
THE STATUS OF WOMEN IN THE ARAB REGIONS AFTER THE ADVENT OF ISLAM

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Introduction

This paper deals with how the status of women in the Arabian Peninsula improved after the coming of Islam in the seventh century A.D. The position of women in Arabian society has often been the subject of debate. The debate falls largely within two opposing arguments that Muslim women are downtrodden and oppressed as a result of their religion or that Islam liberated women and gave them rights that protected them from oppression.

Prior to the advent of Islam the unit of society was the tribe, the group of blood relatives who claimed descent from a common ancestor. It was to the tribe as a whole, not merely to its nominal leader, that the individual owed allegiance, and it was from the tribe as a whole that he obtained the protection of his interests.¹⁾ To the tribe as a whole belonged the power to determine the standards by which its members should live. But here the tribe is conceived not merely as the group of its present representatives but as a historical entity, embracing past, present and future generations. The

notion of course is the basis of the recognition of a customary law. The tribe is bound by the body of unwritten rules which had evolved along with the historical growth of the tribe itself as the manifestation of its spirit and character.

Fourteen centuries ago, the abject torture and inhuman treatment of women in Arabia and elsewhere had reached unimaginable heights. The place accorded to women by the pagan Arab was a disgrace to humanity.

Islam came as a heavenly light in its perfection, giving a complete, comprehensive and well-balanced system of life. A distinguishing feature of Islam is the underlying unity that governs its laws, be they related to any aspect social, political, economic, moral or spiritual. Although each aspect deals with a set of laws complete in itself, yet they are all interlinked and therefore the Islamic system of life can best be understood when studied in its entirety.

Islam introduced many reforms and abominable customs were discarded. The blood tie which was the foundation of the Arab society was replaced by the community of faith in the oneness of God. Man was reckoned as an individual with his rights and duties. Pride of nobility and the arrogance of the times of Ignorance of *Jahilliya* dwindled into insignificance as the *Qur'an* declares that all men are equal and no one is superior to another except in point of righteousness.²⁾ The Prophet Muhammad did not look upon women as a liability or a sex worthy of subjugation. This is clearly understood from the *Qur'an* which is full of verses specifying the equality of men and women in religious duty and in rights and obligations. The *Qur'an* provided beautiful and unmistakable proof that a woman is equal to man in the sight of God. Allah says” For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men

and women who are patient and constant, for men and women who humble themselves, for men and women who give charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, for men and women who engage in Allah's praise, for them has Allah prepared forgiveness and a great reward.³⁾

A major reform of the *Qur'an* was in family law generally, and the status of women in particular. Some of the most important and fundamental reforms in customary law was made to strengthen the family in Muslim society. One of Prophet Muhammed's major aim was to alleviate the deprived role of the Arabian women, and thus much of legal material to be found in the *Qur'anic* verses attempt to enhance the legal position of women. His aim was not only the general equalisation of sexes, in order to effect a perfect male-female equilibrium in the human society, but in numerous verses the *Qur'an* speaks especially of women. It even promulgates a special chapter under the title "The Women" -*Surah al-Nisa*, while notably we do not find any *Surah Rajul*- "The Men" in the Holy *Qur'an*. Major parts of *Surah al-Nisa* deal with women and the family. The other chapters of the *Qur'an* also are special exhortations, precepts and commands concerning all stages of female life -childhood, marriage and old age.

Three main areas of *Quran'ic* reform were in marriage, divorce and inheritance. Family law which includes such important areas as marriage, divorce and inheritance has enjoyed pride of place within the *Shari'ah* (Islamic law), a prominence that reflects the *Qur'anic* concern for the rights of women and the family.

Female infanticide

During the pre-Islamic period, it was the idea of treating daughters as a source of shame that led the pagan Arabs, before the advent of Islam, to practice female infanticide. This sinister crime would never have been stopped in Arabia if the *Qur'an* had not strongly condemned this practice.⁴⁾ Every child's life is considered sacred in Islam but the Almighty Allah especially orders the kind and just treatment of daughters. The *Qur'an* even mentions the gift of the female birth as: To Allah belong the dominion of the heavens and the earth, He creates what He wills, He bestows female children to whomever He wills and bestows male children to whomever He wills.⁵⁾ In order to wipe out all the traces of female infanticide in the nascent Muslim society, Prophet Muhammad promised those who were blessed with daughters of a great reward if they would bring them up kindly: "He who is involved in bringing up daughters, and accords benevolent treatment towards them, there will be protection for him against Hell Fire."⁶⁾ "Whoever maintains two girls till they attain maturity, he and I will come on the Resurrection Day like this; and he joined his fingers."⁷⁾

Prophet Muhammad has further said that one to whom a daughter is born and who does not bury her alive, does not humiliate her nor prefers a son to a daughter, will be sent by Allah to paradise.⁸⁾ Another tradition of the Prophet makes hell-fire prohibited to one who has to go through trials and tribulation due to a daughter and yet does not hate her and behaves well towards her.⁹⁾ This was undoubtedly a great improvement to the status of women in Islam used both inducements and the threat of hell fire to dissuade Arabs from burying their female infants alive.

With the advent of Islam, the status of women improved at a time when the world was defaming women in all sorts of abominable ways, condemning them as organs of the devil, daughters of falsehood, sentinels of hell and enemies of peace.¹⁰⁾ When girls were considered a curse for parents and buried them alive, Islam fortified them with a charter of rights unknown ever before or after,

Dignity of women

The *Qur'an* introduced substantial reforms affecting the position of women by creating new regulations and modifying existing customary practice. Thus, the traditional family social structure as well as the roles and responsibilities of the members and family values may be identified in the law. These *Qur'anic* reforms as well as customary practice, constitute the substance of classical family law. Where *Qur'anic* reforms and values were incorporated, they served to raise the status of women and the family in Muslim society by establishing the rights of family members. Thus Islam brought a shift in the basis of the social foundation from blood kinship to fellowship in a community (*ummah*) of believers, from loyalty to the tribe to that of the extended family as its basic unit. A strong family meant a recognition not only of male rights but of female rights as well.

Various verses in the *Qur'an* clarify the position of men and women in society. Both are like two wheels of society, working with each others for its efficient functioning and smooth welfare. Both are equally important in the eyes of God. The Holy *Qur'an* says:

O Mankind reverence

Your guardian Lord,

*Who created you
From a single Person,
Created, of like nature
His mate, and from them twain
Scattered (like seeds)
Countless men and women.¹¹⁾*

and

*O Mankind! We created
You from a single (pair)
Of a male and a female,
And made you into
Nations and tribes, that
Ye may know each other
(Not that ye may despise
Each other).¹²⁾*

Islam does not raise the question of superiority or inferiority of the sexes, and both men and women are created to complement and complete each other.

*They are your garments
And ye are their garments¹³⁾*

The *Qur'an* goes on further to say that men and women “are for mutual comfort and mutual protection, fitting into each other as a garment fits the body. A garment also is both for show and concealment.”¹⁴⁾ Thus the *Qur'an* makes it clear that women have their individual status and are not to be treated as an adjunct of their fathers, husbands or brothers. They enjoy all the rights as individuals, not merely by virtue of being a mother, wife or daughter though such status would be considered for the purpose of

inheritance. The *Qur'an* recognising a woman's individuality expresses it differently when it says, "For men is the benefit of what they earn, and for women is the benefit of what they earn."¹⁵⁾ This is a clear enunciation of women's individuality, dignity and rights. Even if there are certain contextual statements in the *Qur'an* indicating that men having a slight edge over women in the socio-economic sense, it does not in any sense, detract her from individuality. The *Qur'an*, in order to leave no doubt about the individuality of women declares that women will be judged on their merits and men on theirs.

The *Qur'an* provides clear cut evidence that a woman is completely equated with man in the sight of God in terms of her rights and responsibilities. The *Qur'an* states "Every soul will be (held) in pledge for its deed."¹⁶⁾

Marriage

Women's status in pre-Islamic Arabia was reflected in the predominant marriage agreement, a contract that closely resembled a sale through which a woman became a property of her husband. She was obliged to follow him to his tribe and to bear children who were considered to be his blood. The wife's tribe relinquished their rights to her and to her future children by receiving a price of gift called *mahr* (dower). Strong emphasis was placed on the chastity and potential fidelity of a woman. Therefore, her family limited her behaviour in order to insure her reputation and consequently the family's honour. Since a woman would eventually leave the family, her value consisted primarily in the dower (*mahr*) her family received at her marriage.

The prevalence of marriage agreements which led to general denial of

any rights for women in marriage, divorce and inheritance provides the social context against which the life of the Prophet and the revelation of the *Qur'an* must be understood in order to see the profound social changes brought by Islam.

Islam encourages marriage and prohibits all other deviated forms of sexual gratification. Marriage is most necessary for the perpetuation of the human race. It confers the highest happiness to a husband and wife who are a perpetual source of joy and comfort to each other.

Islam recognises both men and women as responsible human beings. So the consent of the woman is essential for the completion of marriage. Women are not sold blindly to the highest bidder but have the liberty to accept or refuse any proposal. Neither the woman's father nor anyone else can coerce her into accepting a proposal. However, in *jahiliya* (pre-Islamic period) the practice of contracting marriage by her *wali* (marriage guardian) on her behalf re-established itself and her approval was reduced to a mere nod or silence. From playing an active role in marriage she came to be relegated to a passive position.

During the pre-Islamic period there was no restriction on the number of wives a man could have. The tribal chiefs and leaders had many wives in order to build relationships with other families. When the Islamic revolution took place there were many men who had wives from Bai Thaqif.¹⁷⁾ Then came the Islamic revelation: "And if you have reason to fear that you might not act equitably towards orphans, then marry from among (other) women such as are lawful to you, two, or three or four, but if you have reason to fear that you might not be able to treat them with equal fairness, then (only) one (from among) those whom you rightfully possess. This will make it more likely that you will not deviate from the right course."¹⁸⁾ Thus the permission

to marry more than one up to four wives must be seen in this context. When this verse was revealed many who had more than four wives (al-Harith bin Qays had eight, Naufal bin Muawiyah five), the Prophet advised them to opt for four and divorce the rest.¹⁹⁾ Thus it would be seen that Islam did not take initiative in allowing more than one wife, on the contrary, it discouraged it, restricted it, and reluctantly permitted up to four wives depending on the situation.

The Arabs in the pre-Islamic period did not approve of marriage with the wife of one's adopted son or his daughter. But Islam did not find anything wrong with such marriages. The *Qur'an* maintained that there was no blood relationship between the adopted son and the adopter and thus the adopter does not become his natural father. The *Qur'an* says "Call them (adopted sons) by (names of) their fathers; this is more equitable with Allah, but if you know not their fathers, then they are your brethren in faith and your friends"²⁰⁾ The *Qur'an* also says "So when Zaid dissolved her marriage tie, we gave her to thee as wife, so that there should be no difficulty for the believers about the wives of their adopted sons, when they have dissolved their marriage tie. And Allah's command must be fulfilled."²¹⁾

The predominant form of marriage in the pre-Islamic period was contractual. There was never any concept of sacramental marriage in Arabia. Islam retained this form with certain improvements. Its essential elements were *mahr* (dower money given to the bride) and *ijab-wa-qubul* (i.e. proposing and accepting). It was known as *zawaj al-ba'ulah*.²²⁾ Thereafter, it came to known as *nikah*. This word clearly indicated marriage in the usual sense and it used to take place after *mahr* (dower) was paid by the bridegroom to the bride. This form of marriage was undoubtedly the best and in keeping with the dignity of women.

In the pre-Islamic period the barriers placed on marriage were comparatively few. A man could inherit his father's widow (i.e. his own step-mother), and either marry her himself or give her in marriage to another. The *Qur'an* makes it unlawful for a man to marry either the widow or the divorced wife of his father, although where such a marriage had already taken place (during the pre-Islamic period) it remained valid. The phrase used in the *Qur'an* to express this latter condition is "except what is already past," i.e. except what is in force already. The same words are used in connection with the marriage of two sisters²³⁾ which accordingly would appear to have been lawful in pre-Islamic times though the *Qur'an* forbade it.²⁴⁾ Islamic legislation further prohibited a man from marrying his daughters, his sisters, his aunts on both his father's and mother's side, his brothers' and sister' daughters and his sons' wives.²⁵⁾ Moreover, a man is forbidden to marry a woman and her daughter, nor may he take in marriage a woman who is already lawfully married to, and in the possession of another man,

Dower - *mahr*

Mahr in the pre-Islamic period was considered a bride price, just as in other tribal societies. A woman was treated as an object of sale, she was fully exploited by her father, and she could be sold in marriage to the highest bidder. Usually the father used to take away the amount of dower (*mahr*) from the daughter. But Islam elevated it from being merely a bride price to being a token of love, truthfulness and sincerity. *Qur'anic* legislation completely transformed this position. From an object of sale, the revelation directing the husband to pay dower (*mahr*) to the wife involved as

contracting party in her own right.²⁶⁾ Under Islam, the *mahr* became the woman's dowry and was paid to her, but otherwise her position did not become greatly better than under the old system.

The *Qur'an* repeatedly exhorts men to give *mahr* to the women they intend to marry. It says: "And give women their dowries as a free gift. But if they of themselves be pleased to give you a portion thereof, consume it with enjoyment and pleasure."²⁷⁾ Thus, the *mahr* should be a free gift and the husband can enjoy it only if the wife permits it, not otherwise.

The *Qur'an* does not specify the amount of *mahr*. It could be nominal or quite substantial. When the husband has no capacity to pay, it could be as nominal as an iron ring or teaching.²⁸⁾ There is no limit to it. It could be as the *Qur'an* says, even a whole treasure.²⁹⁾

The husband cannot take back the *mahr* which he has given to his wife at the time of divorce. It could be taken back only if the wife wishes to have a form of divorce called *khul'a* (wife's right to dissolve the marriage), If however, the divorce takes place before the consummation of the marriage, the husband need not pay the entire amount agreed to by way of *mahr* but only half of it. Thus we see that the *Qur'an* shows maximum consideration to women and tries to safeguard their rights in every possible manner. Some '*ulamas* (learned teachers) like Imam Malik says that even if the marriage had not been consummated and the husband and wife spend some time together, the husband will have to pay the full dower amount. Similarly Imam Abu Haniffa holds the view that even a moment spent together would necessitate the full payment of the dower.³⁰⁾

The *Qur'an* is so specific about *mahr* being an integral part of a marriage that no contract will be valid without *mahr* ultimately being paid though it may not be mentioned at the time of the contract.

Divorce - *talaq*

Prior to Islam, men had absolute rights over women in matters of divorce. A husband could discard his wife at a moment's notice. His repudiation (*talaq*) of his wife, a right naturally stemming from his position as a purchaser of her, operated as an immediate and final severance of the marital relationship. Islam did not approve of such a practice, which was essentially designed to keep women under men's control.

Marriage in Islam is a sanctified bond that should not be broken except for compelling reasons. Couples are instructed to pursue all possible remedies whenever their marriages are in danger. Divorce is not to be resorted to except when there is no other way out. In a nutshell, Islam recognised divorce, yet it discourages it by all means. Islam does recognise the right of both partners to end their matrimonial relationship. Islam gives the husband the right for *talaq* (divorce).

Islam also grants the wife the right to dissolve the marriage through what is known as *khul'a*. If the husband dissolves the marriage by divorcing his wife, he cannot retrieve any of the marriage gifts he has given her. The *Qur'an* explicitly prohibits the divorcing husbands from taking back their marriage gifts no matter how expensive or valuable these gifts might be. "But if you decide to take one wife in place of another, even if you had given the latter a whole treasure for dower, take not the least bit of it back. Would you take it by slander and manifest a wrong."³¹⁾

Islam gave women the right to annul their marriage if they were married in childhood on reaching the age of puberty or to go ahead with it.³²⁾

The *Qur'an* prohibited the practice of *zihar* (literally meaning back) as

zihar was among the worst and most strongest kind of *talaq* (divorce). Islam was categorical in prohibiting *zihar* as a wife could not become a mother simply by making such a declaration, just as an adopted son could not become a real son just by adoption.

In a form of divorce known as *Talaq al-ba'in*, a man could take back his wife after a fresh *nikah* (marriage ceremony) but after Islam this was made conditional on marrying another man and only then could she acquire legitimacy to marry her former husband, This was done to prevent the pre-Islamic practices of perpetually divorcing a wife, pretending to take her back, and then divorcing her again in order to either convince her to relinquish her dower for her final freedom, or to prevent her from re-marrying and seeking the protection of another husband.

Islam also categorically banned the practice of *al adl*, which literally meant forcing the women not to marry. The *Qur'an* says "And when you divorce women and they end their term, prevent them not from marrying their husbands if they agree among themselves in a lawful manner."³³⁾

The *Qur'an* and *hadith* (literally meaning practice, traditions or precedent that was derived from stories that relate to the behaviour of Prophet Muhammad and of his Companions) are clear in matters relating to divorce. Divorce must be pronounced twice and then (a woman) must be retained in honour or released in kindness. And it is not lawful for you to take from women that which you have given them³⁴⁾ meaning that *mahr* is not returnable and the debt must be paid upon the dissolution of the marriage.

The absolute right of repudiation (*talaq*) was at least controlled by the introduction of the *iddah* (waiting period) of three menstrual cycles during which time the husband is given the opportunity to reconsider the decision.

As for post-divorce rights of women are concerned, no sooner than her *iddah* (waiting period) is over she is legally treated as a virgin with all the rights and privileges of virgins restored to her in the home of her parents or other legal guardians with no inhibition whatsoever for any man against marrying her.

Waiting period after death or divorce of husband - *iddah*

In the pre-Islamic period the period of waiting (*iddah*) after the husband's death was one year where she was confined to a small room until one year had passed. Islam abolished this practice. It reduced the period of waiting to four months and ten days. The *Qur'an* says: "And (as for) those of you who die and leave wives behind, such women should keep themselves in waiting for four months and ten days, when they reach their term, there is no blame on you for what they do for themselves in a lawful manner."³⁵⁾

In the pre-Islamic period, it was lawful for a woman immediately on the death of her husband or after divorce by him, to be married to another man without regard to her physical condition. A woman carrying a child would marry and go and live with her new husband and gave birth to the child in his house. The child so born was known after the man she had later married though it was known that she had conceived it from her earlier marriage. It was Islam which fixed the waiting period.³⁶⁾ If she were pregnant then her waiting period would last until the delivery of the child,³⁷⁾

In the laws of divorce, the supreme innovation of the *Qur'an* lies in the introduction of the waiting period (*iddah*). Islam made it necessary for a divorced woman before remarrying to wait "three courses" and for the widow to wait four months and ten days in order to allow sufficient time for

it to be made clear whether she was pregnant or not. The *Qur'an* virtually suspended the effect of the repudiation until the expiry of the "waiting period", which was to last until the wife had completed three menstrual cycles or, if proved pregnant, until delivery of the child. This period is primarily designed, according to the express terms of the *Qur'an* itself, to provide an opportunity for reconciliation, and during this period the wife is entitled to receive financial support from the husband.

Maintenance

The natural and just laws of Islam make arrangements for widows to be properly adjusted in society, and maintained in the best way. It is Islam alone that secures to widows an honourable and dignified life. The *Qur'an* primarily encourages widows to re-marry.

Muslims are further directed to bequeath a year's maintenance and residence for their widows. But if the widows wish to act upon their own will, and leave their residence, they are free to do so.³⁸⁾

During the period of her *iddah* following a divorce, the wife is entitled to maintenance from her husband. If she is pregnant, until the birth of her child. Furthermore, if the divorced wife has a young child, she can nurse him for two years. During this period, the father must maintain both the mother and child.³⁹⁾ However, a widow does not receive maintenance during the *iddah* following her husband's death since maintenance is considered to be inconsistent with her position as an heir.

Custody of children

During the pre-Islamic period, the customary law relating to the custody of children was rigid. The father would claim that the child belonged to him and the child would be ascribed to him just on the basis of this claim alone.

After the advent of Islam, as for custody of children women had well-defined sphere of rights. Although Islam basically follow a patriarchal pattern of society, maternal rights should not be ignored. After all, the woman carries the child in her womb for several months and bears all kinds of hardship. The *Qur'an* acknowledges this when it says “and we have enjoined on man to be good to his parents - his mother bears him with fainting upon fainting and his weaning takes two years - saying Give thanks to me and to thy parents.”⁴⁰⁾

According to the Hanafi law, the divorced mother has the right to the custody (*hadanah*) of her male child until he is seven years old and of her female child until puberty, set at age nine. During this time, the father, who is legally considered to be the child's natural guardian and maintainer, continues his supervision of the child and at age seven and nine his or her paternal relatives receive custody of them. While the Maliki law, lays emphasis on the mother's right in this regard, and the mother is allowed to keep her children until her sons have reached puberty and her daughters have reached puberty and are married. On the contrary, according to the Shaf'i law, children are given the choice at the age of seven as to which parent they will live with. Hambali law accords the same right to boys, but girls at the age of seven pass automatically into the custody of the father. However, if the woman marries another man, custody of her children,

regardless of age, is given to her first husband as long as he is an able and proper guardian. A woman loses custody of her child at any age if her behaviour is immoral or if she gives the child poor care. However, no male relative may obtain custody of a female minor unless he is related within the prohibited degrees of consanguinity.

Female Inheritance

The customary laws dealing with inheritance in pre-Islamic Arabia were designed to keep property within the individual tribe in order to preserve its strength and power. Inheritance passed only to mature male (agnate) relatives who could also fight and defend their possessions. The rules of inheritance was designed to consolidate the strength of the individual tribe as an effective participant in the popular sport of tribal warfare. Widows who were regarded as part of the estate, and daughters, who would no longer belong to the family once they were married were also barred from inheritance. Therefore, women were denied rights in inheritance and to any form of transferable property.

The general rule was that females had no right of succession, nor had minor children because of their inability to participate in military activities.

The inheritance provisions in the *Qur'an* modified this system in order to correct injustices. Islam decreed a right of which a woman was deprived both before Islam and after it the right of independent ownership. Then Islam brought about a change in the social structure. Loyalty to the Islamic community (*ummah*) transcended tribal allegiance. In the Islamic community, more emphasis was placed upon family ties between husband, wife, and children. The consequent shift in allegiance from the individual

tribe to the individual family unit significantly raised the status of woman in society. According to Islamic law, woman's right to her money, real estate or other properties is fully acknowledged. This right undergoes no change whether she is single or married. She retains her full rights to buy, sell, mortgage or lease any or all her properties. It is nowhere suggested in the law that a woman is a minor simply because she is a female. It is also noteworthy that such right applies to her properties before marriage as well as to whatever she acquires thereafter.

Islam gives women the right of inheritance whereas in some other cultures women were considered themselves objects to be inherited. Her share is completely hers and no one can make any claim on it, including her father and her husband. Allah says "Unto men (of the family) belongs a share of that which parents and near kindred leave, and unto women a share of that which parents and near kindred leave, whether it be a little or much - a determinate share."⁴¹⁾ Her share in most cases is one-half the man's share with no implication that she is worth half the man!

The *Qur'anic* reference to this subject is a typical ethical injunction which urged a person who is on the point of death to "bequeath equitably to his parents and kindred." This provision obviously qualifies, in general, the system of exclusive inheritance by the male agnate relatives and in particular recognises the capacity of female relatives to succeed. As such, it reflects the transition effected by Islam from a society based on blood relationship to one based on a common religious faith; and in this new society the individual family had replaced the tribe as the basic unit,⁴²⁾ anticipated in many respects the picture of early Islamic legal history now provided by Western scholarship, regarded the dissolution of the tribal organisation as Prophet Muhammed's chief aim.

The *Qur'an* removed all uncertainties with regard to inheritance and fixed a share of inheritance for women. There are other indications as well that women did on many occasions inherit possessions.⁴³⁾

The law of inheritance allows women specific shares, not only in father's property, but also in the property of the husband and the son. To women belong all the gifts that they may have received during marriage. The dower (*mahr*) adds further to their personal property. They have every right to possess, use or dispose of their personal property in whatever way they like, without undue interference of the society.

Inherited property of a woman is, in Islam, wholly unfettered in her hands exactly like her self-earned property, her absolute ownership over which is decreed by the *Qur'an* in these clear words:

To the men belong what they have earned;
And to the women belongs what they have earned.⁴⁴⁾

Thus the most far-reaching reform in the *Qur'an* in the legal field contained in the verse which provided a series of fixed fractional inheritance rights to certain relatives of the deceased who, in the pre-Islamic customary law may not have received any part of the estate.⁴⁵⁾ The result of this innovation is to transform the old tribal bond of pre-Islamic Arabia into an extended family bond of the Muslim community politically allied by religion and legally allied by inheritance. The new sharers however, did not supersede the old agnatic system but rather the *Qur'an* introduced the morality of Islam into the customary practice of the Arabs.

An examination of the inheritance law within the overall framework of the Islamic law reveals not only justice but also an abundance of compassion for women.⁴⁶⁾

Conclusion

The reforms brought about after the advent of Islam obviously go a long way towards ameliorating the position of women. They are designed to remedy only particular aspects of the marital relationship and do not attempt to create an entirely novel structure of family law or to eradicate the basic concepts of existing customary practices. Marriage remains a contract in which the husband, as a quasi-purchaser, occupies the dominant position. He also retains his basis rights (which, as has been pointed out, is a natural corollary of that concept) unilaterally to terminate the marriage. According to the Holy *Qur'an*.⁴⁷⁾ men are protectors and maintainers of women as they have contributed property in the form of dower and maintenance. But this patriarchal scheme of society is now subjected to the tempting influence of the ethical standard of fair treatment for women. The often repeated injunction to “retain wives honourably or release them with kindness” finds its practical implementation in legal rules which mitigate for women the rigours of that society and remove its harshest features. In short, the *Qur'anic* regulations modify certain particulars rather than supplement entirely the existing customary law.

The *Qur'an* gave definite normative and legal shape to women's rights and duties. It accepted many practices prevalent in Islamic society but rejected those which were derogatory, iniquitous and unjust from the human point of view. In the pre-Islamic period, there was neither a scriptural authority nor a legal one as that. There were only traditions and age old practices which gave sanction to what people did or did not do. The *Qur'an* and the Prophet Muhammad filled this vacuum, as did divine injunctions and

the Prophetic sayings and traditions. In addition to the divine commands, the Prophet also had legal acumen in abundance to weed out all those practices which might be legally termed iniquitous.

Thus *Qur'anic* reforms corrected many injustices in pre-Islamic society by granting women rights to which they were entitled -the right to contract their marriage, receive dower, retain possession and control wealth, and receive maintenance and shares in inheritance. At the same time, however, family laws were formulated to meet a woman's needs in a society where her largely domestic, childbearing rules rendered her shelter and she depended upon her father, husband, and her close male relatives.

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- 15) The *Qur'an*, Sura Nisa: Verse 32.
- 16) The *Qur'an*, Sura Muddaththir: Verse 38.
- 17) Sayyid Quth, *Fi Zillal al-Qur'an*, Beirut, 1967-74, pp.240-4.
- 18) The *Qur'an*, Sura Nisa: Verse 3.
- 19) Al-Qurtabi, *Al-Jami'al Akham al-Qur'fan*, Cairo, 1969-70, V. p.18 see also *Nayl Al-awtar*, V. p.160.
- 20) The *Qur'an*, Sura Ahzab: Verse 5.
- 21) The *Qur'an*, Sura Ahzab: Verse 37.
- 22) Jawwad Ali, *Al-Mufassal fi Tarikh al-Arab Qabl Al-Islam*, Beirut, 1968-71, V. p.533.
- 23) W. Robertson Smith, , *Kinship and Marriage in early Arabia*, Cambridge, 1855 p.426.
- 24) *ibid.*
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- 26) The *Qur'an*, Sura Nisa: Verse 19.
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- 28) *Sahib Bukhari*, op. cit. p.95-6.
- 29) The *Qur'an*, Sura Nisa: Verse 20.
- 30) Maulana Umar Ahmad Usmani, *Fiqh al-Qur'an*, op. cit. Vol. I, p.550.
- 31) The *Qur'an*, Sura Nisa: Verse 20.
- 32) Ahmad Muhammad al-Haufi, *Al-Mar'ah fi al-sh'ar al'jahili*, Cairo, 1954, p.215.
- 33) The *Qur'an*, Sura Baqara: Verse 232.
- 34) The *Qur'an*, Sura Baqara: Verse 229.
- 35) The *Qur'an*, Sura Baqara: Verse 234.
- 36) The *Qur'an*, Sura Baqara: Verse 232.
- 37) The *Qur'an*, Sura Baqara: Verse 234.
- 38) The *Qur'an*, Sura Baqara: Verse 240.
- 39) The *Qur'an*, Sura Baqara: Verse 233.
- 40) The *Qur'an*, Sura Luqman: Verse 14.
- 41) The *Qur'an*, Sura Nisa: Verse 7.
- 42) C. Bergstrasser, whose observation in his Grundzuge des islamischen

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- 43) Ahmad Muhammad al-Haufi, *Al Mar'ah fi sh'ar al-jahil*, Cairo, 1954, p.266.
- 44) The *Qur'an*, *Sura Nisa*: Verse 32.
- 45) The *Qur'an*, *Sura Nisa*: Verse 7.
- 46) Abd al-Ali, Hammudah, *Islam in Focus*, pp.117-118 and Al-Sibaa'i Mustafa, *Al-Marah Baynal Fiqh Falqanoon* (in Arabic) pp.31-37.
- 47) The *Qur'an*, *Sura Nisa*: Verse 34.