

## **The Place of Woman: The Qur'anic Teachings and Later Juristic Accretions in Muslim World**

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### **Abstract**

Islam is regarded by Muslims as containing/guiding man's whole life from birth till death and even the afterlife. As such, it is difficult to properly appreciate the notion of women's status without reference to the teachings of Islam. Such teachings are contained in the Qur'an, the book believed to have been revealed to the Prophet of Islam, and the Sunnah, the Prophet's sayings and actions during his ministry. This paper highlights such authentic teachings regarding place of women in an Islamic society. The paper also mentions how such teachings were interpreted in various regions that came to form part of the lands under Muslim rule. Such interpretations were codified and, over time, came to distort the place that the Qur'an gives to the woman in society. As a result, across the world, most of the Muslim women are among the poorest, socially backward, economically susceptible, and politically marginalized segment of society.

**Keywords:** Shari'ah, Jurisprudence, Hanafi, Malki, Shafi'i, Hanbali, Takhayyur

### **Introduction**

Islam treats the whole of mankind on an ethical basis. In Islam, both male and female are considered equal as individual regardless of their age, social and economic class and education, but not the same in their rights and duties. However, since in the Western culture and in cultures influenced by it, there exists a disparity between men and women, there is more need for stating Islam's position on important issues in a clear way. Although, in west women's rights were given in late nineteen century i.e. right of vote, employment and property. An international bill of women rights was established in 1979 by CEDAW. It also set an agenda for action by countries to guarantee these rights worldwide. Most of the historians and scholars with the proper knowledge of religion Islam agree that it was Islam that empowered women for the first time in human history with the most progressive social, legal, economic and political rights since the seventh century. Some detail of Islamic teachings is described in terms of a woman's life from birth to onwards and roles in society, particularly role of motherhood.

### **Place of Women in Qur'anic Teachings Girl-Child's Rights**

The Qur'an condemned the practice among pre-Islamic Arabs who hated girls and, indeed, used often to bury them alive. The practice is pointedly condemned:

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“Whenever any of them is given the glad tiding of [the birth of] a girl, his face darkens with suppressed anger, avoiding all people because of [alleged] evil of the glad tiding which he has received, [and debating within himself:] shall he keep this [child] despite the contempt [which he feels for it]-or shall he bury it in the dust? Oh, evil indeed is whatever they decide!”<sup>1</sup>

Asad comments on the verses explaining that either of the two alternatives is evil:

“To keep the child as an object of perpetual contempt, or to bury it alive, as was frequently done by the pagan Arabs.”<sup>2</sup>

Another place where the evil practice of infanticide is condemned is the 81<sup>st</sup> chapter of the Qur'an the title of which is:

Al-Takwir (Shrouding in Darkness). The word Al-Takwir introduces “the symbolic image of the Last Hour and, hence, of man's resurrection”<sup>3</sup>

In the cataclysmic conditions (e.g. “when the sun is enveloped in darkness.”)<sup>4</sup>

“The girl child that was buried alive is made to ask for what crime she had been slain.”<sup>5</sup>

That is, those who committed the crime of slaying new born babies because they happened to be girls will suffer punishment on the day of rebirth:

“None will be able to divest himself of responsibility for his past deeds.”<sup>6</sup>

Such verses give fair idea of the dignity of the girl-child in the Qur'anic teachings. Similarly, teachings of the Prophet Muhammad emphasize the rights of girl-child. It is reported in his saying:

“Whosoever has a daughter, and he does not bury her alive, does not insult her, and does not favour his son over her, God will enter him into Paradise.”<sup>7</sup>

### **Spiritual Parity between Men and Women**

The Qur'an everywhere appeals to human capabilities and powers to further understand the universe, the human life and eventually, the Creator of all. There are several verses which relate to relationship between man and woman but there is one verse which elevates such relationship to Sign of God:

“And among His wonders is this: He creates for you mates from out of your own kind, as that you might incline towards them, and He engenders love and tenderness between you: in this, behold, there are messages indeed for people who understand [undertake profound thinking].”<sup>8</sup>

The Qur'an emphasizes recurrently spiritual parity of a woman with a man when it says:

“For men who submit themselves wholly to Allah, and women who submit themselves wholly to Him and men who believe and women who believe, and men who obey Allah and women who obey Him, and men who are truthful and women who are truthful, and men who are steadfast and women who are steadfast, 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 chastity and women who guard their chastity,

and men who remember Allah much and women who remember Him, Allah has prepared forgiveness and a great reward.”<sup>9</sup>

“Allah will turn in mercy to believing men and believing women; Allah is Most Forgiving, Ever Merciful.”<sup>10</sup>

Equal safety is guaranteed to men and women. For example:

“Those who malign believing men and believing women for that which they have not done, shall bear the guilt of a calumny and a manifest sin.”<sup>11</sup>

“Those who persecute the believing men and believing women, and then do not repent, will surely suffer the chastisement of hell, and the chastisement of burning.”<sup>12</sup>

Talking of the situation that erupted at Hudaibiyyah,<sup>13</sup> it has been stated:

“Had it not been for believing men and believing women of whom you had no knowledge, who were then in Mecca, whom you might have trampled down unknowingly and thus incurred blame on their account, Allah might have let you fight your way into Mecca; but He held you back that He might admit into His mercy whom He will. Had those believing men and believing women drawn apart from the rest, we would surely have chastised the disbelievers with grievous chastisement.”<sup>14</sup>

Considering women more delicate and more vulnerable than men, women have been given unique safety:

“Those who calumniate chaste, unwary, believing women are cursed in this world and the hereafter; and for them is grievous chastisement, on the day when their tongues and their hands and their feet shall bear witness against them as to that which they used to do.”<sup>15</sup>

The amount of reward remains the same at the day judgment for both, i.e. men and women:

“Of the believers whoso acts righteously, whether male or female, we will surely grant such a one a pure life; and we will certainly reward them according to the measure of the best of their works.”<sup>16</sup>

“Whoso does well, whether male or female, and is a believer, these will enter the Garden; they will be provided therein without measure.”<sup>17</sup>

“The believers, men and women, are friends one of another. They enjoin good and forbid evil and observe Prayer and pay the Zakat, and obey Allah and His Messenger. It is these on whom Allah will have mercy. Surely, Allah is Mighty, Wise. Allah has promised the believers, men and women, Gardens beneath which rivers flow, wherein they will abide, and delightful dwelling places in Gardens of Eternity, and the pleasure of Allah, which is the greatest bounty of all. That is the supreme triumph.”<sup>18</sup>

“Their Lord would answer their supplication. I will not suffer the work of any worker from among you, male or female, to perish. You are spiritually akin one to another.”<sup>19</sup>

“O my servants, there is no fear for you this day, nor shall you grieve. Enter the Garden, you and your mates, delighted and joyful.”<sup>20</sup>

“The inmates of heaven will be happily occupied that day. They and their mates will be under the shades of Allah’s mercy reclining on raised couches. They will be provided therein with fruits and whatever else they call for.”<sup>21</sup>

“Keep in mind the day when thou wilt see the believing men and believing women, their light running before them and on their right hands, and it will be said to them, ‘Glad tidings for you this day of Orchids below which rivers stream, wherein you will surrender. That is the supreme triumph.’”<sup>22</sup>

The Holy Prophet was directed “to look for forgiveness for all believers, women as well as men.”<sup>23</sup>

### **Heterogeneous Duties of Males and Females**

The divine scheme is nothing but an embodiment of wisdom in all its facets. Male and female are spiritually similar to one another and equally receive the blessings of Allah, but their responsibilities differ in many ways. Keeping in view this polarity in their functions and duties, there is proportionate variation between the faculties and capacities of both genders.

This is made clear in Qur'an as is said:

“Our Lord is He Who has endowed everything with its appropriate faculties and then guided it to their proper use.”<sup>24</sup>

“God has fashioned mankind according to the nature designed by Him, there is no altering the creation of Allah.”<sup>25</sup>

It is, therefore, unfeasible to mingle up or overlap the nature of men and women and try to change men into women, or vice versa. Each one of them has a unique and specific role to perform which if performed in the right spirit, leads to honour, pleasure, self-satisfaction and beauties of life itself. Same conclusions one comes across if one tries to compare and contrasts the natural duties and capabilities of both genders. We come to know that a woman is more suitable for child rearing duties whereas man is found better fitted in the field scenario. Therefore, we have many instances in the history where women were entrusted to command in the field but they only proved successful for a short span of time. It is not a matter of one's being superior or inferior in his or her prowess; rather, it is a focal area of natural endowments which divine forces bestow upon men or women.

The very act of being motherly in child rearing places some restraints which a man can never be yoked in. But the pride of enjoying the honour of ‘motherhood’ rests with women. Early nurturing of a child rests primarily with mother though the role of father remains facilitative to mother. Due to this attachment, child develops an instinctive affiliation with mother more strongly than he or she has with father. Therefore, minor scolding by the father irks the child more, but the child does not feel offended on any such treatment from mother. The ties that develop between a child and the mother, is primarily based on tender passions of love than the attachment between the child and father which thrives on authority and discipline.

Naturally a woman needs a homely environment where she can perform her primary and social duties being a wife or mother, whereas, man has to earn. His place or sphere of his activities is normally outdoors. A balanced society caters for a fine balance between the both. Such systems are based on mutual

good will, beneficence and extend support to sustain an accord and harmony between both genders. Islam advocates the same society.

### **Sanctimonious Nature of Matrimonial Affairs**

The sole motive of marriage in Islamic system is to seek the pleasure of Almighty Allah, and, through chaste ways, satisfaction, contentment and reproduction of human race. For example, among the features of true believers, the safeguarding of chastity through marriage is emphasized along with regular and firm observance of rituals, i.e. abstinence from all that is vain, the institution of Zakat and fulfilling all covenants and being watchful of trusts:

“These are the true heirs who will inherit Paradise, wherein they shall abide.”<sup>26</sup>

The Holy Prophet has proclaimed in an often quoted statement:

“Conjugal life is our way; he who turns aside from our way is not of us.”

In Western world, chastity, instead of being considered virtue, has tended to become a slander. Concept of courting and adultery has been on the rise. Extramarital relations have tended to become accepted ways. This outlook on life has degraded woman into a mere instrument of sexual pleasure. In Islam, the conjugal and matrimonial relations between a husband and a wife have an aura or grace and respect as the Qur'an dictates:

“O you who have attained to faith! It is not lawful for you to [try to] become heirs to your wives [by holding onto them] against their will; and neither shall you keep them under constraint with a view to taking away anything of what you may have given them, unless it be that they have become guilty, in an obvious manner, of immoral conduct. And consort with your wives in a goodly manner; for if you dislike them, it may well be that you dislike something which God might yet make a source of abundant good.”<sup>27</sup>

The essence of the relationship between a husband and wife may be viewed from the perspective of the Holy Prophet that he stated in the form of a prayer:

“When you come together, supplicate: O Allah, safeguard us against Satan, and keeps Satan away from such issue as Thou might bestow upon us.”

The Holy Qur'an declares a husband to be cover for his wife, and vice versa. They are the symbols of safety, respect, dignity, and beauty for each other. In essence the very institution of marriage is viewed in Islam from a moral and spiritual focus and it does not focus on simply from an angle of baser elements ala sexual pleasures. This is rightly highlighted in the following commandments of Qur'an:

“They ask thee, O Prophet, as to consorting with their wives during their monthly courses. Tell them: it is harmful, so keep away from them during their monthly courses and do not consort with them until they are clean. But when they have washed themselves clean, consort with them as Allah has commanded you. Indeed, Allah loves those who turn to Him constantly, and Allah loves those who are clean and pure. Your wives are a tilth for you, so approach your tilth as you may be minded and lay up a store of good for yourselves.”<sup>28</sup>

Chastity and honest ways of life should always be kept in view as the Holy Qur'an enunciates one of the most important aspects of being righteous:

“Lord, grant us of our spouses and our offspring the delight of our eyes and make us a model for the righteous.”<sup>29</sup>

The Holy Prophet has reprimanded:

“The most perfect believers are the best in conduct and best of you are those who are best to their wives.”<sup>30</sup>

### **A Blend of Rights and Responsibilities – Husband and Wife**

In Islam, marriage is a bond of a civil nature which involves a set of mutual rights and duties. For its confirmation, it requires the public declaration of the free consent of the both parties, the approval of the guardians of the bride, according to some schools of thought, and a settlement of dower by the husband on the wife proportionate to his means. But dower should not be confused with dowry which is given to the bride by her parents or guardian. However, it is desirable that guardians will also act in consonance to the wishes of bride.

Any restrictions to marriage in Islam are clearly undesirable as it is revealed in the following message:

“Lawful for you are those outside these categories, that you seek them in marriage, by means of your properties, safeguarding yourselves against fornication. For the benefit that you receive from them pay them their dowers as fixed, and there will be no sin upon you in respect of anything that you may agree upon mutually after the fixing of the dower. Surely, Allah is all knowing, wise.”<sup>31</sup>

Men are to take full care of the women \_\_\_\_physical protection and maintenance.

“Men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions. And the righteous women are the truly devout ones, who guard the intimacy which God has [ordained to be] guarded.

And as for those women whose ill-will you have reason to fear, admonish them [first]; then leave them alone in bed; then beat them; and if thereupon they pay you heed, do not seek to harm them. Behold, God is indeed most high, great!”<sup>32</sup>

If mutual efforts to continue living a peaceful conjugal life fail, they may ask some counsellor to intervene for reconciliation as had been instructed:

“And if you have reason to fear that a breach might occur between a [married] couples, appoint an arbiter from among his people and an arbiter from among her people; if they both want to set things a right, God may bring about their reconciliation. Behold, God is indeed all-knowing, aware.”<sup>33</sup>

“And if a woman has reason to fear ill-treatment from her husband, or that he might turn away from her, it shall not be wrong for the two to set things peacefully to rights between themselves: for peace is best, and selfishness is ever-present in human souls. But if you do good and are conscious of Him - behold, God is indeed aware of all that you do.”<sup>34</sup>

### **Divorce**

If all efforts to have peace fail and, seemingly, there is no option left but to divorce, even then Islam does not view divorce with approval. The Holy Prophet made it clear: Of that which is allowed, the most abhorring act, in the eyes of Allah, is divorce.

Divorce may be sought by the husband or by the wife; from husband's side it may be taken up when differences appear and, harmony fails, the husband declares to be away from his wife. The situation however, must be settled within four months:

"For those who vow abstinence from their wives, the maximum period for making up their minds is four months; then if they revert towards conciliation, surely Allah is Most Forgiving, Ever Merciful; and if they decide upon divorce, Allah is All-Hearing, All-Knowing."<sup>35</sup>

A complete code on how to adopt divorce exists. These regulations stand to ensure that divorce should not be sought as a fun or under an impulse, anger or emotional overtones. It should be a well thought over act settled after a careful thinking of the consequences, both for the parties and the children, if there are any. With this end in view, the conduct is to be well deliberated so that the parties may have chance to reflect dispassionately and also muse over any chances of making peace, before the divorce becomes irreversible:

"Revocable divorce can only be pronounced twice; where after there should be reconciliation in approved form, or final separation with beneficence. it is not lawful for you to take away anything of that which you have given your wives; unless it should be a case in which the wife insists upon separation without any default on the part of the husband and they are afraid that they would not be able to observe the limits prescribed by Allah, if they were to continue their association. In such case there will be no sin on either of them in respect of that which the wife may surrender by way of compromise. These are the limits prescribed by Allah, so transgress them not; whoso transgresses the limits prescribed by Allah, it is they that are the wrongdoer."<sup>36</sup>

There is another restriction to control hasty decision to go for divorce in the following words:

"Should the husband divorce the wife a third time, the divorce would become irrevocable, and she would not be lawful for him thereafter, except in case she should marry another husband and he too should happen to divorce her, or should die. In such contingency, it would be no sin for them to return to each other, provided they are sure that they would now be able to observe the limits prescribed by Allah. These are the limits prescribed by Allah which He makes clear to the people who possess knowledge."<sup>37</sup>

"In the case of a revocable divorce, when the end of the appointed period of waiting approaches, there should be reconciliation in approved form, or final separation in approved form; but do not hold back such women to impose hardship upon them. Whoso does that, surely wrongs his own self. Do not bring the commandments of Allah into contempt, and keep in mind the favour that Allah has bestowed upon you and that which He has sent down to you of

the Book and Wisdom, whereby He exhorts you. Be mindful of your duty to Allah and be sure that Allah knows all things well.”<sup>38</sup>

“When you divorce your wives and they reach the end of their waiting period, and the divorce becomes irrevocable, do not hinder them from marrying their chosen husbands, if they agree between themselves in an approved manner. This is an admonition for every one of you who believes in Allah and the Last Day. It is most blessed for you and purest. Allah knows and you know not.”<sup>39</sup>

“Divorced women shall wait, concerning themselves, for the space of three courses. It is not lawful for them to conceal what Allah may have created in their wombs, if they believe in Allah and the Last Day. If their husbands should desire reconciliation during this period, they would have the stronger right to the continuation of the marriage than that it should be irrevocably dissolved.”<sup>40</sup>

“There shall be no blame on you in hinting at a proposal of marriage to divorced or widowed women, or in contemplating the possibility in your minds. Allah knows that you will think of them in that connection; but do not enter into any secret engagement with them, beyond conveying some indication to them of your inclination. Do not, however, resolve on the marriage tie until after the expiry of the period of waiting. Be sure Allah knows what is in your minds, so be mindful of Him. Know also that Allah is Most Forgiving, Forbearing.”<sup>41</sup>

“Those of you who die leaving behind surviving widows, the legacy for their widows would be provision for a year without being turned out of the marital home. Should they depart there from on their own, after the expiry of the period of waiting, there shall be no blame upon you with regard to any proper thing which they do concerning themselves. Allah is Mighty, Wise.”<sup>42</sup> “For divorced women also there shall be provision according to what is fair. This is an obligation binding on the righteous.”<sup>43</sup>

“It will be no sin for you, if need arises, to divorce women whom you have not touched and for whom no definite dower has been fixed. In such case, make provision for them—an affluent one according to his means, and a poor one according to his means—a provision in a becoming manner. This is an obligation binding upon the virtuous.”<sup>44</sup>

“If you divorce them before you have touched them, but you have fixed a dower for them, then make over to them half of that which you have fixed, unless they should remit it or the guardian for the marriage should remit it, or unless the husband should voluntarily decide to pay a sum in excess of the half. That she should remit, or you should pay a larger sum, as the case may be, would be closer to righteousness. Do not neglect any chance of behaving benevolently towards each other. Surely, Allah sees what you do.”<sup>45</sup>

“In cases of divorce, mothers shall give suck to their infants for two whole years, where it is desired to complete the suckling, and the father of the child shall be responsible for the maintenance of the mother during that period according to usage. No one shall be burdened beyond his capacity. No mother shall be made to suffer on account of her child, and no father shall be made to suffer on account of his child; and the same is the obligation of the heir. If the parents should agree by mutual consultation and consent upon weaning

the child, there shall be no blame on them. Should you desire to engage a wet-nurse for your children, there shall be no blame on you, provided you hand over what you have agreed to pay, in a fair manner. Be ever mindful of your duty to Allah, and be sure that Allah sees what you do.”<sup>46</sup>

Teachings about divorce are summarized in a chapter of that name, i.e. Divorce, is produced here as:

“O Prophet, when you divorce your wives, observe the period prescribed for making the divorce effective, and reckon the period, and be mindful of your duty to Allah, your Lord. Turn them not out of their homes, nor should they depart there from, during that period, unless they are guilty of manifest indecency. These are the limits set by Allah. Whoso transgresses the limits set by Allah wrongs himself. The waiting period is prescribed as you do not know that Allah may, during that period, bring about something new.”<sup>47</sup>

“When they arrive-at the end of the prescribed period then retain them in a suitable manner, or send them away in a suitable manner, and appoint two just persons from among you as witnesses; and bear true witness for the sake of Allah. This is an admonition for him who believes in Allah and the Last Day.”<sup>48</sup>

“The prescribed period for those of your wives who have lost all expectation of monthly courses, in case of doubt, is three months, and also in case of those who have not had their monthly courses. In case of those who are with child, the prescribed period is until they are delivered.”<sup>49</sup>

“Lodge them during the prescribed period in the houses wherein you dwell, according to your means; and harass them not that you may create hardships for them. If they should be with child, provide for them until they are delivered. Should they give suck to the child for you, pay them their due recompense, and settle the matter between yourselves equitably; but if you run into difficulty between yourselves, then let another woman suckle the child for the father. Let one who is in easy circumstances spend according to his means and let him whose means of subsistence are straitened spend out of that which Allah has given him. Allah does not require of any one beyond that which He has bestowed on him. For those suffering from hardship, Allah will soon bring about ease.”<sup>50</sup>

## **Polygamy**

Polygamy in Islam is allowed subject to meeting out just treatment to all the wives:

“But if you feel you may not be able to deal justly between them, then marry only one.”<sup>51</sup>

Adjacent to the above, we come across another vivid commandment:

“You cannot keep perfect balance emotionally between your wives, however much you desire it, but incline not wholly towards one, leaving the other in suspense. If you will maintain accord and are mindful of your duty to Allah, surely Allah is Most Forgiving, Ever Merciful.”<sup>52</sup>

It seems near truth to say that Islamic concept of polygamy carries a lot of social sagacity and wisdom. It stands out to strike a balance for nurturing highest moral

standards and safeguards purity and chastity of both genders. It works as a safety valve to regulate moral and cultural standards. There are societies that tried to control their people through a rigid system of monogamy, they failed. Their men and women turned to evil ways in order to defeat the system of monogamy. Such state of moral turpitude became the cause of degeneration and decay of many nations which were otherwise strong and mighty. Islam permits a conditional consent for polygamy so that it does not become another way of satiating bestial needs. In Islam, marriage remains a sacred and divine institution to regulate the nations.

Monogamy or polygamy both are good if they remain conditioned by moral restraint. If both lack restraints and regulations, both can be equally bad and catastrophic. It is the nature of the consort ship that raises or lowers it. As the sole objective of marriage in Islam is to seek the pleasure of Allah, Islam instills a proportionate development of all faculties and capacities through wise regulation and conduct.

In the early days of Islam and even during the Islamic wars and crusades there used to be heavy loss of lives of men whereas women would survive being not directly exposed in the battlefield. There arose the practical use of the Islamic notion of polygamy, many retained their virtuous ways of living by going for polygamy as the ratio of women was comparatively far greater than that of men. Had there been no polygamy allowed, there may have been innumerable women or men who would have resorted to adulterous relationships which can be destructive of morals in any nation. Widows got husbands and orphans did not remain without the shelter of a father. Polygamy during the wars served as a safeguard to sustain chastity and morality and honest ways of life.

### **Place of Mother**

Islam places parents at the highest pedestal of honour and respect. There are several verses in the Quran which enjoin respect for parents:

“Now [among the best of righteous deeds which] We have enjoined upon man [is] goodness towards his parents; yet [even so,] should they endeavour to make thee ascribe divinity, side by side with Me, to something which thy mind cannot accept [as divine], obey them not: [for] it is unto Me that you all must return, whereupon I shall make you [truly] understand [the right and wrong of] all that you were doing [in life].”<sup>53</sup>

“Thy Lord has commanded that ye worship none but Him, and has enjoined benevolence towards parents. Should either or both of them attain old age in thy lifetime, never say: Ugh; to them, nor chide them, but always speak gently to them; be humbly tender with them and pray: Lord, have mercy on them even as they nurtured me when I was little.”<sup>54</sup>

“We have enjoined upon man concerning his parents. His mother bears him in travail after travail and his weaning takes two years. Be grateful to me and to thy parents; unto me is the final return.”<sup>55</sup>

“We have enjoined upon man to act benevolently towards his parents. His mother bears him in pain and brings him forth in pain; and the bearing of him and his weaning extends over thirty months....”<sup>56</sup>

The Holy Prophet’s golden teaching regard mother is:

“Paradise lies at the feet of your mothers.”<sup>57</sup>

## **Development of Variety of Codes in Muslim World: Their Effect on Women’s Status**

While the shari’ah is based fundamentally on the Qur'an and the Sunnah, other principles are also taken into consideration by the religious scholars when seeking to arrive at conclusions on any given legal point. The consensus (Ijma) of the notables of the community is a principle that can intervene when the Qur'an and the Sunnah are silent with regard to a particular problem. Still another principle, that of argument by analogy (Qiyas), is available when other principles, are silent. These four principles of jurisprudence came into play as the community expanded outside of its Arabian homeland and entered into contact with novel situations not mentioned in the Qur'an nor in the Sunnah but that could be handled by either consensus or analogous reasoning. The codification of the Law in the eighth and ninth centuries came about because of a need for manuals and treatises on jurisprudential matters. The various schools of jurisprudence, which arose in that epoch, were founded by individuals of independent or personal authority (Ijtihad).

Interpretation of how the principles of jurisprudence applied to particular questions was not always the same. Their differences, however, were seen in a positive light, an attitude that banished the possibility of the tyrannical rule of one school over the whole Muslim world. While there were many schools circulating in early times, eventually the four great schools of the present day emerged as the orthodox schools of jurisprudence. They were named after their founders, Abu Hanifah (d. 767), Malik ibn Anas (d. 795), ash Shafi'i (d. 820), and Ahmad ibn Hanbal (d. 855) their schools being, respectively, the Hanafi, the Maliki, the Shafi'i, and the Hanbali. These schools became, in the course of time, characteristic of certain regions of the Islamic world, the Hanafi being strong in Turkey and Subcontinent, the Maliki in North Africa, the Shafi'i in Egypt, while the Hanbali had a limited diffusion in parts of the Near East and the least number of adherents.<sup>58</sup>

The four schools recognized one another's orthodoxy; the muftis of each school gave their formal legal opinion (fatwa) in accordance with the rules of their schools. The tradition maintains that, since the founders of the schools exercised absolute authority, this same independent or absolute ijtihad, could not be exercised by later muftis, who have only a relative ijtihad, the "gate" of ijtihad in an absolute sense having been closed at the time of the founders of the reigning schools.<sup>59</sup>

Several reasons have been advanced regarding the difference between the classical/Qur'anic improvements in the status of women and the later

restrictions imposed on Muslim women in the medieval times. An important reason seems to be the strong influence of customary laws of the people who became Muslims and became part of the Muslim civilization. As Islam spread to several lands, there was some clash between ideas/practices learnt by Muslims through the Qur'anic teachings and the social customs prevalent among those converting to Islam. Esposito (1976) believes that such cultural adjustments eventually led to the lowering of status in Muslim thinking as well.<sup>60</sup>

Esposito particularly refers to veiling practices among women in Syria, Egypt, Persia and Mesopotamia. Muslim women from Arab lands adopted such veiling "as a concession to the prevailing custom so that they would not be misunderstood for women of loose character who remained unveiled."<sup>61</sup> He also says that the custom of seclusion originally prevalent in Byzantium and Persia, came to be adopted by Arabs and termed as 'herem' or 'purda.' The Abbasid court in Baghdad became persianised and practices relating to seclusion of women became part of Muslim ways of social life.

The Qur'an does contain a verse wherein the Prophet was asked to advise those who had accepted Islam that their wives use outer garments when out of home to save themselves from insulting non-believing molesters.

"O Prophet! Tell thy wives and daughters and the believing women, that they should cast their outer garments over their persons (when abroad): That is most convenient, that they should be known (as such) and not molested."<sup>62</sup>

The idea was not to restrict liberty but to avoid insult. By medieval time, the verse became a justification for seclusion of women altogether. Esposito gives Al Tabari's commentary on the verse as an example of how the acceptance of social customs of non-Muslim Baghdad penetrated the Muslim understanding of the Qur'an itself. At-Tabari lived most of his life in Baghdad. His writing reflects his environment where the veiling of free women as a status symbol came about to distinguish them from the great number of unveiled slave girls. Tabari's Tafsir interprets the above verse in the following way:

God says to his Prophet:

"Tell your wives and daughters and the wives of believers when they go out of doors not to be like female slaves in their garb, leaving their hair and face uncovered; but let them down part of their robes that no miscreant may expose them to harmful comments when he discovers them to be free women."<sup>63</sup>

Practices like veiling and seclusion when became hardened came to be taken as religious precepts and applied stringently to women in all environments. Over time, in non-Arab Muslim environment, elaborations by jurists tended to create problems with regard to status of women. For example, for jurists, licit sexual relations were all important. Marriage contract was one of equality between two consenting adults. The question seriously explored related to how to ascertain a woman's consent to contract. The following quotation from a jurist's manual shows the seriousness of the question:

"If the guardian consults her and she remains silent or smiles, this constitutes consent, because the Prophet (upon him be peace and blessings) said, "The

virgin is consulted in [what pertains] to herself; if she remained silent, this was her consent.” “And consent is likely the case because she is embarrassed to demonstrate desire by replying. And laughter is a stronger sign of consent than silence, as opposed to if she cried because that is a sign of unhappiness and abhorrence. And it is said: if she laughed in derision at what she heard, that is not consent, and if she cried soundlessly, that is not refusal. And if this [proposal of marriage] is made by someone other than her guardian, someone self-appointed or another delegated to be her guardian, her consent cannot be ascertained until she voices it, because her silence might stem from her not attending [carefully] to his words, and not be a token of her acceptance.”<sup>64</sup>

In case a father had arranged a marriage when the girl was minor and husband wanted delivery, a jurist’s manual advises how to determine the age of majority:

If she is plump and buxom and ready for men, and the stipulated matter has been received promptly, the father is compelled to give her to her husband, according to the soundest teaching. The Qadi examines whether she is [ready] by [asking] whoever raised her and by her appearance; and if she is suitable for men, he orders her father to give her to her husband or not. And if there are none who raised her, then he requests a consultation from women. And if they say she is ready for men and can endure intercourse, he instructs the father to give her to her husband. If they say she is not ready, then he does not so instruct the father. And God knows best.<sup>65</sup>

Several historical development affected women’s status in the Muslim society. In 1544, the Sultan of Ottoman Empire used his discretionary powers as the interpreter of the Islamic shari’ah and issued a decree which restricted women from entering into marriage without the consent of their guardians. He ordered that marriage be accepted as legal only when the consent of the guardian of the bride was there. However, in spite of the decree, many a woman particularly if they were already married once, continued to arrange their own marriages. During 17<sup>th</sup> and 18<sup>th</sup> Century in Syria and Palestine, jurists followed the most dominating Hanafi interpretation which said that an adult woman could not be forced by the guardian nor was she required to consult the guardian. As a consequence, despite the decree issued by Sultan of Turkey, the legislators of the Arab lands, Hanafi jurists, always supported the stance that woman had the right to enter marriage without intervention from any guardian, etc.

In Several other lands, guardian could give Minor girls into marriage, and many families in the Ottoman Empire would practice that. The law makers of the time stressed that such marriages should be completed at proper age. The misuse of various restrictions relating to girls rights is evidenced from courts’ decisions in favour of originally minor girls, including the exercise of divorce option on the basis of Khizar al-Bulugh. That is, the minor girl could ask for divorce, if marriage was contracted by guardians, when she came to age, and courts allowed that.

17<sup>th</sup> century Egypt marriage contracts indicate that women demanded a number of dos and don’ts for marital relationships in deference to social and

economic changes in the society. On the other hand, in Syria and Palestine of 18<sup>th</sup> Century, it was rare for any marriage to contain demands. Probably, this was so because of plurality of the legal school; Hanafi fiqh dominated but Maliki, Shafi'i and Hanbali also existed. In the words of Tucker (2008):

“This Legal pluralism promoted by mutual recognition among the Sunni schools of law meant that the richness and diversity of doctrine on stipulations and other issues were preserved in both regions. It appears likely, therefore, that local customs rather than doctrinal difference lay at the root of the divergence in the use of stipulations in marriage contracts.”<sup>66</sup>

It has been maintained that by the twentieth-century, residents of the cities and towns knew what an Islamic marriage contract should have and how a marriage should be conducted. The great number of suits which came to courts shows that complainants knew about the rights they had and trusted that courts would protect them. This was particularly true with regard to dower and maintenance. However, courts and jurists exercised a fuller control in urban areas. The case was different in rural areas. There, the jurists did complain that there were extra-judicial and un-Islamic marriage customs among the farmers. By and large legal doctrines as elaborated by jurists were in force in the court setting. Tucker sums up:

“There women and men sought to secure their rights and force others to meet their obligations. There was no fundamental alteration in the laws on marriage, but there were discernible accommodations of local custom and, more significantly for our present concerns, support of the kind of women’s rights, such as the rights to make stipulations or collect maintenance, that blunted the sharp patriarchal edges of Islamic marriage.”<sup>67</sup>

Tucker does note:

“I do not want to leave the impression that all pre-twentieth century Muslims adhered faithfully to the Islamic marriage.”<sup>68</sup>

They did not and that was for two reasons. One, that development of jurisprudence tended to take customs of previously non-Muslims and non-Arab lands into account. This made them alter the Qur'anic ideals about the place of women. Secondly, Ottoman Sultan began to select, at will, the school of thought mainly according to their manly traditions, traditions that favoured men. This tended to create compromises for women’s rights and status. Ottoman legislation of 1915 and 1917 took the lead in process of change in Family Law. It was codified on the juristic basis that the sovereign, as part of his acknowledged political powers, had the right to define the jurisdiction of the courts. The sovereign might order courts to apply one among several existing variant opinions.

In the Ottoman legislation, rules were selected from the whole corpus of traditional shari'ah doctrine were those regarded most suitable for application in new circumstances. It involved selection from various schools. It is technically called Takhayyur. Takhayyur is the process of selection. As an example, one could take Divorce law. A Hanfi wife could obtain a judicial annulment of her

marriage if the husband had proved totally incapable of consummating it. Also, she could obtain dissolution on the grounds that her husband had become a missing person. But beyond that she had no means of freeing herself from a prejudicial union, apart from negotiating a divorce by mutual agreement. The Malikis allowed a wife to ground a petition on the husband's cruelty, his refusal or inability to maintain her, his desertion, or his affliction with some serious ailment which made the continuance of the marital relationship harmful to the wife. In 1917, there was reform in Ottoman law of family rights. The new law provided for judicial dissolution of marriage in the case of wives whose husbands were suffering from some serious disease. In this case, Maliki authority was the basis of the new provisions. Another provision was taken from Hanbali doctrine. According to that women could seek dissolution if their husbands had deserted them without providing for their maintenance.

In the Subcontinent, diminution of status of women happened more and more, partly because of laxity on the part of religious administrators of justice. Situation there deteriorated greatly by the eighteenth and early nineteen century.

### **Concluding Remarks**

In the case of women place/status, this paper has attempted to portray the authentic Islamic teachings from the Qur'an itself believed by Muslims to be a revealed book consisting of God's last message to mankind for good life on earth and the hereafter.

Although it deals with family matters in some detail, the Qur'an is largely a book of principles. Development of legal system including the family laws owes a great deal to interpretation by men believed to be well versed in Qur'anic teachings. There is an imprint of time and space on the development of law of numerous persons and several socio-psychological environments. The code so developed was also influenced by environment. Over time, customs developed with recognizable print of cultures on Muslims in world. This was later complicated by foreign influence and west over the Muslim world.

There is need of hour for Muslim women to reclaim their religious rights and to take active part in religious 'debate on women's rights'.

### **References**

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- 1 Surah Al-Nahl 16:58-59
- 2 Muhammad Asad, the Message of the Qur'an. (Gibraltar: Dar Al-Andalus, 1980) Page.403. <http://www.geocities.com/masad02/073.html>.
- 3 Ibid, Page:933
- 4 Surah Al-Takveer 81:1
- 5 Surah Al- Takveer 81:8-9

6      The Message of the Qur'an, Page:933

7      Ahmad Ibn Hanbal quoted in Jamal Badawi, The Status of Women in Islam.  
Retrieved June 30, 2016 from [www.islamswomen.com/articles](http://www.islamswomen.com/articles)

8      Surah Al-Room 30:21

9      Surah Al-Ahzab 33:35

10     Surah Al-Ahzab 33:73.

11     Surah Al-Ahzab 33:58.

12     Surah Al-Burooj 85:10.

13     It was almost six years, after the Prophet's migration from Macca to Madina, that he planned to visit Macca in a "sacred" month, i.e. a month which according to time- honored Arabian custom, was a month of 'no war.' A follower, sent as an emissary, was rumored to have been killed by Meccan Pagans. The Prophet, instead of fighting, effected a treaty to come back for visit the following year. The Qur'anic verse says that in the event of war some Muslim men and women would have been killed unknowing. The verse affirms preciousness of lives of both the sexes.

14     Surah Al-Fath 48:25.

15     Surah Al-Noor 24:23-24

16     Surah Al-Nahl 16:97

17     Surah Al-Gafir 40:40

18     Surah Al-Touba 9:71-72

19     Surah Al-Imran 3:195

20     Surah Al-Zukhruf 43:69-70

21     Surah Yaseen 36:56-58

22     Surah Al-Hadid 57:12

23     Surah Mohammad 47:19

24     Surah Taha 20:50

25     Surah Al-Room 30:30

26     Surah Al-Mominoon 23:11-12

27     Surah Al-Nisa 4:19

28     Surah Al-Baqarah 2:223-224. Asad's translation of the last sentence is: "your wives are your tilth; go, then, unto your tilth as you desire, but first provide something for your souls." And he comments: "[A] spiritual relation between man and woman is postulated as the indispensable basis of sexual relations." See The Message of the Quran, Page:49

29     Ibid; 25:74

30     Musnad Ahmad Ibn Hanbal quoted in Jamal Badawi.

31     Surah Al-Nisa 4:25

32     Surah Al-Nisa 4:34, trans., Asad, pp.109-110.

33     Surah Al-Nisa 4:35

34     Surah Al-Nisa 4:128

35     Surah Al-Baqarah 2:226-227

36     Surah Al-Baqarah 2:229

37     Surah Al-Baqarah 2:230

38     Surah Al-Baqarah 2:231

39     Surah Al-Baqarah 2:232

40     Surah Al-Baqarah 2:228

41 Surah Al-Baqarah 2:235  
42 Surah Al-Baqarah 2:240  
43 Surah Al-Baqarah 2:241  
44 Surah Al-Baqarah 2:236  
45 Surah Al-Baqarah 2:237  
46 Surah Al-Baqarah 2:233  
47 Surah Al-Talaq 65:1  
48 Surah Al-Talaq 65:2  
49 Surah Al-Talaq 65:4  
50 Surah Al-Talaq 65:6-7  
51 Surah Al-Nisa 4:3  
52 Surah Al-Nisa 4:129  
53 Surah Al-UNKABOOT 29:8  
54 Surah Bani Israil 17:24-25  
55 Surah Luqman 31:14  
56 Surah Al-Ahqaf 46:15  
57 Musnad Ahmad Ibn Majah quoted in Badawi..  
58 Jafariyyah is the Shiah school of jurisprudence that was compiled and codified by the sixth Shiah Imam, Jafar-e-Sadiq. It tends to differ from others school of thought on a number of questions.  
59 As Danner explains: “In nonessential matters, the later muftis are free to pursue a relatively independent judgment within the framework of their particular school. They cannot now, for example, re-examine the necessity for observing the Pillars of Religion and thus overturn the traditional practice, but they can issue fatwas on more peripheral matters.” See Abd-al-Jabbar Danner, *The Islamic Tradition an Introduction*. (Lahore: Institute of Islamic Culture,1988) Page:119  
60 Ibid; Page: 112  
61 Ibid; Page: 113  
62 Surah Al-Ahzab 33:59  
63 John L. Esposito, *Muslim Family Law in Egypt and Pakistan: A Critical Analysis of Legal Reform, Its Sources and Methodological Problems*. (Ann Arbour, Michigan: Xerox University Microfilms, 1976), Page: 114.  
64 Judith Tucker, *Women, Family, and Gender in Islamic Law*. (Cambridge: Cambridge University Press, 2008) Page: 42  
65 Ibid, Page: 44  
66 Ibid, Page: 63  
67 Ibid, Page: 64-65  
68 Ibid, Page: 63