyyah* is the ability or fitness to acquire rights and exercise them and to accept duties and perform them” .¹ This meaning indicates two types of capacity: the first is based on the acceptance or acquisition of rights and the other on the performance of duties, which are named as *ahliyyat al-wujb* and *ahliyyat al-ada*” or the capacity for acquisition (of rights) and the capacity for execution or performance of duties. Capacity for acquisition enables a person to acquire both rights and obligations, while capacity for execution gives him the ability to exercise such rights and perform his duties².

Al-Zarqa defines legal capacity (*ahliyyah*) as “a description presumed in a person rendering such a person a possible candidate to receive a legislative injunction”.³ *Al-Sabouni* sees *al-ahliyyah* as “the ability of a person to oblige, be obliged and conduct ones affairs by oneself”.⁴ *El-Alami* refers to it as “the fitness of a person to enter into obligation that is to bind and be bound”.⁵

Al-ahliyyah (legal Capacity) requires set of qualification in accordance with which a person becomes able to acquire right, bear obligations and conduct actions and transactions that are able to produce their legal effects. These definitions entail four conditions. The candidate of *al-ahliyyah* must be (1) A person, (2) Able to acquire right, (3) Able to bear obligation; and (4) Able to conduct legally effective action and transactions. In Islamic law, the child' has capacity of acquisitions but she/ he has no capacity of performance. It will be easy to understand legal capacity of a child in Islamic law after going through its kind because it will clarify the legal status.

Reading:

3.3 Mandi Zahraa “Legal Personality in Islamic Law” p 193

¹Nyazee Imran Ahsan, *Islamic Jurisprudence (Usal al-Fiqh)*(Islamabad: International Institute of Islamic Tholight and Islamic Research Institute,2000), p110.

² Ibid, pl 1 1

³ Zahraa, Mandi, 'The Legal Capacity of women in Islamic Law,' Arab Law Quarterly, vol. 11, year 1996,p245.

⁴ Ibid, p245.

⁵ Ibid, p245.

3.3.1 Kinds of Legal Capacity in Islamic Law

The Muslim Jurists has divided legal capacity in to following three kinds:

i) Complete Capacity

The complete legal (*al- ahliyyah al-kamila*) is found in a human being after his birth and makes him eligible for acquisition of all kinds of rights and obligations. *Al- ahliyyah al-kamila* is established in a person when he or she attains full mental development, and acquires the ability to discriminate. The ability of discriminate is associated with the external standard of the puberty. However, Attaining *bulugha* (puberty) alone is not sufficient. It is necessary for a person to acquire complete capacity for execution, in addition to puberty, the possession of *rushed* (discrimination; maturity of actions) is stipulated as well. "The jurists have imposed the condition of *Rushd* ⁷ on the bases of following legal evidence from the Quran:

"Make trial of orphans until they reach the age of marriage; than if ye find sound Judgment in them, release their property to them: but Consume it not wastefully, nor in haste against their growing up" ⁸.

This verse clearly shows two conditions that must be fulfilled before the wealth of orphans can be handed over to them. These are *bulugha* (puberty) and *rushed*.

ii) Deficient Legal Capacity

Deficient capacity or *al- ahliyyah al-Naqisaa* is assigned to a person in whom the bases of legal capacity are not fully developed. Thus, a person may not have been born yet or he may not have reached full mental development. In other cases, the attribute of being a human may be missing altogether.⁹

iii) Imperfect Legal Capacity

Imperfect legal capacity or *al- ahliyyah al-qaisirah* is assigned in cases where the bases of capacity, being a human and possession of discretion are present but an external attribute has been introduced that do not permit the recognition of the legal validity of certain acts.¹⁰

⁶ Niazee, op.cit., p113.

⁷ This term signifies the handling of financial matters in accordance with the dictates of reason.

⁸ Al-Q

¹⁰Al Sarkhasi, Abubakar Muhammad ibn Abi Sahl Ahmed (1090 C.E), "*Usul al-Sarkhasi*" Edited by Wafa al- Afghani, (Cairo, 1953), p.2/333-334.

Reading:

3.3.1 Dawoud S. El Alami. (1991) "Legal Capacity with Specific Reference to the Marriage Contract" Arab Law Quarterly Vol 6, Part II pp 190- 203.

3.3.2 Levels of Legal Capacity

The legal capacity of a human being starts from his/her creation in the womb of mother and it remains until his death. Its deferent levels develop with the development of human being. The Muslim jurists have identified five stages and their corresponding level of legal capacity as under:

i) The unborn child (Janin)

During the first stage, which exists during pregnancy prior to the birth of a baby, deficient or incomplete capacity is established for an unborn child or the fetus (*Janin*). Deficient capacity implies that only rights are established for the *Janin* and no obligations are imposed on it. The reason is that the *Janin* is considered part of the mother in some respects.¹¹ In other respects, the *Janin* enjoys a separate life and prepares for separation from the womb. Her/His personality is therefore, considered deficient or incomplete. By virtue of this deficient capacity, the *Janin* acquires certain rights: freedom from slavery, inheritance bequest and parentage. On the other hand, the *Janin* is not liable for satisfaction of rights owed to other.¹² A purchase made by the *Wali* (guardian) on behalf of the *Janin* cannot make the *Janin* liable for the payment of the price. Likewise, the maintenance of close relatives and the membership of the (*Aqilah*) cannot be enforced against him. Once the child is born, these rights can be enforced against her/him, but not when the obligations were acquired during the gestation period".

ii) Childhood

The childhood stage starts at birth and lasts until the age of discernment. During this stage, children have a full *ahliyyat al-wujub*, as at this stage they become able to acquire rights and bear obligation but until he attains the age of actual or legal puberty, he lacks capacity for execution. Although all statements, expressions of will, actions and transactions that are carried out by the child itself have no legal value and produce no legal effect, the child can still bear certain obligations:¹⁴

¹¹ Niazee, op.cit.p.248.

¹² Al Sarkhasi, op.cit., p.2/334.

¹³ Niazee, op.cit., p115; Zahraa,Mehaop.cit.,p.248.

¹⁴ Ibid.

iii) Discernment

This stage starts at the age of discernment and lasts until puberty. During this stage the child has full *ahliyyat al-wujup* and restricted civil discretion capacity that is called *ahliyyat al-ada al gasira*. The Muslim jurists developed this concept in order to meet the needs of the child.” In this stage the child is allowed to execute his capacity for the performance of certain kind of acts, which are not usually allowed to children.

iv) Puberty

The fourth stage of capacity is started when a child attained a full legal capacity after having full puberty. The Muslim jurist has indicated two ways of identification of puberty. It can be either factual, when the natural signs of puberty, such as nocturnal emission for a boy and menstruations for a girl appear or presumed in case of delay in the appearance of natural signs. The identification of natural signs is usually based on local customs. At this stage the person is considered to possess full religious legal capacity, which is named as *ahliyyat al-ada diniyyah*. In this situation, the human being is liable before God for his religious duties.

v) Maturity

This final stage commences from actual physical and mental maturity with rushed. The criteria for attain the age of puberty is same for male and female. At this stage, the person is considered eligible for facing the risks and accordingly makes reasonable decisions. On reaching this stage the individual completes capacity for execution and declared eligible for each kind of Kitab. Rushed is a particular condition of this stage.¹⁶

SAQ

- | |
|---|
| <ul style="list-style-type: none">- What are the Levels of Legal Capacity?- What are the Kinds of Legal Capacity in Islamic Law? |
|---|

3.4 Legal Capacity of Women in Islamic Law

3.4.1 Women as Persons

It is clear from above discussion that Islamic Jurisprudence does not give any weight whatsoever to the sex of the candidate of *al-ahliyyah*. No Muslim scholar has ever stated or indicated that femininity is a defect of Islamic Legal capacity. All the jurists agree in their view that mature women have full legal capacity to conduct Muslim jurists their own civil actions and transactions whether they are married or single. Jurists are also unanimous in the view that the female's male relative, *wali*, be it her father, brother, uncle or husband, has no right whatsoever to supervise or even to interfere with her financial and civil affairs. Al-Shafi'ie illustrates this fact in a high standard argument saying that puberty and maturity are the only criteria to attain the ability to conduct one's affairs by

¹⁵ Al-Zarqa Ahmad M., *al-Madkhil PH Fig* (6th edition, 1959) p2/733; Zahraa, Mehdi, *op.cit.*p.249.

¹⁶ Niazi, *op, cit;* p.114-I 14; Zahraa, Mehdi,*op.cit.*,p.250.

oneself; men and women are alike in this respect whether they are married or not. Imam Shafi stated:

“None of the jurists whom I have known have differed in opinion on the fact that both, man and woman upon their attainment of the age of puberty and maturity are alike in their ability to conduct their affairs by themselves. If someone says that the woman who has a husband cannot given her properties unless upon permission from her husband, the answer, which refutes such a contention, will be that the word *yatama* [orphans] as mentioned in the Qur'an denotes that it excludes both men and women from the institution of *wilayah* [guardianship] upon satisfying the stated criteria. And that who is excluded by God Almighty from the institutions of *wilayah* must not be subject to any from of guardianship except if there is an impediment such as spendthrift ness or mental defect. This is supported by the Qur'an, Sunnah and reason....”

This challenging statement by Al-Shafi'ie seems to counteract the view of some of the followers of the Maliki School who have claimed that Imam Malik does not give the married woman the right to conduct her civil transactions without the permission of her husband. If Malik's opinion was contrary to al-Shafi'ie's statement mentioned above, Al-Shafi'ie would not have stated clearly that he did not find a contrary opinion from other jurists known to him. The correct Malik's view has been explicitly stated by Sahnouri who said that the married woman has full capacity to conduct all her civil transactions except those concerning her charitable dispositions. According to him, such charitable dispositions are not valid if they exhaust more than one third of the married woman's properties unless approved by her hasband. This opinion is mentioned in Al-Modawwanah, It is obvious that there is no provision eitherfrom the Qur'an or the Sunnah to support this view. The only possibility is that Malik was relying on his own reasoning, “Ijtihad”. Ibn Hazm strongly criticizes the Malikies' view and provides strong evidence from both the Qur'an and Sunnah to refute their argument.

Reading

3.4 Mandi Zahraa (1992) “The Legal Capacity of Women in Islamic Law” Arab Law Quarterly, Part III. pp 245 - 263.
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3.5 Women, legal capacity and the marriage contract

Although a marriage contract is not considered a religious contract, it is given a sacred status as it is the starting point of family life which is given a high sacred level in Islamic Law. Therefore, Islamic jurists have endeavored to provide sufficient precautions and safeguards in order to secure, as much as possible, the family entity. This objective must be borne in mind while interpreting Islamic rules and principles regarding the marriage contract and its conditions. The particular point of interest here is that it is widely alleged that Islamic Sharia does not recognize women as having full legal capacity to concede

their marriage contracts. In order to refute this allegation, this article will try to provide a brief account of the woman's role in the marriage contract.

According to the general rules of contracts in Islamic Law, the consent of both parties is a decisive precondition without which the contract is null and void. The marriage contract is no exception. However, as has been said above, due to the sacred character of the institution of marriage Muslim jurists have tried to provide certain precautions so that the marriage institution is secured from hasty, inexperienced and defective decisions. Islamic jurists, therefore, differentiate between two situations.. On the one hand, there is no disagreement between the jurists. in principle, regarding the fact that woman who have previous marriage experience, (thaiyyeb'), can choose their new husbands. However, they disagree on whether the woman can, in this case, conclude her marriage by her own single will, 'or. must she will be combined with that of her male relatives? The details of this are available in the study material.

Reading

3.4 Mandi Zahraa “Legal Personality in Islamic Law” p 193

SAQs

1. After reading this section how do you analyze women's status in your family?
2. How a person becomes a legal personality?
3. Identify women's status in the Pakistani community?

3.5 REFERENCES FOR STUDY MATERIAL:

Muhammad Tahir Mansoori (2006) Family Law In Islam. Shariah Academy, Lahore. Chapter 4

UNIT-4

**COMPARISON OF WOMEN RIGHT IN
VARIOUS RELIGIONS**

**Dr. Riffat Haque
Mamonah Ambreen**

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4.1 INTRODUCTION

All religions state about the conduction of social life and role of female. The history of religions is a fabric of religious structure interwoven with diverse cultures and customs, which have settled them selves within societies. While the customs and tradition of existing societies were usually strongly influence and transformed by the religion to take a meaningful weight in the line of the religious teaching: The interweaving of existing culture with religion did undoubtedly and also influence the interpretation and concepts of the faith particularly in the practical and social dimensions.

Interpretation of religious text is an issue with feminists. According to feminists mostly civilizations were patriarchal. Religion was interpreted with in patriarchal societies that often misused and justified oppressing and limiting women. The debate about religious patriarchal or patriarchy is cultural. In effect, interpretation of religions changed to varying extent for a long time, men used religions as an excuse to continue control and power in the society. The interpretations of religion changed to varying extent throughout different societies and time spans. The transformation at that times so was drastic that the major frameworks and principles of the religion were manipulated and distorted by the personal fantasies of the (male) writers. The most evident example of this trend is manifested in the distortion of the divine books. As a result there exists today several versions of each book with major difference among their texts. Women have been discriminated against since time immemorial. This unit tries to identify how various religions have 'represented women in other words interpreted for us today by the author/writers. We will discuss about women status in Judaism. Judaism is one of the oldest religions. It was preached by Moses (Hazart Moosa AS) to whom Allah gave holy book Torah (Taurat). Its believers are called Jews. The Jews pray in a Synagogue. We will also discuss women status in Christianity. Christianity is based on the teachings of Jesus Christ (Hazrat Isa AS). The Bible (Injeel) revealed by Allah to Christ. His followers are called Christians and their place of worship is called the Church. Hinduism is based on the teachings of the Vedas, Upanishads, the Puranas and the Bliagavad Gita. Hindus have many idols because they worship God in many forms. Their place of worship is called the Mandir.

4.2 OBJECTIVE

After reading this unit students will have an idea about

- Women Rights & Status in Various Religions: Judaism, Christianity and Hinduism
- Feminist's Critique of Religious Institution

4.3 Women Rights in Various Religions

All divine religions have depicted women's role in the society. It varies from religion to religion. Feminist theologians argue that it is not religion, which discriminates women's status but the male interpretations. In Judaism e.g. "some of the Jewish faith regarded a woman as a much more inferior creature than her counterpart the man. Other considered her to be even lower in grade than that of the servants. She never inherited anything from her parents, if she had a brother or brothers. Her - father had right of selling her if she were under the maturity age. When woman got married all the possession was transferred to her husband. He used to exercise full right over her possession during their joint life." Karen Yager (1998) in her essay argues "Women, until recently, have been disenfranchised, as complementary but unequal partners, and have been legislated out of the Jewish communal process, the honor of the community" was at stake. As feminists, we now understand the term community to have meant the community of Jewish men. Prejudices against, and control over women have origins in prerecorded time, but historic entrenchment of male dominance has been reinforced developmentally by its sustained interweaving in political and religious life and discourse throughout the ages. This pervasive legacy of debasement is the root challenge of the feminist critique, both in the secular women's movement, and in the later emergent religious feminist movements. For more detail about read the Karen Yager's article. (4.3a)

Let us now turn to the Bible in order to find out the status of woman in Christianity. In the Mosaic Law, the wife is betrothed. The Encyclopedia Biblica explains this concept and its ramifications:

To betroth a wife to one self meant simply to acquire possession of her by payment of the purchase money; the betrothed is a girl for whom the purchase money is paid.

The girl's consent is unnecessary and the need for it is nowhere suggested in the Law.

As to the right of divorce, "the woman being man's property, his right to divorce her follows as a matter of course. The husband alone enjoys the privilege of divorcing his wife. The Church was heavily influenced by the Mosaic Law and the prevalent local tradition in its perception of woman. David and Vera Mace, author of *Marriage East and West*, throw light on the status of woman in the early Christianity:

Let no one suppose, either, that our Christian heritage is free of such slighting judgments. It would be hard to find anywhere a collection of more degrading references to the female sex than the early Church Fathers provide. Lecky the famous historian, speaks of these fierce invectives which form so conspicuous and so grotesque a portion of the writing of the Fathers woman was represented as the door of hell, as the mother of all human ills. She should be ashamed at the very thought that she is a woman. She should live in continual penance on account of the curses she has brought upon the world. She should be ashamed of her dress, for it is the memorial of her fall. She should be especially

ashamed other beauty, for it is the most potent instrument of the devil. One of the most scathing of these attacks on woman is that of Tertullian: You are the devil's gateway; you are the unsealed of that forbidden tree; you are the first deserters of the divine law; you are she, who persuaded him; whom the devil was not valiant enough to attack. You destroyed so easily God's image, man. On account of your desert—that is death -- even the Son of God had to die. Not only did the Church affirm the inferior status of woman, it deprived her of legal rights she had previously enjoyed.

The following passage from the Bible, relating the story of the fall of Adam and Eve, explains to some extent, the negative image of woman in the Biblical traditions.

“Now the snake was the most cunning animal that the Lord God had made. The snake asked the woman, 'Did God really tell you not to eat the fruit from any tree- in the garden?' We may eat the fruit of any tree in the garden' the woman answered, 'except the tree in the middle of it if we do, we will die'. The snake replied, 'that's not true you will not die... when you eat it you will be like God and know what is good and what is bad, so she took some of the fruit and ate it. Then she gave some to her husband and he also ate it... God asked, did you eat the fruit that I told you not to eat? The man answered, 'The woman you put here with me gave me the fruit and I ate it ...And He said to the woman, 'I will increase your trouble in pregnancy and your pain in giving birth. In spite of this, you will still have desire for your husband, yet you will be subject to him'.” (Genesis 3: 1- 7, 12 and 16)

The Christian Council in the fifth century concluded that woman had no soul and her abode was hell. In a later century another Christian Council debated whether woman was human or not. Mary, the' mother of Jesus, w/lts, however, considered as an exception. A century later another Christian Council debated whether woman was human or not.

The Women rights in Christianity the idealization of womanhood are natural characteristic of all the highest natures. “Tertullian represented the general feeling in a book in which he described women as the devil's gateway, the unsealer of the forbidden tree, the deserter of the divine law, the destroyer of God's image-man.”(Ali 1964 p25 1). In ancient India, according to Encyclopedia Britannica, “woman's Subjection was a cardinal principle. Day and night must women be held by their protectors in a state of dependence, says Manu, The rule of inheritance excluded females.

A good wife in the Hindu Scriptures is “a woman, whose mind, body, speech are kept in subjection.

An Indian wife used to address her husband as “My Lord” and “My God” in that he was held to be her earthly god. - She could not eat or walk with him. Throughout her life she was dependent on and subservient to her father, husband and son.

Not only was this, in many cases when the husband died his wife burnt alive on his pyre, a practice that is not uncommon even in modern India.

At the time of marriage, her father gives her in charity to her husband, who obliges her father by accepting her along with a huge dowry in cash and kind. This is very much in practice even now.

In the most sacred Hindu scripture, Ramayana (not really ancient, composed in the late sixteenth century), recommends in unequivocal terms:

Drum, rustic, untouchables, animal, woman Deserve they all a thorough thrashing;
 Woman has been categorized with animals and untouchables and it is regarded necessary to beat her hard if you want something good out of her. For more detail please read the following material.

Reading:

4.3 (a) Karen Yager 1998	“The response of feminist Activism to Issues of Violence and Injustice” in The Jewish Community in Women and Religion, Heinrich Boll foundation. Lahore. pp83-110
4.3 (b) Syed Ameer Ali 1964	“ The Status of Women in Islam” in The Sprit of Islam Sang-e-Meel Publication, Lahore. Pp 222-257.
4.3(c) Chatterji 1990	“Religions and The Status of Women” (ed) Joytgna Chatterji Uppal Publishing. New Dehli. pp 66-74 cited in perspective on Women's Studies Allied Study Material Course Code 873 733
4.3 (d) Helen Tieney 1989	“Paul (Saint) and Women”, in Women's Studies Encyclopaedia (ed) Helen Tierney, Greenwood press, London, pp: 350-351 cited in Perspective on Women's Studies, Allied study Material (course code 873). pp 737
4.3 e Mary Anne Warren 1980	Saint Paul. Pp368-369, Bible. Pp69-71 Saint Augustine. Pp46-49. In The Nature of women by Mary Anne Warren. Maccoby and Jaclin cited in Perspectives on Women's Studies, Allied study Material (course code 873) pp740
4.3f Ranjana Kumari Femaleness 1990.	The Hindu Perspective”, in. Jyotsna Chatterji. (ed) Religions and the status of women Uppal Publishing. New Dehli. in Perspective on Women's Studies, Allied Study Material (course code 873). pp709

S.A.()

1. Enlist the rights of women given by Islam?
2. What is Islamic point of view on Adam (AS) & Eve?

4.4 Feminist Critique of Religious Institution

Feminist critique is that religions are basically patrilineal. Feminists charge that gender bias has permeated the way philosophy of religion has been written and has influenced how the field has been professionalized. For philosophers studying the intellectual effects and belief systems of religion, the opportunity to critique and correct sexist and patriarchal constructions in this field is as ample as it is urgent, given the presence of gender ideology in all known religions. Not one of the religions of the world has been totally affirming of women's personhood. Every one of them conforms to Heidi Hartmann's definition of patriarchy as "relations between men, which have a material base, and though hierarchical, establish or create interdependence and solidarity among men that enable them to dominate women". (Stanford Encyclopedia of Philosophy 19 1, 14).

"Feminists are examining religions & women status from various perspective, some argue that empowerment is possible only on secular grounds. Religion sanctions sexual inequality and hence religion is a powerful obstacle in the way of their empowerment. However, there are others who would not like to ignore religion as it play a very vital role in people's lives, especially in Asia and Africa." (Aiysha Madani 2005)

It is not surprising, therefore, that feminist philosophies of religion are still in a nascent stage of development. The field faces the challenge of encounter with traditions expressing practices and beliefs that are not predominantly associated with male modes of understanding, it will be required to elaborate a broader theory of evidence, a cross-culturally adequate conception of human rationality, and a more complex appraisal of the norms applicable to cases of divergent, rival religious claims and disagreements. Insofar as feminist philosophy of religion studies the strictly intellectual interpretations of any religious tradition, it will encounter beliefs, symbols, and ideas that are embedded in specific socio-cultural power relations. New work is now needed that reflects on the dynamics of power relations, analyzes inherited oppressions, searches for alternative wisdom and suppressed symbolism, and risks new accounts of the tricky truth and justification questions in light of religious pluralism. For more information please study the following material.

Reading:

4.4 a)	“Feminist Philosophy of Religion”, Stanford Encyclopedia of Philosophy.
4.4 b) Sherif Dr. Abdel Azeem	“Women in Islam versus women in the Judaeo-Christian Tradition: The Myth & The Reality”.5.15.2007 www.themodhereligion.com/women/w_comparison_full.htm

4.5 Exercise

- Q.1 Discuss the Women Rights in various religions?
- Q.2 Compare the status of women- in Judaism and Christianity?
- Q.3 Discuss the women's rights in Hinduism?
- Q.4 What is the Feminist critique on religious institution?

4.6 Bibliography

Aiysha Madani(2005) “ A review of contemporary thought in Women Rights”

Karen Yager (1998) Women and Religion, Heinrich Boll foundation, Lahore.

Syed Ameer Ali (1969) The status of women in Islam in The sprit ofIslam, Sang-eMeel Publications.

UNIT-5

WOMEN RIGHTS IN PAKISTAN

**Dr. Riffat Haque
Mamonah Ambreen**

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5.1 INTRODUCTION

Pakistan provides an interesting and unique case study of the rhetoric and reality of women's human rights in Islam. It is the only country in the world to have come into existence on the basis of an Islamic identity. She is a postcolonial country and thus shares the historical and political manifestations of the phenomenon with a number of Muslim countries. Pakistan has followed a pattern similar to other Muslim Jurisdictions in terms of reformist ideology (particularly family law reform), alongside revivalist' thinking and movements.

After independence of Pakistan in 1947, implementation and interpretation of law, faces an amalgam of European law clamped with a patchwork of Islamic laws that provided part solutions to the problem in general, women continue to survive at the fringes of justice. The introduction of the Hudood Ordinance in Pakistan was in fact the last nail in the coffin of women's rights. Women in Pakistan faces tremendous social and legal problems through misunderstood and malpractice Islamic Laws. A Pakistani woman suffering from a bad marriage does not know how to get out of it and retain her rights as a human being, something that Islam grant her but society as a whole traverses.

Women in a patriarchal set up have been on the receiving end of abuse. They are treated unequally in terms of nutrition, education, employment opportunities, health and related reproductive issues etc. Cultural and social norms and misinterpretation of Islamic Injunctions further deny their inherent rights as human being. All these aspects have also left them feeling insecure and invalid members of society

Women in Pakistan have a layered identity, each layer out lining certain rights and obligations. She is simultaneously subject to various sets of rules. The gap between the rights within each set widening as one moves from constitutional law to Islamic and. customary law. Customary practices in Pakistan are not uniform and vary from region to region.

5.2 OBJECTIVE

After completing this unit student will be able to discuss the:

- Legal Pluralism in Pakistan
- Legal Status of Women in Pakistan.
- Contradiction Between law and Custom

5.3 Legal pluralism

Most contemporary legal systems in developing countries and post-industrialized states contain parallel and often contradictory regulations of social, economic and political organization. These are based on different type of legitimating: international law, state law, religious law, customary law and forms of self-regulation. This type of legal complexity is called “legal pluralism”.

Legal pluralism emerging from a combination of regulatory norms in terms of customary practices, statute law (secular or civil codes) along with law based on religion. Pakistan is made up of people from diverse ethnic, racial, and linguistic origin, hence diversity in customary practices. Most, prominent among these groups include Punjabi, Sindhi, Baluch, Pukhtun (Pathan), people from the Northern Areas (Gilgit, Hunza etc) and people from the State of Azad Jammu and Kashmir. In addition to ethnic and regional diversity, customary practices are also subject to the urban/ rural divide, particularly where attitudes towards women's issues are concerned. Even where religion and formal law gives certain rights to women, its denial by sheer force of custom invariably prevails. Research indicates that women in Pakistan use courts with extreme caution and far less confidence than their male counterparts and that too, as last resort. The result is that most disputes are laid before informal dispute resolution forums, i.e Jirga, Panchayat etc. that apply customary practices, placing women at a huge disadvantage. These are all' male forums. As a rule, women do not appear before these forums. Women in customary law are legal non-entities as worst as best they are perpetual legal minors under the guardianship of male relations.

S.A.Q 1. Depict a few cases related to female issue of customary law in this month in any Newspaper?
2. How women's evidence is represented in Jirga or Panchayat?

Reading:

5.3 Shaheen Sardar All 2000	“Women's Human Rights in Islam” in Gender and Human Rights In Islam and International Law. Kluwer Law International, The Hague. pp 42-91
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5.4 Legal Status of Women in Pakistan

The legal status of women implies their position under the laws of the land and includes their legal rights and responsibilities as person, citizens, as a member of society and as worker. Their basic legal position can be explained by the laws, which govern their corresponding relationship with the state and society. But the legal status of women has further dimension, in that it encompasses what the actual reality of the situation is as well as the effectiveness of implementation of the safeguards. Thus, what has to be taken in to account when assessing the legal status of women are the traditional and customary law which govern their lives as well as the social, political and administrative measures undertaken to ensure their legal rights.

Jirga: Council of elder among the Puktun and Baluch tribes of Pakistan and Afghanistan
Panchayat: Council of five elders who resolve disputes in rural communities in Sindh& Punjab province of Pakistan.

While women's position under the law has to be ascertained, many other aspects and factors have to be considered to understand the dimensions which shape the legal position of women in Pakistan. For more information please go through following material.

Reading:

5.4 Shehla Zia	“The Legal Statuses of Women in Pakistan” in Fareeha Zafar (ed) Finding Our Way. ASR Publication Lahore pp 26-41.
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5.5 Contradiction between Law and Custom

The dilemma in Pakistan is that, there is contradiction between women's legal status on the books and their legal status in actual practice. Even where the constitution or laws accord women a high or equal status, social norms and customs make their constitutional and statutory rights seem like a mockery. Forced Marriages, restrictions on their right to work Or educate themselves, denial of inheritance of property and lack of control over their earning are some of the common example of socially accepted practices with in the country. In actual fact, the majority of women in Pakistan are not even aware of their legal rights.

Women are viewed as property, bought and sold at will by male relatives for advancing their own financial and material gain. She is considered the property of her male agents (father, brother etc) to be bartered away at a suitable bride price known as “sar paisay. In some parts of NWFP, male relatives and, only a negligible portion of it utilis to provide clothes, furniture or other household goods for the bride invariably appropriate the amount. The amount of the bride price is considered a matter of prestige for the bride’ family and is reflective of their status and esteem in society. This practice contradicts the Islamic Law requirement of a valid marriage, where dower must be stipulated in the marriage, contract and is the sole property of woman. The custom of sar paisey is confined to the tribal belt of the NWFP in urbanised areas, known as the settled areas of the provinces, dower is indeed stipulated in the marriage contract and as the property of women. The exchange marriages in which a women is married to a man on the condition that a man in her family will marry a woman in her husband's family. This custom is preValent not only among the low-income groups but also in middle and high-income groups. The real objective of exchange marriage is no doubt quit sinister since the gained achieved is the denial of any economic empowerment to two women. By denying a woman from her dower, a flagrant violation of Islamic Law is being made by both husbands; similarly by not making any gift of a dowry the parents of the women also participate in her in her economic disempowerment. And, finally the most dangerous consequence, is that the state of happiness or unhappiness as the case may be, of one couple is direct tied to the other. In NWFP this custom is known as Adal Badal,

elsewhere as Walla Saila (Punjab) and Addo Baddo (Sind).

After getting married a woman's "ownership", is transferred to her husband's family who then onwards assume total control of her life. Even if she is widowed, she still remains the property of her husband's Male kin and any man desirous of marrying her is required to "deal" with them. The Riwayatnama of the Malakand area dearly states that if rule riway disregard by him i.e. the present husband of the women, then the male kin of the deceased husband are justified in starting an enmity with him for failing to Seek their permission for the marriage. This custom finds no support or mention in either Islamic law or the family law of Pakistan. Arguable, were a woman forced in to such a marriage to approach a court of law, she would succeed in having it annulled.

The mobility and decision-making ability of woman, whether married, single or widow is restricted. The famous Pukhto saying sums up this restricted space for women by declaring: "Khaza da kor da ya the gor!" (A woman belongs either to the house or the grave). The custom of confining women to the home is reflected in the DCHD (Human Situation Report) where the only occasion on which women are allowed to venture out of the confines of their homes are to attend wedding , ceremonies or on the death of a relative. Denial of basic right to education is also a direct result of customary practices confining women to the home. Whereas both Islamic law and constitutional guarantee of providing education without discrimination on the basis of sex is recorded, entrenched custom hold away In the NWFP. A World Bank Report states that NWFP's aggregate literacy rate of 21.5% is about two-third of the national average and conceals severe inequities between males and females. For example, the literacy rates for male and female are, respectively, 34% and 8%.

Customary practices provided a receptive environment for restrictive interpretation of Islamic law to create a subordinate status for women in Muslim jurisdictions, since custom is the inner core and most influential of norms regulating and informing the view point of millions of illiterate Muslim men and women, therefore a selective use of Islam that match this notion of women rights in Islam falls well within the realm of belief and expectation. This partnership of custom and retrogressive view on women and Islam came in to the fore and gained currency over the past few decades. For more detail read the following material.

Reading:

5.5 a Aiysha Madani (2005)	Women Right Issue in Pakistan In" <u>A Review of Contemporary Thought in Women Rights</u> Proob Acadmy, Islamabad, pp81-105
5.5 b Shaheen Sardar All (2000)	"Public" and "Secular"? Women's Human Right under Constitutional Law in <u>Gender and Human Rights in Islam and International Law</u> Kluwer law International, The Hague.

5.6 Exercise

- Q.1 Explain the Legal pluralism in the contest of Pakistan?
- Q.2 Discuss with example that customary laws are hurdle to achieve women Human Rights?
- Q.3 What are women rights issue in Pakistan?

5.7 Bibliography

5.8 Further Reading

Shaheen Sardar Ali (2000) Gender and Human Rights in Islam and International Law, Kluwer law International The Hague.

UNIT-6

FAMILY LAWS & WOMEN RIGHTS

Dr. Muhammad Zia-u1-Haq

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6.1 INTRODUCTION

Al-Sharia Al-Islamia provides two types of rulings; detailed and principal ruling. The matters that are very important in human life and are not subject to change with the change of time have been discussed in detail in Quran and Sunnah. Muslims jurist derived from Quranic verses and sayings of the Prophet legal ruling for the conduct of these matters. Family Laws of Islam are also from this category. Pre Islamic Arabs family life was not stable and particularly rights of women were not protected at all in it. Holy Prophet after establishment of State in Madinat introduced reforms in pre Islamic Laws. Contemporary Muslims Laws are generally based on these reforms. Due to the decline of Muslim states majority of Islamic laws in practice have been replaced by western laws but Muslim Family Laws are still practiced in majority of Muslim countries. Due to the importance of these laws this unit is designed in perspective of women rights.

6.2 OBJECTIVES

This unit is aimed to create understanding among the students about the:

- Islamic concept of Family
- Importance of Nikah and its role in the establishment of a Family
- Legal position of Nikah
- Rules and regulations for conduct of Nikah
- Matters of Divorce and maintenance in Islamic Law

6.3 Importance of Nikah (Contract of Marriage)

6.3.1 Literal Meaning of Nikah

Nikah is derived from Arabic word. In literal sense it means union of two. One meaning of Nikah is to meet. So when the branches of trees meet with each other then it is said that (trees are together or they are mix-up with each other). On the analogy of that this terminology is also applied on Aqd (Nikah) that is base for the relationship between husband and wife. Nikah is the relationship on the basis of which sentimental relations are valid between a male and a female. The children born after this sexual relation are considered legitimate offspring, having confirmed lineage.

6.3.2 Legal meaning of Nikah

In technical sense Nikah means an Aqb (contract) between a male and female in presence of witnesses on payment of Dower to live together as husband and wife. The terminology Nikah is derived from the verses of Quran and Sunnah. Some of the terminological definitions of Nikah are as under:

According to jurists "Nikah is a contract which is productive of an exclusive right of enjoyment) i.e. this enjoyment is validate only for those women by a men who are legally not prohibited for marriage." An other definition of Nikah is as "In technical sense nikah means the agreement of woman in presence of two witnesses by having the procedure of acceptance and proposal."

6.3.3 Marriage: Righteous Act

Islam gives vital importance to the institution of Family. A new family unit is established at the time of contract of Nikah. Muslim jurists regarded preservation and protection of family unit among five fundamental objectives of Shariah. Quran described Nikah as a sacred and sanctified contract. Marriage in Islam is essentially a righteous. act and an act of devotion. The Holy Prophet has emphasized on the importance of marriage in many of his sayings. In one of saying it has been declared as Sunnah. Holy Prophet Peace be upon him said in this regards:

" Marriage is my Sunnah, whoever turns away from My Sunnah, does not belong to me."

In another Hadith the Holy Prophet Peace be upon him advised young men to enter the fold of marriage as a means to protect their morals and live a clean and virtual life. He said:

[O young men, those among you who can support a wife should marry for it restrains eyes from casting, and preserves on from immorality"]

Holy Prophet has forbidden that one should not stop him from nikah out of love for worship. Hazrat Anas has narrated that once a companion asked the Holy Prophet that I will not marry, another companion said I will offer prayer all the night I will not sleep,

and one of them said I will observe fasts all the year but will not get marry. When Holy Prophet heard all this then he said:

"What has happened to these people that they say so and so. Whereas I pray and sleep too; I fast and suspend observing them; I marry women also And he who turns away from my Sunnah, has no relation with me"

On the bases of these instructions from Quran & Sunnah of the Holy Prophet the Jurists give important to the marriage. Allah has created man and woman to live together by accompanying each other and to keep them away from living lonely lives. The demands of Islamic teachings are that woman live with her husband in ups and downs of life and help her husband to run affairs of life. They both are complementary to each other as both of them play vital role in each other's life.

Self assessment

- 1- What is meant literacy by Nikkah.
- 2- What is terminological definition of Nikah.
- 3- Describe importance of Nikkah in Quran & Sunnah

6.3.4 Legitimacy of Nikah

According to jurists Nikah is obligatory, recommended and imperative duty and all jurists agree on it.

Nikah is Obligatory

According to Hanafi Maliki and Shi'i there are some conditions in which marriage is obligatory, firstly when there is uncontrollable sexual desire and person cannot stop himself from adultery then it is obligatory to get marry. Secondly if he thinks that he is unable to observe a large number of fasts and he can indulge in illegal relations then it is obligatory on him to get married. According to Hanafis the condition for marriage is that he has the ability to pay the dower and to provide food but with legal means, and if he is unable to pay the dower or food on legal means than marriage is not obligatory for him. It does not mean that if he is unable to provide food through legal means he is not legible for marriage and start indulging himself in adultery, it actually means that he must stop himself from Haram and should not make anybody's life problematic, he must act on Allah's word that

“And let those who cannot find a match keep chaste till Allah give them independence by His grace”

However it is possible for anybody to borrow money from any one for giving dower and providing food because of the fear that he can indulge in unlawful relations then Nikah becomes obligatory on him.

Imam Shafi says that Nikah becomes obligatory when one wants to save him or herself

from unlawful relations. Whereas according to Hanbali school of thought Nikah becomes obligatory when one person even imagines that he can indulge in unlawful relations, whether she is woman or man both are equal in this regard. Hanbali also says that whether a man is able to bear the responsibilities of food or not he should marry and later should try to find the ways, which can be helpful for his marital life with the blessings of Allah.

Nikah is Imperative

Nikah becomes imperative duty when anybody wants to have Nikah but without having strong desire for it. On the other hand, without Nikah he may indulge in unlawful relations, then remaining, as bachelor is sin. Most important is that he should be able to maintain his family through lawful means and must have the capacity to fulfill the duties of marital life. If anyone of these conditions is missing then Nikah neither obligatory nor imperative duty.

But Nikah is forbidden (Haram) for a person whose financial status is neither stable nor he is capable of fulfilling the sexual need of wife, nor he can maintain his family through lawful means. But if woman agrees after knowing the deficiencies of man and still wants to live with him then Nikah is not forbidden but woman should not compromise on living with him through unlawful means but should try to live life according to Islamic teachings.

Nikah is recommended

According to Sunni schools of thought Nikah is recommended when any person does not want to marry but wants to have children, same is for woman who does not want to marry but have children. Now condition for both of them is that they must fulfill the rights and duties of husband and wife. Man should be capable of sexual relations; to earn food for wife otherwise Nikah will be forbidden for him. Both must have the intention that Nikah is Sunnah. Nikah will be disapproved 'when both man and woman do not take the marriage as Sunnah.

According to Jafari School of Islamic Law marriage is a highly recommended deed. Allah says: ["And Marry such of you as are solitary and the pious of your slaves and maid-servants. If they be poor, Allah will enrich them of His bounty. Allah is of ample means, Aware"]¹²¹.

The first word of this verse begins with "ankihu" (Marry), which is an imperative form of the word Nikah. According to the principles of Islamic jurisprudence, any communication in imperative form from God can have two levels of meaning: either it is an obligatory command or a very high recommendation. And therefore we see that in Islam celibacy is not considered as a virtue. Based on this verse we find the Prophet saying that, ("Whoever refrains from marriage because of fear of poverty, he has indeed thought badly of God".)

6.3.5 Importance of Nikah

Preservation and Continuation of Human Race

An important purpose of marriage institution is preservation and continuation of human race. The Quran says:

[O, Mankind, be conscious of your duty towards you board who has created]

You from one soul and created of like nature his mate and scattered from them countless men and women.] Al Quran 4:1.

This verse shows that Allah has chosen to create man through mating with members of his own species but belonging to different sex. Marriage between a man and women is a way to do so.

Love and satisfaction

Nikah is base of love and satisfaction between the spouses. Allah says in al-Quran

“And one of his signs is that he made wives of your genus so that you may seek comfort in them and he inspired love and sympathy between couple” (Al- Quran 30:21). According to Islamic teachings husband and wife are garments of each other. They are protectors of each other. Due to this importance it is said: (“To busy in it (Marriage) is valuable than to busy in Nan Ibadats”}In this regards Jurists say that 1”There is no act of devotion that has remained prescribed for us, since the time of Adam, upon him be peace. Up to this moment, and which is to be continued in paradise, except Nikah and Iman.”)

Due to blessings of Nikah, it gives rise to diverse relationship of man i-e husband,' father, son, the paternal grandfather, paternal grandson, maternal uncle, paternal uncle, and then brother. And because of the nikah woman attains sacred relationships i.e wife, mother, paternal grandmother, and maternal grandmother, paternal or maternal aunts. Thus Nikah is sole source for the emergence of these relations. It is the nikah through which one unknown person becomes known. It is this relation when a person learns to respect elders, to love children, to adopt modesty etc.

6.4 Rules and Regulations of Marriage

6.4.1 Rights and Obligations of Spouses

Allah has declared husband and wife as protector' and. dresses of each other. Therefore Muslims jurists have clearly mentioned rights and duties of the spouses so that stability can be maintained in marriage. The important rights and duties of the spouses are (1)Kind and fair Treatment(2)Maintenance and Protection of Family (3)Mutual respect -(4) Management of House affairs etc.

6.4.2 Essentials of Marriage Contract

The marriage contract is based on the offer from the husband, acceptance from the wife, presence of witnesses, payment of dower. These are essential elements of contract of Marriage. Missing of these elements means missing of contract of marriage. The contract of marriage is essentially a civil contract. It has conditions and impediments like other contracts of Marriage. However due to the importance of this contract Sharia has given this contract sacred sanctity. The details of the conditions of this can be seen in the Books of Islamic Law.

6.4.3 Dower in Marriage Contract

Dower or Mahr is a sum of money or other property, which the wife is entitled to receive from the husband. Majority of jurist are agreed that Dower is one conditions of the validity of marriage. Due to its importance in the contract of marriage the jurists have provided details rules regarding its kinds, minimum and maximum amount, types and ways of payment.

Reading:

Dr.MuhammadTahir Mansoori 2006	“Concept of Marriage and Family in Islam” in Family Law in Islam Shariah Academy, Lahore. pp1-17
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6.5 Dissolution of Marriage: Talaq

Marriage is very important but there can be situations in which continuation of marriage creates problems for smooth life. In such kind of situations marriage can be terminated. This termination can be through Talaq, Khula or decision of the court. Talaq or divorce is right of husband but wife can take this right at the time of contract of Marriage. Divorce is divided into revocable and irrevocable. The jurists have provided detail rules regarding the validity of divorce, its kinds, its types its ways of pronouncement and Iddah. The detail rules regarding Khula and dissolution of marriage by court are also available in Islamic sources.

In Pakistan the establishment and dissolution of marriage takes place under different laws and ordinances promulgated on different occasions by different governments. Lack of awareness regarding the legal framework often creates problems for couples entangled in disputes, forcing them to struggle for their rights. With reference to dissolution of marriage, the following family laws are in practice in the country.

- Guardian-Wards Act (GWA) 1890.
- Child Marriage Restraint Act (CMRA) 1929.
- Dissolution of Muslim Marriage Act (DMMA) 1939.
- Muslim Family Laws Ordinance (MFLO)1961.
- Muslim Family Law Rules (MFLR) 1961.
- Reconciliation Courts Ordinance (RCO) 1961
- The West Pakistan Muslim Personal Law, Shariah Application Act (WPMPLSAA) 1962.
- West Pakistan Family Courts Act (WPFCA) 1964.
- West Pakistan Family Court Rules (WPFCA) 1965.
- Hadd-e-Qazaf Ordinance(HQO) 1979

Although most of the article and clauses of these laws are in conformity with the teaching of Islam, there are certain areas where conflict between them creates difficult situations, particularly for women.

Under Section 5 of West Pakistan Family Courts Act 1964, the Family Courts have been empowered to deal with cases of dissolution of marriage, including *Khula* (divorce on the wife's demand), and the allied issues of dower, maintenance, restitution of conjugal rights, custody of children, guardianship, dowry, personal property and belongings of the wife.

Although separate Family Courts have been established, the existing Civil Courts are given additional powers of the Family Courts. Amendment 2002 in WPFCA provides the facility of seeking relief through combining different sections, clauses and articles taken from related laws in a single suit.

Section 6 of the West Pakistan Family Courts Rules 1965 provides that suits for dissolution of marriage or recovery of dower may be filed in a court that has jurisdiction in the area where the litigant wife ordinarily resides. Moreover according to section 19 of WPFCA, the Court fee for any plaint or appeal is only Rs. 15, as opposed to Rs. 15,000 for ordinary civil suits. These provisions are intended to facilitate plaintiff Women.

Reading:

6.5 Dr. Mullammad Tahir Mansoori 2006	"Dissolution of Marriage: <i>Talaq</i> " in Family Law in Islam Sharjah Acadmy, Lahore. pp111-151
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6.6 Polygamy

Islam is not allowing any kind of illegitimate relationships. Generally one marriage is sufficient for a male and female therefore monogamy is Islamic norm but in exceptional circumstances more only one marriage is allowed. This permission of one marriage is not absolute. This is a conditionally permission. It is allowed to the husband only if he can pay maintenance to all his wives and keep Justice between them. Some modern Jurists are saying that justice is not possible between more then one wife therefore polygamy should be stopped. However majority of classical jurists considered is legitimate permission. The details can be seen in Books of Islamic Law.

According to Muslim Family Laws Ordinance, (1961);

- (1) No man, during the subsistence of an existing marriage, shall except with previous permission writing of Arbitration Council, contract another marriage, nor shall any such marriage contract without such permission be registered under this Ordinance.
- (2) An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reason for the proposed marriage whether the consent of existing wife or wives has been obtained thereto.
- (3) On receipt of the application under Sub-section (3), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such condition if any, as may be deemed fit, the permission applied for.
- (4) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.
- (5) Any man who contracts another marriage without the permission of the Arbitration Council shall,
 - (a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and
 - (b) on conviction upon complaint be punishable with the simple imprisonment which may extend to one year, or with fine which may extend to, five thousand rupees, or with both.

Reading:

6.6Dr.Muhammad Tahir Mansoori 2006	“Polygamy in Islam: A Survey of Ideas “in Family Law in Islam Shariah Acadmy, Lahore. pp231-242
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6.7 Maintenance.

Nafaqah or maintenance refer to the provision for the necessities of life, which a man is obliged to provide to his wife, or wives equitably according to the resources of the giver and the needs of recipients.

Maintenance includes everything that is indispensable for sustenance i.e. dwelling, clothing etc. according to social standing of the given.

- (1) If any husband fails to maintain his wife adequately,- or where there are more wives than one, fails to maintain them equitably, the wife or all or any of the wives. may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.
- (2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.
- (3) Any amount payable under Sub-section (1) or, (2) if, not paid in the due time, shall be recoverable as arrears of land revenue.

Reading:

6.7 Dr. MuhammadTahir Mansoori 2006.	“Maintence of wife” in Family Law in Islam Shariah Acadmy, Lahore.pp97-109
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PUNJAB AMENDMENT

In sub-section (2), the full-stop occurring at the end shall be replaced by a colon and thereafter the following proviso shall be added, namely:

Provided that the Commissioner of a Division may, on an application made in this behalf and for reasons to be recorded, transfer an application for revision of the certificate from a Collector to any other Collector, or to a Director, Local Government, or to an Additional Commissioner in his Division. [Ord. II of 1975: Section 2].

6.8 Dower

Dower is a money or other property which the wife is entitled to receive from the husband in consideration of marriage. All *sunni* school of law agreed that the dower is one of the condition of validity of marriage and an agreement to forgo it is not permitted. They based this ruling on the Quranic verses “And give in to women (whom you marry) a free gift of their marriage portions and ...so-wed them by permission of their folk, and give in to their portions in kindness” (4:4)

According to Muslim Family Laws Ordinance, 1961

Where no details about the mode of payment of dower are specified in the nikahnama or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

Power to make rules

- (1) The Government may make rules to carry into effect the purposes of this Ordinance.
- (2) In making rules under this section, such Government may provide that a breach of any of the rules shall be punishable with simple imprisonment which may extend to one month, or with fine which may extent to two hundred rupees or with both.
- (3) Rules made under this 'section shall be published in the official Gazette and shall there upon have effect as if enacted in this Ordinance.

Amendment of child marriage restraint act, 1929 (xix of 1929). Omitted by Ord. 27 of 1981.

Amendment of the dissolution of Muslim marriages act, 1939 (viii of 1939). Omitted by Ord. 27 of 1981.

Reading:

6.8Dr.MuhammadTahir Mansoori 2006	“Marriage Contract: Dower” in Family Law in Islam Shariah Acadmy, Lahore.pp 71-82
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6.9 Inheritance

The area of succession and inheritance laws is one that has seen the dominance of custom over Muslim personal law mainly to the detriment of women's rights. Although established Muslim jurisprudence gives women a share in inheritance, customary practices, which deny this right to women, were the overriding basis for deciding inheritance cases until the 1930s. Despite centuries of Muslim rule in the Indian

subcontinent, local Muslim communities followed local customs and usages in matters of succession and inheritance in which women's rights were either extremely limited or non-existent.

At first glance, a perusal of Pakistani case law on inheritance and succession rights of women is very encouraging. From 1947 to date, we find that where a woman has approached the courts for the protection of her right to inherit, she has met with a very positive response. But, a closer analysis of the various strands of case law raises some important questions. First of all, in comparison to other areas of family law, the quantum of cases raising issues of inheritance and succession rights for women are extremely low. There could be several reasons for this, that there are few disputes in this area due to a religious compliance with the law; given the countless obstacles and inhibitions that women face, they rarely make it to the courts to secure their rights; the pressure from both family and society to forego one's inheritance is so compelling that women are simply unable to raise a voice and are forced to settle out of court. To determine the factors inhibiting litigation in this area and the level of influence of each would require an empirical study.

Despite the relief given; the tone of most judgments is one of condescension. Women are generally favored because, they are perceived to be a 'weaker section' of society needing protection and not because it is their right as equal citizens.

While the tendency of the courts to reject relinquishment deeds executed by women signing away their inheritance to male relatives may appear to be a very positive trend, the theoretical premise on which these judgments are based are prone to ionic term defects in so far as promoting women's rights are concerned. It is presumed that women are not adults and as such, incapable of taking important decisions. They are thus likely to be deceived and tricked out of their possessions by scheming men; hence the constant need for male protection. In the present socio-economic set-up, this protection is indeed required and the sensitivity of Pakistani courts to the problem is welcome. But the danger in this patronizing attitude is that it may become the norm. This means that women run the risk of being permanently marginalised in matters dealing with wealth, both cash and kind, decisions which, as it is, are taken mostly by men. Rejecting relinquishment deeds etc., therefore, may only bring short-term benefits leading to adverse long term effects for women by reinforcing the attitude that women are incapable of serious decision-making.

6.9.1 Laws of Inheritance

General Principles and Practices (1947-1992) Inheritance is the involuntary devolution of property by which the estate of the deceased, person is transferred to the heirs as his 'or her successors (Rehman 82; 402). The Islamic Law of inheritance as given in the Qur'an and laid down in effect by the Prophet was that 'the blood relationship is cause of title to succession'. (Ghulam Ali vs. Ghulam "Sarvar Naqvi)

Under Muslim law, inheritance immediately opens on the dead; of the pcestor (prepositus), and the devolution of property takes place immediately without any other intervention.

The heritable property includes properties of all kinds and there is no distinction between movable and immovable' or ancestral and self-acquired property (Mulla 91) However- heritable property is required to be free from encumbrances- Therefore, funeral expenses, debts (which includes dower debt i.e. dower payable to the widow of the deceased) and will, if any, are to be satisfied before the heritable property is divided among the heirs. Prior to the Shariat Acts, the courts decided cases according to local customs, provided that the custom was "not contrary to justice, equity and good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority." Personal laws were applied only in the absence of a local custom or usage, we begin the analysis of case law from the year 1947, & period when the onslaught on customary laws had already begun. With the creation of Pakistan, however, the force behind the movement to replace customary laws with personal law weakened considerably and a complete transition could not take place until the early sixties. During this period, case law remained mostly fluid. Issues centered largely around which law (Personal or customary) was governing the parties, rather than addressing controversies and innovations within the law.

However, during this period, the courts did lean in favour of personal law (and hence for women's right of inheritance) unless the existence of custom was proved beyond doubt.

In 1951, long before custom as a rule of law was abolished, 'the Federal Court in *Fazal Dad vs. Mst Nom Nishan* observed that in all cases an initial presumption 'arises that the parties are governed by their personal law and any person setting up a custom differing from and in derogation of personal law must establish that custom. This laid the foundations of case law favouring implementation of women's succession and inheritance rights under personal law. The law had hardly been settled when the Muslim Family Laws Ordinance 1961 (MFLO) was promulgated, radically changing the traditional Muslim law of inheritance by granting the right of succession to the children of a predeceased child.¹¹ The MFLO was readily followed, despite repeated observations by courts that it was a departure from the accepted Muslim law of inheritance:"

Since the promulgation of the MFLO the courts have taken a very literal view of the provisions of Section 4. In numerous cases, the courts refused to extend the benefit of per stirpes share to the wife or husband of the predeceased child as they did not fall within the ambit of Section 4 of MFLO. Pakistan High Court refused to extend the benefit of this section to a British Muslim as the provision, was a departure from traditional Islamic law and was applicable to only Muslims who were citizens of Pakistan.

In wider interpretation of this section, Peshawar High Court in *Abdul Gafoor vs. Anwar*, held that the female child of a predeceased father is entitled to inherit the entire estate that the father would have inherited if alive and not the share to which she would have been entitled under Islamic law.

During General Zia-ul-Haq's Martial Law (1977-85), when the process of Islamisation was initiated, the Shariat Bench of the Peshawar High Court held in *'Fartshita vs. Federation of Pakistan* that a person must be alive to be able to inherit under Islamic law. Therefore it stated that section 4 of the MFLO was against the injunctions of Islam and liable to be repealed. Interestingly, however, the Court felt inclined to favour the position that the children of a predeceased child should inherit the parents' share and went on to suggest various means for relieving the tress of the children of a predeceased son or daughter under Islamic As reflected in case law on Section 4 of the MFLO, this provision i.e. law has always been a subject of controversy in legal as well as religious circles as it is argued that it contravenes a clear Quranic recitation.

6.10 Exercise

- Q.1 Explain the concept of Marriage and Family in Islam
- Q.2 Discuss Family Laws related with Talaq
- Q.3 Explain polygamy and which are conditions or restriction on polygamy in laws
- Q.4 Explain the importance of Dower and gifts in marriage contract

UNIT-7

**HUDOOD LAWS AND WOMEN STATUS
IN PAKISTAN**

Dr. Muhammad Zia-ul-Haq

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7.1 INTRODUCTION

In the history of world Islam was the first religion and the first social system which recognized the human status of women, and conferred on them the highest dignity and honour, and grant them equal rights with men in every respect and all discriminations on the basis of sex. A basic understanding of the sources of the *Sharia* (principal of Islamic Law) is essential due to the fact that the concept of human rights in the Islamic tradition is firmly grounded in its sources and accompanying juristic techniques, namely the *Quran*, *Hadith*, *Ijina*, *Qiyas* and *Itihad*. *Quran*, are the words of God is the primary source of Islamic Law and the *Sharia*. Any human rights regime must therefore, conform to those rights and duties, privileges and obligations enjoined upon believers in the *Quranic* verses. Out of 6666 verses of the *Quran*, about 500 have legal element.

Hudood Ordinances a set of laws and penalties enforced by Martial law regime of General Zia-ul-Haq on February 10, 1997. The *Hudood* Ordinances (1979) are five laws relating to theft, fornication, adultery and rape, false testimony, prohibition of intoxication (drugs, alcohol etc) and whipping. The Law of Evidence states that in matters relating to financial and future obligations the evidence of at least one man or two women will be required, and through the Retribution and Blood Money Ordinance the blood money given to a female victim will be half given to a man.

The Ordinances were later given constitutional protection by the then parliament of 1985, where as Qisas, and Diyat Ordinance in its present form was enacted in 1990. On April 11, 1997, the entire state was brought under the jurisdiction of this law by the Government of Pakistan. In this unit an effort is being made to study about the Shariah laws related with women

7.2 OBJECTIVE

In this unit you will learn about:

Shariah Laws specifically related with women in the following areas:

- Law of Evidence
- Hudood Ordinance.
- Rajam Qisas Diyat

7.3 Law of Evidence

Being the last divinely revealed law, Islamic law seeks a number of temporal goals, the most important of which is the pursuit of justice. Both the Holy Qur'an and Sunnah of the Holy Prophet (SAW) repeatedly demand justice and condemn injustice, associating the former with reward and the latter with, punishment. The Islamic law has laid great stress on the evidence to prove the facts relevant for the judgment of a court. Because unless it is not proved beyond reasonable doubt that the accused has committed the crime or the defendant has taken the right of the plaintiff, he cannot be held liable to the punishment of the crime or the restoration of the right.

The Holy Qur'an has emphasized giving evidence and condemned its concealment. It has laid down the criterion of evidence for different crimes and rights as well as the witness. The Sunnah of the Holy Prophet Muhammad (PBUH) has also laid great emphasis on evidence and has explained the conditions for testimony confession and admission as well as the witness and has elaborated other sources of proof of a crime and a right.

Hazrat Umar in a letter to Abu Musa Al-Ashari writes "The burden of proof is on the claimant and the defendant may be put on oath. If a claimant brings proof within the prescribed time, his claim should be allowed otherwise judgment should be given against him. All Muslims are acceptable as Witnesses against each other except those who have been punished with hadd of Qadhf (accusation of adultery), those who have tendered false evidence and those who are suspected (of partiality) on the ground of accuser's status or relationship."

The object of the law of evidence is to lay down, principles, to prove the facts relevant for the decision of a case. In every dispute there are at least. two litigant parties, the plaintiff and the defendant. The former claims what is contrary to the apparent fact and the latter denies the claim. The burden of proof lies on the plaintiff because what is apparent is presumed to be the original state. The theory that what is apparent will be presumed to be true unless proved otherwise is called Istishad in term of Islamic jurisprudence.

According to Islamic law the crimes and rights with regard to their proof, have been classified into two categories:

- (i) Hudood, Qisas and Documentation of monetary transactions
- (ii) Ta'zirat and general civil case.

CD Reading

7.3 a) Dr. Anwarullah. (1992) The Islamic Law of Evidence. Research Cell Dyal Singh Trust, Lahore. Pp 2-66
7.3 b) Asghar All Engineer. (1999) "Is Women a Half Witness According to the Quran?" The Quran Women and Modern Society Sterling Publishers Ltd. New Delhi pp 75- 84

7.4 Hudood Crimes

Hudood crimes include Zina, theft, Harabah, Qadhf case. Hudood, Qisas and documentation of certain monetary transactions are proved with the prescribed number of the witnesses. The Holy Quran has only prescribed four witnesses for the proof of zina, two male witnesses or one male and two female witnesses for the proof of a document of a monetary transaction and two witnesses for the proof of a will and has not prescribed number of witnesses for any other crime or right. The jurists have fixed the number of witnesses for the proof of certain crimes and rights. However all crimes of tazirat and cases of rights are proved with the evidence of even one witness along with the oath is also a source of proof in tazirat and rights when there is no other evidence. Islamic law does not reject any true evidence even if it is less than the prescribed quantum.

It is pertinent to mention here that “hadd” means the Punishment fixed by the Holy Qur'an or the Sunnah of the Holy Prophet (SAW) and it also signifies a crime for which punishment has been fixed by the Holy Qur'an or Sunnah of the Holy Prophet (SAW). “Tazir” means the punishment other than hudd and it also means the Crime other than hudd. Qisas means the similar punishment to the offender as he had caused to the victim and it relates to the crimes of murder and hurts.

According to Islamic law the commission of an offence or the infringement of a right is proved by the following modes:

1. Testimony
2. Confession [or Admission]
3. Circumstantial Evidence
4. Evidence by Expert
5. Oath
6. Personal knowledge of the judge

The word “Hudd” in strict legal sense, expresses Allah's restrictive Ordinances per excellence the fixed punishments,; which have been prescribed by the Holy Quran. Later on it also came to define the punishment proved or established by the Sunnah of the Prophet (SAW) and his Companions on which there is an “Ijma” (consensus) of the Prophet's Companions.

Following punishments are included in Hudd

- (1) for theft (sariqah), cutting of the right hand
- (2) for dacoity or highway robbery without murder (qat' lal- tariq), the cutting of right hand and left foot; with murder, death either by the sword or by crucification
- (3) for fornication, a hundred stripes, when the act is committed by unmarried person. For adultery zian stoning to death, in case the act is committed by married person ;
- (4) for stripes
- (5) for apostasy (irtidad) dath
- (6) for drinking wine (shurbal-Khamr), eighty stripes.

The Hudd, in principle being a right of Allah, no compromise, settlement, pardon or

waiver is possible.

Reading:

7.4 Muhammad Fail Khan (2004) Hudood, Hudood Ordinances and Women (Organization of Research and Education) Asia Foundation, Rawalpindi. pp1- 54

7.5 Punishment of Rajm

Punishment of Rajm a hadd: Rajm is a Tazeer and not hadd. There may be circumstances when even the Mohasan may not be punished with Rajam. Actual hudd is of one hundred stripes which must be inflicted. However the Holy Prophet sometimes inflicted both the punishments (stripes and Rajm) jointly and sometimes considered any one of them sufficient. Rajm cannot be held to be a hudd within the accepted meaning of that term, since hudd cannot be remitted or dropped but Rajm can sometimes be remitted. Verse in Surah Noor is general and applies, to both married and unmarried adulterers and that the punishment of Rajm is in addition prescribed by the Holy Prophet (SAW) in view of the aggravation of the offence. If the concept of hudd and taazir as presented by the jurists is taken to its logical conclusion it would follow that what is provided by Allah can only be called The dictum of Imam Abu Hanifa in an analogous case will apply in such a case. In respect of the punishment of expulsion he said that it was in excess of the Qur'an and was, therefore, a taazir. The sentence of Rajm also being in excess of the Book of Allah can only be said to taazir. All those who believe a Muhsan to be liable to whipping as well as Rajm (like Hazrat Ali) interpret this verse to be applicable to married persons too. The traditions of Rajm being not similarly worded cannot be called Mutawatirul Lafz (continuous in words). It appears that the word (continuity) is used only in a loose sense of the continuity of events of Rajm.

7.6 Islamic Law of Retaliation and Protection of Human Life

The Islamic Law of retaliation provides a very effective and practical means to put a stop to murder and safeguard human life. A man who shows a callous disregard for the life of a fellow-person loses his title to live as a member of human society. The option to pardon allowed to the heirs of the slain person should not be regarded as likely to encourage murder, for such option is not synonymous with exemption from punishment as in ordinary circumstances the murderer will have to pay the blood-money. Moreover, the would-be murderer possesses no means to know that the heirs of the person whose murder he contemplates will actually be persuaded to pardon him; so the fear capital punishment will always be there to deter him from the commission of the crime. Again, pardon or remission is permissible only where the circumstances are such that pardon or remission is likely to improve matters and bring about good results for all parties concerned.

To prevent crime, Islam really aims to eliminating the conditions that produce it. It seeks to remove, the very root-cause of all crime by working a complete moral reformation in

man. But it does not remain content with that. It also prescribes deterrent laws in conformity with the dictates of reason, justice and humanity.

Muhammad Asad comments on Sura al-Baqara which deals with Qisas.

Now one of the main problems facing any society is the safeguarding of the lives and the individual security of its members and so it is understandable that laws relating to homicide and its punishment are dealt with prominently at this place.

As far the term Qisas it must be pointed out that according to all the classical commentators-it is almost synonymous with in the instance, making the punishment equal (or another thing),: to the crim-a meaning which is best rendered as just retribution and not (as has been often, and erroneously, done) as “just retribution” seeing that the Qur'an speaks here of cases of killing (fi'l-qatla,) in the matter or the Killed in general, and taking into count that this expression covers all possible cases of homicide-premeditated murder, murder under extreme provocation, culpable homicide, accidental manslaughter. And so forth, it is obvious that the taking of a life for a life (implied in the term retaliation) would not in every case correspond to the demands of equity. (This has been made clear for instance, in 4:92, where legal restitution for unintentional homicide is dealt with.) Read in conjunction with the term just retribution which introduces this passage, it is clear that the stipulation the free for the free. The slave for the slave, the woman for the woman, cannot-and has not been intended to-be taken in its literal, restrictive sense for this would preclude its application to many cases of homicide. E.g., the killing of a free man by a slave, or of a woman by a man, or vice versa. Thus, the above stipulation must be regarded as an example of the elliptical mode of expression (ijaz) so femalely: if a free man hag' committed the crime, the free man must be punished: if a slave has committed the crime..., etc.-in other words, whatever the status of the guilty person, he or she and he or she alone is to be punished in a manner appropriate to the crime.

In consonance with the oft-recurring Quranic exhortation to forgiveness and forbearance, the remission mentioned above may also (and especially in cases of accidental manslaughter) relate to a partial or' even total waiving of any claim to indemnification.

“There is a safeguard for you, as a community, so that you might be able to live in security, as God wants you to live. Thus the objective of qisas is the protection of the society, and not revenge.”

The Arabs were addicted to female infanticide. This crime regarding childrens' lives is here characterized as one of the greatest of sins.

Here it has been expressly condemned to take life os others which is a crime against our fellow creatures. Every crime is against God, His creatures and ourselves, but some may be viewed more in relation to one than to another. The prohibition against taking life is qualified: “except for just cause”, e.g, in judicial punishment for murder, or in self-

preservation which may include not only self defense in the legal sense, but also the clearing out of pests, and the provision of meat under conditions of Halal.

To kill or seek to kill an individual because he represents an ideal is to kill all who uphold the ideal. On the other hand to save an individual life in the same circumstances is to save a whole community; what could be stronger condemnation of individual assassination and revenge?

“The Qur'anic injunction is more practical..This appeal for mercy is as between man and man in the spiritual world. Even where the injured one forgives, the State or Ruler is competent to take such action as is necessary for the preservation of law and order in society. For crime has a bearing that goes beyond the interests of the person injured: the Community is affected.”

It has been ordained:

“Hence, do not kill your children for fear of poverty; it is we who shall provide sustenance for them as well as for you, verily killing them is a great sin.”

“Historically this may be a reference to the pre-Islamic Arabian custom of burying unwanted female children alive as well as to the occasional thought much real sacrifices of male children to some of their gods. Beyond this, however, the above prohibition has a timeless validity in as much as it relates also to abortions undertaken for fear of poverty', i.e., on purely economic grounds.”

“This refers to the klegal, punishment for homicide, termed qisas (just retribution). In the present context, the term wali protector or defender of one's right, is usually taken to mean the their or next of kin of the victim.”

What is mentioned here is the punishment in the Hereafter, the spiritual consequences. Enforceable by human society, are mentioned in.2:178, under the rules of Qisas. That is a life should be taken for a life destroyed, but this should be on a scale of equality; a single murder should not commit a whole tribe to a perpetual blood-feud, as in the days of ignorance. But if the heirs of the man slain accept reasonable compensation, this should be accepted, and the taking of a life for a life should be put a stop to. This course leads to the saving of life, and is commanded to mean of understanding.

Reading:

7.6 Hassam Qadir Shah (1998) “Reflections on the Law of Qisas and Diyat” in Shaheed, Warriach, Baluch and Gazder (ed.) Shaping of Women's Lives. Lahore: Shirkat Gah. pp 253-266
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7.7 Exercise

- Q.1 Explain the Law of Evidence?
- Q.2 Discuss Hudood Ordinance in detail?
- Q.3 What is meant by Rajam ?
- Q.4 Write note on
- (a) Qisas
 - (b) Diyat

Reading

Dr. Anwarullah. (1992) The Islamic Law of Evidence. Research Cell Dyal Singh Trust, Lahore. Pp 2-66

Hassam Qadir Shah (1998) "Reflections On the Law of Qisas and Diyat in ' Shaheed, Warriach, Baluch and Gazder (ed.) Shaping of Women's Lives. Lahore: Shirkat Gah. pp 253-266

7.4 Muhammad Farooq Khan (2004) Hudood, Hudood Ordinances and Women (Organization of Research and Education) Asia Foundation, Rawalpindi. pp1- 54

Shaheen Sardar Ali. (2000) Gender and Human Rights in Islam and International Law. The Hague: Kluwer Law International. pp102- 112

UNIT-8

MUSLIM WORLD AND WOMEN RIGHTS

**Dr. Riffat Haque
Mamonah Ambreen**

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8.1 INTRODUCTION

Some half billion women in the world are Muslim. Concentrated in a broad belt from Senegal to the Philippines, with the largest number on the South Asian subcontinent. Muslim women may also be found in such countries as Norway, Trinidad and Japan, as well as throughout many communities in the United States and Canada, Thus they form a worldwide gender community. In order to understand the rights of a Muslim woman within the Islamic tradition, one needs to locate her in the concentric rings of religion, class, law, society etc that form the multiple layers of her identity and 'encompass her from the moment she is born. Since the Islamic world embraces an overwhelming complexity of social forms and cultural ways. the diversity in behavioral patterns is enormous. Muslim women live under widely different conditions and their rights and obligations and the influence they can exert over their own lives change considerably from one part of the Muslim world to another. Norms within a particular cultural milieu, economic and political conditions, all play a crucial role in determining what rights are conceded to a Muslim woman in a particular Muslim Jurisdiction. Therefore, a single, categorical statement regarding the human rights of Muslim women in the world today would simply not be a valid one as these vary from society to society and from one age to another. One must bear in mind that the variation of Muslim women's rights is also influenced by the different interpretations of the religious text offered to justify restricting the space given to Muslim women in the Islamic tradition.

Over the centuries And with the emergence of sovereign nation states on the one• hand and internationalization of the world on the other, an operative' Islamic law has come into existence- that is not entirely in keeping with traditional of Islamic law principles nor' completely irreconcilable with current international human rights instruments relating to women's human rights (discussed in unit 9). It is this 'operative' Islamic law that influences women's human rights in Muslim jurisdictions.

8.2 OBJECTIVES

After completing this unit students will be able to:

- Explain the Women Rights in Muslim World and Women Rights
- To learn a Comparative legal Perspectives and Implementation of Women Rights in Muslim World with a litter difference

8.3 Muslim World and Women Rights Legal Perspectives, Interpretation and Implementation.

The complex nature of Laws influence female status, it would not be wrong to say that same applies in rest of the Muslim world with a little difference. Iran, Sudan, Pakistan and Algeria are among the countries where Islamic Revivalism' has appeared, whereas Turkey, Bangladesh and Tunisia are comparatively new entrants in the field.

Islamic societies of the world over seem to be in a state of flux today and are caught in an upsurge of Islamic Revivalism', vehemently advocating a return to pure Islamic ideas, a return to strict religious practice, to observance of the text i.e. a study of Quran and Hadith and a return to principle of religious law, the Sharia in short a quest for a return to the fundamentals as it were. Be it Iran or Pakistan, Algeria or the Sudan, seeds of a strong politico-religious movement have been sown. Broadly speaking, three different views have emerged among people of the post-colonial Muslim states.

On the one band there are the *secularists*, who advocate a complete break between religion and the state, perceiving secularization as a panacea for all ills to which these societies are a prey. For instance, Turkey, declared itself a secular state and under the Turkish constitution of 1982, Article.24 prohibits even the notion of religious law as law for society.

At the other end of the spectrum are the *Islamic revivalists* for whom the term 'fundamentalist' was coined and extensively used. They argue for imposition of all pervading law based on Islamic principles or Sharia.

The third category consists of those *Islamic reformists*' who were instrumental in initiating legal reform in the post world war II era among the newly emergent independent Muslim countries. For example, in Egypt Pakistan, Morocco, Tunisia etc., some law particularly in the area of family law, were made based' on a progressive interpretation of Quran. Proponents of this view opined that a progressive interpretation of Islam is required if Muslim societies are to make any progress. The present ascendancy to prominence and power of the Islamic revivalists is primarily due, to the disillusionment with these reforms and a feeling of alienation by the Muslim masses how see them as western inspired impositions and conspiracies to rob them of an Islamic way of life. But this call for a return to the fundamentals and the ensuring agenda has generated an ongoing controversy as states have proceeded with this so called process of 'Islamisation' in highly selective and discriminatory manner. In Pakistan this term was • coined during the regime of the late General Zia-ul-Haq, who promulgated laws reflecting his views of Islam that were extremely discriminatory, to women.

A problem that all Muslim jurisdictions are confronted with is the ideological hardening brought about by the Islamic 'revivalist' movements. These movements reject the validity of secular' constitutional documents as legitimate guidelines for Muslims States and seek

to restore elements of the sharia utterly out of context and juxtaposed with legal codes borrowed from, the west. The status of women suffers most, especially from legislation where intent diverges widely from effect, and where retrogressive laws relating to women are among the chosen few 'Islamic law' that are particularly canvassed.

In analysis of women rights in Muslim societies today it is important to examine the political projects of contemporary Muslim States and their historical transformation. Thus what is today known as 'Islamic revivalism' and its implications for women follows on directly from the colonial and post-colonial situations of Muslim States.

The western colonial powers had interfered with legal systems of their Muslim colonies, and, at the level of state legislation various sectors of social life had been withdrawn from the control of religious laws and replaced by civil laws for example, Penal Law, taxation, Constitutional Laws and the laws of contract and obligation. The one exception was the family law and personal law aspect of Islamic legislation, which was held on to most tenaciously (Nicolson, 1983).

Michael Anderson argues quite convincingly that under British colonial rule in the sub-continent, Islamic law rigidified with the consequence that gender hierarchies were made more pronounced (M Anderson, 1990).

In the context of Pakistan, in pre-partition India, Islam was a communally based religion, which served as an ethnic marker and subsequently an integral component to Pakistani nationhood itself (A Jalal).

After attaining independence, states such as Pakistan had to establish an identity by redefining it

Reading:

8.3a Islamic Laws & Women 2001	Islamic Law & Women in the Modern World, Giant Forum, Islamabad. pp5-95
8.3 b Aiysha Madani 2005	"Women Right Issue in the Muslim World" In A Review of Contemporary Thought in Women Rights Poorab Academy, Islamabad pp 55-79

8.4 Exercise

- Q.1 Write a detail note on the women rights in the Muslim world?
- Q.2 Compares & analyse family laws in four Muslim countries?
- Q.3 Critically analyze the Legal perspectives, interpretation and implementation of Women Rights in Muslim countries?

8.5 Bibliography

M Anderson, (1990) *Islamic Law and the colonial Encounter in British India*

In Mallat and J. Connors (eds) *Islamic Law* (1990) London: Graham and Trotman

A. Jalal "The convenience of subservience: women and the state of Pakistan" in *Kandiyoti Op. Cit.*, n.47 at pp79-85

8.6 Further Reading

- Ruth Roded (1999) *Women in Islam and the Middle East A Reader* By I.B 175Fifth Avenue, New York NY10010
- Katerina Dalacoura (1998) *Islam liberalism& Human Rights* LB Tauris Publishers London. New York

UNIT-9

**INTERNATIONAL HUMAN RIGHTS AND
MUSLIM WOMEN**

**Dr. Riffat Haque
Mamonah Ambreen**

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International Human Right and Muslim Women

9.1 INTRODUCTION

No one can deny that at its core Islam is entirely consonant with the principles of fundamental human rights, including human dignity, tolerance, solidarity and quality. Numerous passages from the Holy Quran and sayings of the Prophet Muhammad (S.A.W) will testify to this. No one can deny from a historic perspective that the revolutionary force that is Islam, which bestowed rights upon women and children long - before similar recognition was afforded in other civilizations. Custom and tradition have tended to limit these rights, but as more Islamic States ratify the Convention for the Elimination of Discrimination against Women, ways forward for women are being found and women are leading the debate. And no one can deny the acceptance of the universality of human rights by any Muslim States.

Women's human rights in International Law have evolved in the 20th century from the protective, corrective stages to reach the non-discriminatory level. The solid body of women's human rights built up through numerous UN Declaration, Conventions, and Resolutions, General Comments of various Treaty Bodies, as well as regional human rights instruments and jurisprudence bears testimony to the fact that women's human rights have found a place on the international human rights agenda. The development of the international norm of non-discrimination on the basis of sex through international human rights instruments, synthesizing in the United Nation Convention on the Elimination of All Forms of Discrimination Against Women (the women's convention). Other major developments at the international level contributing to international human rights relating to women, including the World Conference on Population and Development, in Cairo, 1994 (ICPD), and the Fourth World Women Conference, Beijing 1995 (the Beijing Conference) will be addressed. As most of the substantive rights relating to women in the international human rights arena is a post- United Nations phenomenon, it is proposed to trace the development of women's human rights from that point in time. On the other hand it is need to address the issue is to trace parallel developments emanating from Muslim States as a collective entity from the platform of the Organisation of Islamic Conference (OIC).

9.2 OBJECTIVE

After studying the unit, it is hoped that the student will be able to;

- Explain Universal Islamic Declaration of Human Rights
- Describe International Human Rights, various Instruments
- Discuss the Convention CEDAW & Muslim States

9.3 Universal Islamic Declaration of Human Rights

In the Islamic legal tradition propounds the doctrine of Equal worth and equal dignity of the human person, rather than using the phrase, equality for men and women. In the area of women's human rights, it proceeds on the assumption that women as a class are perpetually 'protected' persons with men as their protectors and maintainers. This position results in conceptually divergent norms including 'mutuality' and 'complementarily' between men and women. Human rights documents presented from Islamic platforms, including the OIC, appear reluctant to include the term equality when formulating women's human rights. A strategy that may be suggested towards bridging these conceptual gaps between international human rights and Islamic law is to focus on, and adopt a basic needs approach. To this end, the CRC, to which Muslim countries have lent wholehearted support, might well act as a common denominator between international human rights affecting women, and women's human rights in the Islamic tradition. For read the following material:

9.3 Reading

Universal Islamic Declaration of Human Rights Web document

9.4 Into-national Human Rights, Various Instruments

The solid body of women's human rights built up through numerous UN Declarations, Conventions, and Resolutions, General Comments of various Treaty Bodies, as well as regional human rights instruments and jurisprudence bears testimony to the fact that women's human rights have found a place in the international human rights agenda. Women's human rights in international law have evolved in the 20th century from the protective, corrective stages to reach the non-discriminatory level.

The categories developed in the international human rights context, may usefully be employed in developing a theoretical framework of women's human rights in the Islamic tradition that shared a number of similar features. The categories of corrective, protective and non-discriminatory rights were replicated in the Islamic tradition by the ibadaat and muamalaat classes of rights.

The comparative approach to women's human rights in' Islam and International law in turn, also brought into prominence the disparity existing between theory and effect of both legal traditions when applied to the situation of women. Notions of formal equality have been emphasized in major international human rights instruments as opposed to substantive equality.

By granting de jure equality, de facto equality would automatically follow. Although the Women's Convention has to a great extent rectified this conceptual gap, weakness in implementation mechanisms of human rights treaties in general forms a crucial barrier in

this regard. It appears that international human rights law has yet to extricate itself from the post Westphalian notion (informing modern statehood) of male, public sphere, exclusionary formulation of institutions. This attitude, transported to the international level, is due to the present day arrangement of civic life, where access to resources and institutions privileges men, while denying similar opportunities to women. Human rights instruments, when providing equal rights for women fail to take account of this denial of equal opportunities; hence the conclusion that something more than formal pronouncements of the equality norm is required to translate it into a reality.

9.5 CEDAW and Muslim States

The reaction of Muslim states to the women's Convention has been very strong. One of the serious problem encountered in effective implementation of Human rights treaties, is the vast number of reservation and declarations entered by states parties. This is particularly true of the women's convention that appears to be the most widely reserved human rights treaty. The number of far reaching reservation entered to this treaty has been the subject of a global and the women's convention is seen as the most 'political' of the entire human rights instrument. At the same time, reservations to human rights treaties do not simply pose legal. questions. Affecting as they do, interests of the most vulnerable and marginalized groups in society such as women and children.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has the status of an international treaty which members of the United Nations are encouraged to ratify. CEDAW was adopted as a UN Convention because it offered a comprehensive framework for the implementation of rights of women. It has been in force since, 1981 and was adopted by the General Assembly in December, 1979 and it is, in essence, the international bill of rights for women. Currently, 165 countries more than two thirds of the members of the United Nations have ratified the Convention, committing themselves to a legally binding international treaty, including participation in, a country-by-country reporting process. An additional 97 countries have signed the treaty, binding themselves to do nothing in contravention of its terms. Out of 40 Muslim countries 31 have ratified the Convention and one has signed it.

Although the Women's Convention has to a great extent rectified this conceptual gap, weakness in implementation mechanisms of human rights treaties in general, forms a crucial barrier in this regard. It appears that international human rights law has yet to extricate itself from the post-Westphalian notion (informing modern statehood), of male, public sphere, exclusionary formulation of institutions. This attitude, transported to the international level, is due to the present day arrangement of civic life, where access to resources and institutions privileges men, while denying similar opportunities to women. Human rights instruments, when providing equal rights for women fail to take account of this denial of equal opportunities; hence the conclusion that something more than formal pronouncements of the equality norm is required to be translated it into a reality.

That where equal life chances for all children irrespective of sex are taken as the departure point for a viable rights strategy, chances of establishing a Non-Discrimination Regime would appear more feasible. By entering the Women's Human rights discourse through a non-controversial channel, as, by demanding equal access for all to health care, nutrition, education, economic resources, employment, indeed the entire range of rights, a new realm of empowerment for women would open up. This may result in rendering the 'equality' debate a little irrelevant, but with a strong potential for achieving defacto equality for women.

The question arising, Is it worth exploring and canvassing the alternative route of empowerment through access to basic needs in order to arrive at a non-discriminatory, 'formal' equality, destination?

Please read the following material

Reading:

9.5 a) Shaheen Sardar All 2000	Response of Muslim States to International Human Rights Instruments Affecting women. Kluwer Law International pp238.272	
9.5b) Retrievals from http://www.un.org/womenwatch/daw/cedaw	1/17/07	The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)s

9.6 Exercise

Q 1: Explain the Universal Islamic Declaration of Human Rights?

Q.2: Describe International Human Rights, and various Instruments affecting women?

Q.3: Discuss the Convention CEDAW and Muslim States?