

Woman in Islamic Law

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ABSTRACT : Islamic law or *Shari'at* is the code of rules and regulations derived from the religious precepts of Islam, particularly the Qur'an and the *Sunnah* (teachings and practices of Prophet Muhammad). It is meant to serve the best interests of human beings through implementation of specific laws, as Islam is essentially and fundamentally a law-based religion. The foundation upon which the Islamic system of law is built is the concept of justice to all without any discrimination on the basis of cast, creed and gender: "Verily, Allah sent His Messengers and revealed His Scriptures so that humanity may establish justice" (LVII :25).¹ The same idea is said to have been kept in mind while ordaining laws regarding treatment of women in Islam. But concerns are often raised about the position of women in Islamic law mainly because of certain myths and misrepresentations about them which are often used to advance the notion that Islam is misogynistic. It is, of course, true that there is a wide gap between what Islam stands for and the actual social reality among Muslims in terms of the status of women, thereby, further compounding the misperceptions and negative stereotypes. The common prevalent misrepresentations of women in Islamic law relate to such matters as their status, the issue of marriage and divorce, inheritance law, polygamy and rigid *purda* system. While doing so, certain basic points of *shari'at* are intentionally or ignorantly distorted to present a misogynistic caricature of Islam which has nothing to do with the teachings of the faith. An attempt has been made in this paper to discuss the position of women in Islamic law from a spiritual, economic, social and political standpoint.

KEYWORDS: Status of women, Islamic law, marriage and divorce, triple *talaq*, *purdah* system, polygamy, inheritance.

I. THE CONDITION OF WOMEN IN PRE-ISLAMIC TIMES

It is a well-known fact of history that in the ancient periods of time the condition of women was very pathetic. They lived a miserable life and had no rights at all. They were treated like a mere chattel marketable and transferable more or less all over the world. They had a very low position in the social scale. Even in religious circles they were looked down upon, condemned and degraded. They were variously described as "the devil's gateway, the unsealer of the forbidden tree, the deserter of the divine law, the destroyer of God's image - man", due to which they were regarded and treated as a necessary evil and a painted ill.² The condition of women among the pre-Islamic Arabs was also degraded in the extreme. They had no social status. Like their counterparts elsewhere, they were kept deprived of the right of inheritance. They were inherited by the heirs of their deceased husbands like their property. The pagan Arabs held women in utmost contempt, ill-treated and hated them habitually. They considered the birth of a daughter as a calamity, and buried alive many of their female children. Their shameful attitude towards women is summed up in the Quranic verses: "When one of them receives the tidings of the birth of a female, his face remains darkened, and he is wroth inwardly. He hides himself from the folk because of the evil of that he has been apprised of (asking himself: Shall he keep it in contempt, or bury it beneath the dust. Verily, evil is their judgement" (XVI :58-59).³ Thus the women not only in pre-Islamic Arabia, but also in the whole of Europe under the influence of Roman culture had sunk to the deepest degradation possible.⁴

II. THE STATUS OF WOMEN IN ISLAMIC LAW

When Islam came, far-reaching reforms were introduced for raising the social, educational and economic standards of women. It not only paid attention to their uplift in society, but also restored to them all their genuine and natural rights on a footing of equality with men by enjoining a number of provisions and regulations to that effect. One dominant feature of Islamic care for protecting the rights of women is that it has taken measures not only for their educational and economic empowerment, but also for the maintenance of their emotional and psychological well-being. On the emotional and psychological side, Prophet Muhammad warded off at one stroke the concept of original sin, which earlier had been associated exclusively with women. Although the Qur'an speaks about Adam, Eve and the forbidden tree, nowhere it gives the impression of blaming Eve for the first mistake. The story is narrated in the Quranic verses (VII: 19-27), in which it speaks

about both of them committing this mistake, disobeying their Lord, and holding both of them equally responsible for the fall of man. When the Qur'an speaks about the suffering of women during the period of pregnancy and childbirth, nowhere does it connect it with the concept of original sin, thereby raising women as equal partners of men without any sense of superiority or inferiority attached to either of them. Prophet Muhammad described them as lovely creatures of Allah. While raising their overall position in society, he went so far as to say to his followers that the most excellent of them was the one best towards his wife.⁵ He further illustrated the status of women by saying that even paradise lies underneath the feet of the mothers.⁶

Equal Status of Men and Women : The approach adopted by Islamic law about the equality of men and women is quite in line with the requirements of human nature. The Qur'an attributes the existence of mankind to partnership of men and women, none of whom is superior or inferior to the other. It does not discriminate between them on the basis of sex. Both are promised the same reward for good deeds and the same punishment for evil conduct. The equal status granted to men and women is adequately expressed in the following Quranic verses:

“Whosoever does right, whether male or female, him verily We (Allah) shall quicken with good life, and We shall pay them a recompense in proportion to the best of what they used to do” (XVI: 97).⁷

“Lo! Men who surrender unto Allah, and women who surrender and men who believe and women who believe, and men who obey and women who obey, and men who speak the truth and women who speak the truth, and men who persevere in righteousness and women who persevere, and men who are humble and women who are humble, and men who give alms and women who give alms, and men who fast and women who fast, and men who guard their modesty and women who guard their modesty, and men who remember Allah much and women who remember - Allah prepared for them forgiveness and a vast reward” (XXXIII: 35).⁸

“ So their Lord has responded to them (and He says): Lo! I suffer not the work of any worker, male or female, to be lost. You proceed one from another” (III:195).⁹

The expression - “you proceed one from another” - recurs in the Qur'an. It is a reminder to men that women are of the same human status as themselves. These and like passages in the Qur'an are sufficient to show that utterly mistaken are those who make reckless and false statements regarding the position of women in Islam.

Islam has made it clear that both men and women have special gifts from Allah. None of them is inferior or superior to the other. Both are equally important in their respective spheres of activity. While granting similar rights and rewards to both of them, Islam does recognise the physical difference in the constitution of both of them. As such it does not wish or encourage women to assimilate themselves to men. The following observation made by Dr. Harry Campbell on the inherent nature of men and women fully justifies the Islamic concept of equality of women with men:

“Women have smaller lungs
and fewer blood cells than
men. In women the vital fire
does not burn so quickly. It is
thus obvious that women are
not adapted like men for a
strenuous muscular life.

Mentally men and women differ
in the realm of feeling rather
than of intellect. Intellectually
men and women stand
somewhat upon the same
footing”.¹⁰

III. MARRIAGE AND DIVORCE

The Muslim woman has the right to ratify or annul her marriage. Marriage, according to Islamic law, is a bilateral contract based on free consent of the two contracting parties. In this respect there is no difference between man and woman in the eyes of the law. As such the Muslim woman cannot be married to anyone without her clear consent. Even her parents cannot sell her off to any person of their choice. The relationship between husband and wife is not that of master and slave, but it is one of interdependence between two equally important persons. The Muslim woman retains her individuality even after her marriage. She has the right to enter into contracts and other transactions such as buying, selling or mortgaging of goods, etc. She is free to own property and dispose of it according to her will independently of her parents or husband. Again, it is man alone who is burdened with the responsibility of shouldering all the financial obligations of his family. It is a legal obligation of the husband. Anything earned by the wife becomes her own property. She can contribute to the family budget only if she so wishes.

The provision of divorce in Islamic law makes marriage terminable by the will of either party in case the couple find themselves in a state of perpetual conflict beyond any hope of reconciliation. Although Islam has approved of divorce, measures have been taken to avoid it as far as possible. As said by Prophet Muhammad: “Of all the lawful acts the most detestable to Allah is divorce”.¹¹ The only form of divorce approved by the Qur'an and the Prophet is an elaborate procedure that spreads over three months and it is only after the completion of the third month that marital relationship ceases. While legalizing divorce utmost care has been taken to discourage this practice through introduction of the waiting period known as *'iddat*. Besides ascertaining whether or not the divorced wife is expecting a baby, this provision also serves as a cooling-off period, during which the relatives and other members of the family may try to help towards a reconciliation and better understanding between the dissenting partners. If they are reconciled, they may resume the marriage relations at any time within the stipulated period of three monthly cycles, whereupon the divorce is automatically revoked, as elaborated in the Qur'an (II: 229), according to which a divorce is finalized over a period of three months. In the first month, the husband tells his wife that he has given her one *talaq*. Then both of them wait for a month, during which they could reconcile. After the first month, he may either take back the *talaq* or pronounce it the second time. The initial declaration of *talaq* is revocable which does not terminate the marriage. The husband can revoke the *talaq* at anytime during the waiting period called *'iddat* which lasts three full menstrual cycles. The waiting period is intended to give the couple an opportunity for reconciliation as well as to ensure that the wife is not pregnant. If the husband divorces his wife for the third time, the *talaq* becomes final and irrevocable, after which the couple cannot remarry without an intervening consummated marriage to another man called *nikah-e halalah*. Upon *talaq*, the wife is entitled to the full payment of the *mahr* (dowry) if it had not already been paid. The husband is also obligated to financially support her until the end of the waiting period or the delivery of her child. In addition to the dowry all the gifts which the wife may have received from her husband or his family during the tenure of the marriage is also retained by her after the divorce. As such there is no Quranic sanction for the concept of triple *talaq* in vogue in India. The instant triple *talaq* is not a principle of Islam. It is rather a dispensable ruling of certain Hanafi Muslim jurists, adopted in the later period of Islam. It is not practiced by

Shias and those subscribing to the Maliki school of jurisprudence. Being un-Islamic, it is banned or not practiced in many countries including Algeria, Tunisia, Malaysia, Saudi Arabia, Iraq, Jordan, the UAE, Libiya, Lebanon, Morocco, Kuwait, Iraq, Sudan, Iran, Pakistan, Turkey, Cyprus, Indonesia, Brunei, Afghanistan, Bangladesh and Sri Lanka.

Origin and Evolution of Triple Talaq in Islamic History : The development of triple *talaq* as a practice took place during the later part of the rule of the second Caliph, Umar Ibn al-Khattab, who took a different view of divorce. In the Prophet's lifetime as well as in the Caliphate of Abu Bakr and during the early period of the Caliphate of Umar, three utterances of *talaq* in one go used to be taken together as one pronouncement. Then it occurred to Caliph Umar, as described by Maulana Wahiduddin Khan, that despite the fact that a system had been laid down which permitted the husband to withdraw his first or even second *talaq*, some persons wanted to rush into divorce. He felt that if they were hell bent on being hasty, rules should be imposed on them to bind them to a final divorce on the utterance of *talaq* three times in a row. It was then that he imposed the new law. But he also introduced the practice of flogging the back of the man who wanted triple *talaq* as a deterrent punishment, which became an integral part of the process of triple *talaq* sanctioned by the Caliph in certain cases. According to Allamah Ibn Qayyim, even Caliph Umar did not make any alteration in the *shar'i* (legal) position of triple *talaq*. He only made them effective by way of punishment.

On 22 August, 2017, the Indian Supreme Court rightly upheld that the instant triple *talaq* was not an essential part of the religion and practice of Islam. It also deemed it unconstitutional and simultaneously asked the Government of India to ban the practice by enacting a law. This judgement cannot be called an infringement on the fundamental right of Muslims to practice religious functions by any flight of imagination. It was only a reiteration of the authentic stand of Islam on the issue of triple *talaq*. This better should have been done by the *Ulama* (Muslim religious leaders) themselves. Yet this decision is opposed by some Muslims. The main reason for this seems to be their fear of encroachment upon their fundamental religious rights enshrined in the Constitution of the Republic of India. Likewise, under Islamic law, seeking separation from the partner is not the prerogative of the husband alone. The wife is also granted the right of separation from her husband called *khula* just to equalise the status of spouses within marriage which the latter cannot deny. It is worthy of mention that the Supreme Court of Pakistan in the landmark decision in the Khursheed Bibi's case while interpreting this provision held that hatred or aversion towards the husband is a sufficient ground for obtaining *khula* and ruled that the consent of the husband is not a necessary precondition.¹²

Poligamy in Islamic Law : Another myth and misrepresentation about Islam is that it is considered in some circles as the very originator of the institution of poligamy. But the fact of the matter is that it was practiced without any limit not only in pre-Islamic Arabia, but also in different societies across the world inhabited by Hindus, Jews, Christians and Zoroastrians. It is true that Islam does not enjoin strict monogamy, but it does not enjoin poligamy also. Contrary to popular belief, Islam discouraged the practice of poligamy in normal conditions by initiating various measures. It permitted conditional poligamy only to meet certain specific needs of society like protecting the interests of women rendered widowed and destitute following wars in which large numbers of men were killed. Moreover, the woman is given the right of separation from her husband in case he chooses to go in for a second wife without obtaining her consent. As far as the first wife is concerned, she can compel her husband to remain monogamous if she so desires by laying down in the document of the marriage contract a condition to that effect. Such a condition is as valid as any other condition of a legal contract.¹³ Moreover, poligamy in Islam is not the rule but rather the exception. The stringent condition of doing equal justice to several wives is necessary for the poligamous male as per the Quranic injunction: "Marry such women as seem good to you, two, three or four. But if you fear that you cannot do equal justice to them all, you should marry only one" (IV:3) ¹⁴. Since it is extremely difficult, if not impossible, to do equal justice to all the wives not only in the matter of lodgement, clothing and other domestic requisites, but also in respect of love, affection and esteem, the desirability of a monogamous life becomes evident. Thus the trend of Islamic teachings is towards monogamy. And in the words of Syed Ameer Ali : "As absolute justice in matter of feeling is impossible, the Qur'anic injunction amounted in reality to a prohibition"¹⁵

Educational and Economic Rights of Muslim Women : The Islamic law provides women with all the means and opportunities for their intellectual, educational, psychological and economic empowerment as well as for their socio-cultural interaction in civilized societies on a footing of equality with men. Islamic law gives women an independent and honourable status in society as equal partners of men. In order to inspire self-reliance, self-respect and courage among women, several civil, legal and economic rights were granted to them by Islam.

Islam stressed the importance of knowledge as an essential and unavoidable need for both men and women to achieve perfection in life. Inspired by the teachings of Islam, numerous Muslim women achieved eminence as teachers, guides, educationists, litterateurs, merchants, memorisers of the Qur'an and narrators of Traditions. Girls like boys are entitled to the highest form of education in all fields of knowledge without any discrimination on the basis of gender. It is important to note that there is no gender-based division of labour in the Qur'an. Both household chores and outdoor jobs can be performed equally by both men and women. Similarly, the Muslim woman is given the right to enter into contracts or other transactions such as the buying, selling and mortgaging of goods, etc. She is free to own property and dispose of it as per her will independently of her father or husband. She can also run a business of her own without consulting her husband and with no obligation to contribute to the household expenses.¹⁶ She can even appoint an attorney to act on her behalf in legal proceedings. She is also entitled to a share in the property left by her parents and near relations. This point is described in the Qur'an as follows:

“Unto the men (of a family)
belongs a share of that which
parents or near kindreds leave,
and unto the women a share of
that which parents and near
kindreds leave whether it be
little or much - a legal share”.¹⁷

As regards the quantity of inheritance, the Qur'an says: “To the male the equipment of the portion of two females”.¹⁸ The lesser portion of inheritance allotted to the woman is justified in view of the responsibility and function of the woman in the family. It is man alone who is charged with the responsibility of shouldering all the financial obligations of his family. He is required to provide the sustenance of his wife, children and poor relatives as well as to pay the woman's dowry as an expression of his desire to marry her.

The Myth of Rigid Purdah System in Islam : It is, of course, true that Islam does not sanction the emergence of a permissive society by throwing to the winds all norms of modest, sober and disciplined behaviour. It rather makes it binding upon Muslims, both ladies and gents, to maintain high standards of morality and integrity in all manifestations of human life including their conjugal and sexual relations. But while doing so, it also does not favour a situation which may lead to the so-called Talibanization of women, some unacceptable examples of which were recently witnessed by the world at large in Afghanistan under the extremist Taliban regime where religion was used as an excuse to justify the seclusion of women from the educational process on the basis of a very narrow and misguided interpretation of Islam. There is no provision in the Qur'an and Hadith for complete veiling of the face and hands of women. Both sources establish that modesty is fundamental to Islam which has both physical and spiritual aspects. It is also stressed that the spiritual aspect of modesty is more important than its physical aspect. It is prescribed as a religious obligation for both men and women. Some of the Quranic verses relating to the model dress code for women are:

“O children of Adam! We have
provided you with garments to
cover your bodies as well as for
adornment. But the best
garment is the garment of
righteousness. These are
some of God's signs
that they may take heed”.¹⁹
“And tell the believing women
to subdue their eyes, and
maintain their chastity. They
shall not reveal any part of their
bodies, except that which
necessarily appears.
They shall cover their breasts
and shall not relax
this code in the presence of
other than their husbands, their
fathers, the fathers of their
husbands, their sons, the sons
of their husbands, their

brothers, the sons of their
brothers, the sons of their
sisters, other women, the male
servants or employees whose
sexual drive has been nullified,
or the children who have not
reached puberty. They shall not
strike their feet when they walk
in order to shake and reveal
certain details of their bodies".²⁰

It is evident from the above that all that is required of Muslim women in the name of *hijab* is that they should dress themselves decently and moderately without concealing their faces, hands and feet in order to be able to move about without any obstruction. No wonder, the distinguished Muslim thinker Maulana Shibli Nu'mani was greatly impressed by the lifestyle of Turkish Muslim women of his time, who followed the middle path.²¹

Another great benefit done to women by Islam is that it put an end to the old contempt for widows by sanctioning their remarriage. Earlier, they were denied basic pleasures of life, marginalized in the society, often exploited unfairly and treated as a burden by their family. They were also looked down upon. A widow was considered a part of her husband's property to be inherited by his male heirs. The Qur'an scathingly attacked and abolished this degrading custom:

“And marry not women whom
your fathers married except
what is past. It was a
shameful, odious and
abominable custom
indeed”(IV: 22).²²

The improvement effected in the position of women by Islam has been acknowledged by several unprejudiced writers. The views expressed by two Western writers on the subject may appropriately be mentioned here in support of this point:

N. J. Coulson:

“Without doubt it is the general subject of the position of women, married women in particular, which occupies the place of pride in the Quranic laws. Rules of marriage and divorce are numerous and varied, and with their general objective of improvement of women's status, represent some of the most radical reforms of the Arabian customary law effected in the Qur'an. She is now endowed with a legal competence she did not possess before. In the laws of divorce the supreme innovation of the Qur'an lies in the introduction of the 'waiting period' (*'iddat'*)”.²³

A Dorner:

“Certainly, the Prophet raised the status of women above that assigned to them in ancient Arabia; in particular the woman was no longer a mere heritable chattel of her

deceased husband's estate, but was herself capable of inheriting; while again, a free woman could not now be forced into marriage, and in cases of divorce the husband was required to let the wife retain what he gave her at marriage. Moreover, women of the upper classes might occupy themselves with poetry and science, and even act as teachers, while those of lower rank not seldom shared the joys and sorrows of their husbands as mistresses of their households. The mother likewise must be treated with respect".²⁴

IV. CONCLUSION

It is evident from the above that the Islamic law provides women with all the opportunities for their socio-economic, educational, political and psychological empowerment. It permits them to embrace modernity in a disciplined manner without losing their religious identity. It is open to the Muslim woman to serve even as a soldier or commander-in-chief of an army. She can also become head of a state. As such there is little scope for interference in the enlightened provisions and regulations prescribed by Islam for safeguarding their dignity, interests and rights. Indeed, what is needed most in this context is that effective measures should be taken for faithful implementation of these regulations. This can be done by raising the educational and cultural standards of Muslims as well as by creating awareness among them regarding the status and position of women in Islam in the light of the Qur'an and the Hadith. Otherwise, theory without implementation is of no use at all. There is also the pressing need to activate the current justice delivery systems, in which criminals by and large are moving scot-free even after committing crimes as heinous as rape and the murder of women for dowry.

ENDNOTES

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7. M. M. Pickthall, *The Meaning of the Glorious Koran*, p. 201.
8. *Ibid.*, p. 304.
9. *Ibid.*, p.
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14. The Qur'an, IV :3.
15. Syed Amir Ali, *op. cit.*, p. 229.
16. Mohammad Wassel, *op. cit.*, p. 42.
17. M. M. Pickthall, *The Meaning of the Glorious Koran, op.cit.*, p. 80.

18. The Qur'an, IV:11.
19. The Qur'an, VII: 26.
20. The Qur'an, XXIV: 31.
21. Sayyid Sulaiman Nadwi, *Khutubat-e Shibli*, Azamgarh: Darul Musannifin Shibli Academy, 2008, p. 167.
22. The Qur'an, IV: 22.
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