

AN APPRAISAL TO THE STATUS OF WOMAN IN PRE AND POST-ISLAMIC ARABIAN PENINSULA WITH SPECIFIC REFERENCE TO HER MARITAL RIGHTS

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Abstract

Islam is a complete code of life for every human being, devoid of any discrimination of colour, race, language, culture, tribe or caste. Islam is a religion of equality; it does not discriminate between rich and poor, Arab and non-Arab. In Shara'ah, priority is given to the person, who is Muttaqi according to the prescriptions of Holy Qur'an; nonetheless all human beings are equal either male or female. This paper provides an insight to the status and position of woman before the arrival of Islam in the era of ignorance (Jahiliyyah). It also highlights the debauched practices and customs of Arabs with regard to the position of woman before Islam i.e. burying daughters alive, marriage, polygamy and divorce. This study significantly scrutinizes the reasons that why woman was mortified and disrespected. This research paper aims to discuss the amelioration of the status of woman with the arrival of Islam, predominantly in Muslim Family Law, by specifically focusing on the marital rights of women and the subsequent reformations. This study finally concludes that Islam is the only religion that has introduced the basic rights of woman which are not being recognized in any religion or society before; such as marriage with her free will, right to live in this world, share in inheritance. In fact, Islam is a Din, that has provided respect and honour to a woman in every role of her life; as a daughter, as a wife and as a mother.

Keywords: Status of Woman, Rights of Woman, Shar'ah, Family Law, Women.

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I. Introduction

The position of women in pre-Islamic Arab society was miserable. Women were treated as commodities; they were fully exploited by their fathers, and could be sold in marriage to the highest bidder. The husband was entitled to terminate the contract of marriage on any occasion. They were held in bondage to their husbands, who could keep them or divorce them at their will and pleasure.¹ Before the advent of Islam, their existence was regarded as an embodiment of sin, misfortune, disgrace and shame. In such milieu the talk of their rights was a mere fantasy. Indeed, society was confused about the very nature of women and even questioned whether God had granted them a soul.² Women were deprived of all opportunities to develop their individualities, and make full use of their abilities to the benefit of their society. They were also denied all rights of inheritance and ownership. Rather, they were considered as objects of inheritance. A woman was classed not as a person but as a thing, divisible like property; she was an object of disrespect and contempt.³ Asaf A. Fyzee states in this regard:

“The position of woman at the time of Prophet Muhammad was no better than that of animals: they had no legal rights; in youth they were the goods and chattels of the father; after marriage the husband became their lord and master. Polygamy was universal, divorce was easy and female infanticide was common.”⁴

The history of human civilization testifies that the woman, who gives birth to man as mother, was humiliated, treated harshly and reduced to the position of being a maid rather than a dignified woman.⁵ Therefore, I discuss the status of women with specific issues relevant to women in the Arab society in pre-Islamic times and how Islam has redefined and reformed everyday life. The focus in this study is the marital status of women before and after Islam.

II. Burying Daughters Alive

Before the dawn of Islam, men were a source of strength and women were considered burden on their families. The birth of the daughter was embarrassing for the father, who considered it an ignominy and a matter of shame. Therefore, the Arabs of that time

practiced widely female infanticide and burying alive their daughters. This was the common practice of Arabs before Islam. Infanticide was not only common custom among the Arabs but it was also considered a virtuous deed and a generous act.⁶

The Reasons for Female Infanticide and Burying daughters alive

There were three main reasons for female infanticide and burying daughters alive before the dawn of Islam and these are poverty, captives and prisons of war and ill health.

a. Poverty

The very first reason was the poverty, as stated by Smith:

“The Nomads of the Arab suffer constantly from hunger during a great part of the year. The only persons who have enough to eat are great men.”⁷

In such circumstances, innocent girls were burden to their families and burying girls alive was a normal reaction of the people suffering poverty. He further states that:

“To the poorer, a daughter was a burden, and infanticide was as natural to them as to other savage people in the hard struggle for life.”⁸

Some of Arab people regard female infanticide as a sort of kindness and mercy to them. They want to restore them from the harshness and dangers of the life, they face in this World. As Nicholson stated that the dispatch of a daughter is a kindness and the burial of daughters is a noble deed.⁹The Holy Qur’an has explained the motive of poverty and admonished the Arab people against burying and killing children for fear of poverty as stated:

“Kill not your children for fear of want: We shall provide, sustenance for them as well as for you: verily the killing of them is a great sin.”¹⁰

b. Captives and Prisons of War

The second reason and motive was the fear that daughters will become the captives and prisons of war. It will bring disgrace and disrespect to the family as Nicholson stated:

“Fathers feared that they should have useless mouths to feed or lest they should incur disgrace in

consequence of their daughters being made prisoners of war.”¹¹

In this regard, Reuben Levy stated that

“It was humiliating to beget daughters, there ran the thought in that in a society where marriage by capture was common, girls might be carried off in wars to become the views or concubines of the enemies.”¹²

c. Ill Health

The third reason of female infanticide and burying them alive was ill health. The Arabs were used to kill their daughters due to their any disease or ill health or the female child is weak and unhealthy. Arab people marry many women for the reason of strong family and they wish so many male child and a healthy women can provide them so many children. That was the reason, Arabs were not interested to get married with a weak and unhealthy women, so the fathers were burying them alive. As Jawad Ali mentions:

“It is interesting to find some sources suggesting that some Arab killed their daughters, if they had some disease because it was thought unlucky.”¹³

In Al-Serah Al-Halabiyyah, a story is reported regarding burying alive to a weak and unhealthy daughter as stated:

“Sawda Bint Zahra al-Kahina¹⁴ was sent by her father to a place called Al-Hujan to be buried alive there. Because when she was born, her father noticed that she was black due to illness. My father sent the daughter with a digger to be buried alive but when the digger could not bury her because after digging a dig, he was near to put her in a dig, he heard a voice “do not kill her”. The digger returned without burying her and informed her father about the voice, he heard. When her father knew that he also did not kill her and he spared her to become in time the priestess of the Quraysh.”¹⁵

The Arabs were used to kill their daughters by burying and if someone was not performing this practice of burying alive daughters. It epitomizes weakness. Islam has prohibited the practice

of female infanticide or burying daughters alive and restored the birth as rights of a female child. The Holy Qur'an described the mentality of ignorance underlying such a practice as Almighty Allah stated:

“When news is brought to one of them, of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has had! Shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! what an evil (choice) they decide on?”¹⁶

The Holy Qur'an clearly condemned such practice and strictly prohibited a murder of a female child as Almighty Allah will ask the question on the Day of Judgment as stated:

“When the female (infant) buried alive, is questioned— For what crime she was killed.”¹⁷

Islam elevated women to the status of being as worthy of human dignity as were men. Both men and women were henceforth to be regarded as equal in human being. The Holy Qur'an does not make any distinction on the basis of sex and believes in human equality as Allah Almighty states:

“O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you.”¹⁸

In another ayah Allah Almighty lays down that men and women are created from a single soul as stated:

“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.”¹⁹

In this regard, the best ayah of equality between men and women is as Allah states:

“For Muslim men and women— for believing men and women, for devout men and women, for true men and women, for men and women who are

patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves) for men and women who guard their chastity and for men and women who engage much in Allah's praise— for them has Allah prepared forgiveness and great reward.”²⁰

III. Marriage

In the era of *Jahiliyyah*, marriage was one way to increase the strength of the tribe by begetting more children who would be the next generation of the tribe. Generally women were humiliated, degraded, and disrespected having no marital rights and regarded as non-entities as Gustave Lebon manifests:

“Men, before the dawn of Islam, used to consider the position of women as midway between animals and human beings, and her role either as a servant or captive. Islam was a just religion shifting the status of women.”²¹

In Pre-Islamic society before Islam two types of marriage are known, firstly, Edogamy (marriage between cousins) and secondly, Exogamy (marriage outside the tribe).²² Marriage between cousins was very common and they used to prefer this type of marriage and condemned it outside the tribe. The possible reason for this was belief of the Arabs in the purity of lineage and reluctance to marry off their daughters to foreigners. Parents also were not welcoming marriages of their daughters to their enemies.²³ Exogamy was to strengthen the relationship with other tribes. The marriage with a woman not of the kin was often preferred by the husband because it was thought that the children of such a match were stronger.²⁴ This type of marriage was usually with the captives and prisons of war. But they also used to get married outside the tribe to a free woman as well to make an alliance with other tribes in order to belong to a strong tribe who could protect them from danger.²⁵

Abdur Rahim has prescribed that there were four types of marriages before Islam in Arab society. The first one was a form of marriage similar to that sanctioned by Islam; a man would ask another for the hand of his daughter or ward, and then marry her by giving her a certain dower. The second one was a marriage in which a man

desiring noble off spring would ask his wife to send for a great chief and have intercourse with him. During the period of such intercourse the husband would stay away but return to her when her pregnancy was well advanced. The third one was that a number of men, less than ten, would be invited by a woman to have intercourse with her. If she conceived, and was delivered of child, she had the right to summon all the men and they were bound to come. She would then say: "O so and so (naming whomsoever of them she chose), this is your son". This established paternity conclusively and the man had no right to disclaim it. The fourth one was known as a common prostitute. A number of men used to visit a woman who would not reuse any visitors. The women were used to fix at the doors of their tents a special flag as a special sign of their calling. If a woman of this class conceived, the men who frequented her house were assembled and the physiognomists decided to whom the child belonged.²⁶ All these types are mentioned in Sahih Bukhari.²⁷

There were also some other types practised by the Arabs such as η aizen Marriage²⁸, Mut'ah Marriage²⁹ and Shighar Marriage³⁰. Shari'ah has prohibited all such kinds of marriages, the first case of Daizen marriage as illustrated by Kabshah, the wife of Abu Qays, who went to the Holy Prophet (PBUH) and told him that Abu Qays had died and his son, who was the best of men, suited her. The Holy Prophet (PBUH) kept quiet and then the following η yah was revealed: ³¹

"And marry not women whom your fathers married,
— except what is past: it was shameful and odious,
— an abominable custom indeed."³²

Another ayah of the Holy Qur'an demonstrates the prohibition of marriage by inheritance in a clear way as sates

"Prohibited to you (for marriage) are:— your mothers, daughters, sisters, father's sisters, mother's sisters; brother's daughters, sister's daughters, foster-mothers (who gave you suck) foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,—no prohibition if ye have not gone in,— (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one

and the same time, except for what is past; for Allah is Oft-Forgiving, Most Merciful.”³³

Mut‘ah Marriage was a contract between man and woman without having any object of establishing household or begetting children. Islam has also prohibited this type of marriage as well.³⁴ The objective of Mut ‘ah marriage is explained by Abdur Rahim as he states

“When a man came to a village and he had no acquaintance there (to take care of his house), he would marry a woman for as long as he thought she would stay, so that she would be his partner in bed and take care of his house.”³⁵

Islam has also prohibited Shighar Marriage, if dower is not fixed in marriage contract.³⁶ With regard to Shighar marriage Niaz A. Shah stated that

“In shighar marriage a woman would get nothing, no dower, no marriage gifts, even her consent was not considered necessary. Men were the only beneficiaries, getting women for themselves losing nothing.”³⁷

The Holy Qur’an has demonstrated the practice of Arabs, inheriting widows by sons and to give them in marriage:

“O ye who believe! ye are forbidden to inherit women against their will.”³⁸

Woman was considered as property before Islam and inherited to the relatives either to get married with her or sold out in the market or give her to someone else. The marriages usually took place without consent of woman and she was not regarded as an individual person. In Islam, marriage is essentially based on harmony, mutual understanding and love. One of the most fundamental rights of a woman, on which a healthy marriage rely, is to choose a husband and use her consent for a marriage tie. Islam treats a woman an independent person and granting her a right to get married with her own choice especially after divorce. As Almighty Allah states

“When ye divorce women, and they fulfill the term of their (‘Iddah) do not prevent them from marrying

their (former) husbands, if they mutually agree on equitable terms.”³⁹

The Holy Prophet (PBUH) also stated with regard to consent in marriage as

“A married woman has more right (to decide) about herself (with regard to marriage), and a virgin should be consulted by her father, and her permission is her silence.”⁴⁰

Marriage in Islam is regarded as a sacred contract or covenant, legalizing intercourse and the procreation of children. The objective of marriage is the protection of the society, and in order that human beings may guard themselves from foulness and un-chastity. Islam encouraged people to get married with a single and virtuous woman and not to be involved in illegal sexual relations as Quran stated:

“Marry those among you who are single, or the virtuous ones among your slaves, male or female: if they are in poverty, Allah will give them means out of His grace: for Allah encompasseth all, and He knoweth all things.”⁴¹

IV. Dower

Dower was considered compulsory and mandatory for the validity of the marriage contract. They do not recognize a marriage legitimate and valid unless the dower is to be paid. If the dower was not paid, they considered that marriage as adultery and fornication.⁴² It was also a sign of honor, respect and nobility of a woman.⁴³ The custom and practice of Arabs was that the guardian of a woman like father took the whole dower and give nothing to a woman. If a father or guardian wanted to marry her daughter to a man, he was negotiating for a better dower, which he, and not the woman, would take. It was called daughter's Hilwan. They used to congratulate one another saying “May Allah bless your *Nafijah*.”⁴⁴ This explains why some Arabs in the pre-Islamic era would congratulate on the birth of a female child. In fact, they would do this believing that the newly born daughter would grow up and get married and he, the father, would get her dower. Therefore, he will be well off. Smith rightly explained that the dower was paid by the husband to the bride's kin and indeed. They used to congratulate a father on the birth of a daughter. In the times before Islam, say that

the daughter was welcomed as an addition to her father's wealth, because when he gave her in marriage, he would be able to add to his flocks the camels paid to him as her mahr.⁴⁵

In Shariah, Dower is one of the woman's rights, imposed by Almighty Allah on the husband towards his wife. It is a prerequisite of a marriage contract and its inclusion validates the marriage. It is a sole right of a woman and nobody else's, no matter who may take it or do anything with it without her consent or permission. But Islam has provided this right and she can use it in any way she likes, she can leave, forgive or return it to the husband. If the dower is not to her she can even refuse to consummate her marriage until she has to be provided the same. The guardian is not allowed to take the dower from her unless she chooses to give it to anyone. As Almighty Allah states:

“And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.”⁴⁶

V. Maintenance

The divorcees and widows were not having any right of maintenance in pre-Islamic Arab society. If, once divorced then they were not given any right to live in the same house as well.⁴⁷ Simply, it can be said that she was not entitled to maintenance, a house or anything else before Islam. Islam has prohibited the customs and practices of Arab people and given the economic rights to woman such as maintenance. The Holy Qur'an is providing maintenance to widows, pregnant divorcees and normal divorcees. With respect to the provision of maintenance to widows Almighty Allah says:

“Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence; but if they leave (the residence) there is no blame on you for what they do with themselves, provided it is reasonable And Allah is Exalted in Power, Wise.”⁴⁸

The normal divorcees has to be provided reasonably as Almighty Allah says

“For divorced women maintenance should be provided on a reasonable scale and this is a duty on the righteous.”⁴⁹

In case of pregnant divorcee, she must be supported financially till her delivery, furthermore, it is the duty of her ex-husband to provide maintenance during the nurturing the child. In this regard Allah Almighty says in the Holy Qur’an

“Let the women live (in ‘iddah) in the same style as ye live, according to your means: annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden.”⁵⁰

According to Islam the ex-husband is responsible for the provision of maintenance to his divorcee since she faces economic and financial pressure and hardship during ‘Iddah. The maintenance is to be provided on a reasonable scale according to the capacity and affordability of the husband, i.e. a wealthy according to his means, and poor according to his means.

VI. Polygamy

A man was free to get married more than one wives at the same time and it was a common practice of Arab peoples particularly the Quraish. This was considered a common custom among the men of Quraish to have ten wives each, sometimes more or less. There was no limit to prescribe the number of marriages without the provision of any conjugal rights. These unnumbered wives were puppets for a man who used to depend upon his discretion. Usually, Arabs used to get married ten wives and also used to marry with the wives of forefathers.⁵¹This practice of polygamy was prevailed in urban societies more than in the bedouins as Hatab mentions:

“As a result of urban life, appearance of technicians and rich class, stability of resources of living and men’s ability to spend, the rate of polygamy had risen.”⁵²

In this regard ‘Abbas Mahmud Al-‘Aqqad notices:

“All the pre-Islamic civil laws have permitted polygamy without any limitations as to the number of wives. The only limitation was that the husband

should be able to provide for his wives in terms of food and shelter.”⁵³

Polygamy was not confined only to Arab people but it was also existed among other nations⁵⁴ and religions.⁵⁵ Islam has accepted the practice of polygamy, allowed under exceptional circumstances and laid down regulations for protection of woman’s rights. Islam has also restricted and reduced the number of wives to four only and warned to the husband that all four wives must be treated equally with fairness otherwise, the man is not permitted to marry more than one wife as Allah states:

“If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one.”

Shariah has significantly reduced the number of wives with limitations and reservations and restricted to have only one in the event there was fear of doing injustice among wives. Keeping in view that Islam is not insisting or encouraging polygamy, it is just permitted for the better protection of orphan girls and widows. Imam Ibn Kathir stated with regard to this ayah that the word “marry” is not meant to be an order that must be followed, but rather it is suggestion on the way of educating, informing and guiding.⁵⁶ Islam is not making an obligation on any Muslim to get married more than one wife. It is permitted as a license only under certain special circumstances that make it necessary for a man to have more than one wife. These circumstances might be individual, social and personal. Although, there are some circumstances which demand to get married another woman but if the person is not able to be just, fair and treat equally his wives, then he is not allowed to have more than one wife in any way.

VII. Divorce

Arabs used to divorce their wives whenever they liked without any restrictions and reasons. Divorce was considered a sole right of a man but there were also some women⁵⁷ who could stipulate the conditions at the time of the marriage and ask for divorce whenever wanted.⁵⁸ The reasons for divorce before Islam were very petty and inconsequential to us such as the lack of harmony between their

dispositions, the woman's refusal to accommodate herself to the husband's temper and disposition, her rejection of control, and her being disrespectful to her husband. Sometimes divorce was given to take revenge either from woman or from her own people. Some men used to divorce their wives if they had any suspicion of their chastity. Sometimes, this was because of reasons which had nothing to do with the marriage itself such as poverty. Sometimes she was divorced just because she gave birth to girls only? Or she gave birth to more girls than sons.⁵⁹ They used to divorce three times, ten times or even more. There were no limits of numbers in divorce for them.⁶⁰ The Nomads divorce their wives on happening or non-happening of the events, i.e. if happens so and so, she is divorced. When husband know that it happened as he made a condition for divorce then he did not come near to his wife. After getting divorce from husband woman returned to the home and tribe to which she belonged.⁶¹

Kinds of Divorce in Pre-Islamic Arab Society

Arab people were divorcing their wives on the basis of small reason or even without any reason as mentioned above. They were having the full authority to humiliate the status of woman and not providing any status or dignity in the society. The practice of divorce was stemmed from the life style of Arabs before Islam. There were several kinds of divorce in the Pre-Islamic Arab society but the following three were common:

- a. Zihar
- b. Iila
- c. Khula

a. Zihar

The husband enunciates his wife as part of his mother's body which meant that she became unlawful to him. This pronouncement made it illegal for a man to resume the marital life and it was a type of divorce that freed the husband from any responsibility for marital tasks. As Niaz A. Shah defines:

“Zihar was an old pagan custom wherein a man would tell his wife that thou art to me the back of my mother. This would free a husband from conjugal duties but did not leave the wife free to leave her

husband's house or remarry. This custom was degrading to women and the Koran abolished it.”⁶²

Justice Tanzeel-ur-Rahman stated as

“The fact is that during *Jahiliyyah* (the Pre-Islamic period of Arabia) practice of Zihar was prevalent there and Zihar was considered to be a form of divorce.”⁶³

The Holy Qur'an has prohibited this practice of divorce and abolished as stated

“If any men among you divorce their wives by zihar (calling them mothers) they cannot be their mothers: none can be their mothers except those who gave them birth. And in fact they use words (both) iniquitous and false: but truly Allah is One that blots out (sins), and forgives (again and again). (2) But those who divorce their wives by zihar, then wish to go back on the words they uttered— (it is ordained that such a one) should free a slave before they touch each other: this are ye admonished to perform: and Allah is well-acquainted with (all) that ye do. (3) And if any has not (the wherewithal), he should fast for two months consecutively before they touch each other. But if any is unable to do so, he should feed sixty indigent ones. This, that ye may show your faith in Allah and His Messenger, those are limits (set by) Allah. For those who reject (Him) there is a grievous Penalty.”⁶⁴

Islam has condemned common custom of Arabs by divorcing their wives through zihar and escaping their responsibilities and conjugal rights. Islam has also permitted to continue the marriage with the same woman by making expiation for Zihar.⁶⁵

b. Iila

Iila' is an oath from a husband to leave his wife for unspecified period; it may be months, a year, two years and more. This was also a kind of divorce in the era of ignorance and a practice of Arabs to escape from conjugal duties.⁶⁶ Islam has suppressed this practice and allowed husband to return his wife within four months of Iila' as Almighty Allah stated

“For those who take an oath for abstention from their wives a waiting for four months is ordained; if then they return, Allah is Oft-Forgiving, Most Merciful. But if their intention is firm for divorce, Allah heareth and knoweth all things.”⁶⁷

Iila’ was affecting the rights of women as was in practice of Arabs. They were not leaving wives by Iila’ for unspecified period. Islam has not only disapproved of such oaths, but also has specified the maximum period of separation. After the expiry period of four months, the marriage dissolved automatically in Iila’. It is to be known as deferred and an irrevocable divorce in Islam.⁶⁸ The expiation of breaking the oath and to continue the marriage with in four months as stated in the Holy Quran

“Allah will not call you to account for what is void in your oaths, but He will call you to account for your deliberate oaths: for expiation, feed then indigent persons, on a scale of the average for the food of your families; or clothe them; or give a slave his freedom. If that is beyond your means, fast for three days. That is the expiation for the oaths ye have sworn. But keep to your oaths. Thus doth Allah make clear to you His Signs, that ye may be grateful.”⁶⁹

c. Khula

A wife has the right to get Khula from husband by retuning compensation such as dower. In fact Khula is a mutual agreement, if she has no chance to live with her husband and offers to pay him some monetary compensation and husband accepts it. In early times before the dawn of Islam this arrangement of Khula was made by parents as Smith stated

“In old times, Khula’ was a friendly arrangement between the husband and his wife’s father by which the latter repaid the dowry and got back his daughter.”⁷⁰

Divorce was a sole right of a man in pre-Islamic era; he can use it whenever he wants. As a wife, she has no right to divorce her husband but she can take off herself from her husband if both

agreed on what the wife has presented some sort of money as compensation to the husband to be freed from him. If husband agreed and approved the money presented to him as compensation by the wife, it was known as Khul'.⁷¹ Islam has considered Khul' as a sole right of a woman, whenever she thinks and want that there is no possibility living together with the husband, she can request the husband and present the dower money to be freed from the contract of marriage tie. The husband is not allowed to deny from freeing his wife and cannot get more than the amount of dower in release of his wife. In fact, in Khul' a wife buys her release by paying back dower in consideration to the husband as Allah Almighty states

“A divorce is only permissible twice: after that, the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you (men) to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah; so do not transgress them. If any do transgress the limits ordained by Allah, such persons wrong (themselves as well as others).”⁷²

In pre-Islamic Arabia none of these kinds of divorce gave the woman full rights and all these practices were humiliating to the status of woman. When Islam came, it reformed and changed all these type of divorce and laid down the rules for it which safeguards and protects the marital rights of woman.

VIII. 'Iddah (Waiting Period) and Remarriage

Remarriage was considered a right of a husband during '*Iddah*' and he got married to her again many times whenever he wanted. Divorce was an easy matter and a woman was considered just like a puppet in the hands of husband. He could play with the feelings of the wife and humiliate her. The practice of divorce and remarriage to the same woman was unlimited. He can also prevent her to remarry to other man and bargain if she married to someone else.⁷³

There was no waiting period as it had been reported that a man from Anḥar became angry with his wife and said to her: I will not treat you as the husband treats his wife and at the same time, I will not let you go away. The wife asked: How? The husband said: I will divorce you and as the interim period for divorce comes to an end. I will remarry you again and I will keep on doing that. And he had done that many times in order to embarrass her.⁷⁴ Islam has prohibited the pagan customs⁷⁵ and encouraged remarriage after waiting period. Islamic Law has fixed different waiting periods for widows⁷⁶, pregnant women⁷⁷ and normal divorcees⁷⁸ and thereafter women are free to remarry to whomever they wanted. Islam has prohibited the marriage with in the period of 'Iddah as was practiced by the Arabs and permitted women, divorcees or widow to remarry freely to whomever they want after the expiry of waiting period, there is no restriction at all.

IX. Inheritance

The common practice of Arabs was that women were not having any share of inheritance. They were not just deprived from their rights of inheritance but they themselves were also the part of a husband's estate to be inherited.⁷⁹ The general rule of inheritance among Arab people was to give the shares of inheritance to adult males, who could ride a horse and who could use a sword i. e. warriors and fighters. They excluded females from inheritance, and even some males, who were not able to ride the horse and fight with enemies in the war.⁸⁰ Women were deprived and excluded from inheritance especially the widows even they were considered the property of the husband's legal heirs as Robertson Smith stated

“So far as the widow of the deceased is concerned, this is almost self-evident; she could not inherit because herself part of her husband's estate whose freedom and land were at the disposal of the heir.”⁸¹

They were dependent on men for their financial survival and had no property rights except the privileged classes of the society in big commercial cities. They were treated as property and having no rights of inheritance. Islam has changed the situation of women in terms of inheritance as was practices before the dawn of Islam. The Holy Qur'an condemned the custom of Arabs and prohibited women from being inherited as stated

“O ye who believe! ye are forbidden to inherit women against their will.”⁸²

Islam just not destined the position of woman in *Jahiliyyah* but also allotted for her a share in the inheritance of her parents and kinsmen.⁸³ However, the very often reality and common practice of Muslim countries including Pakistan is that women relinquish their shares to the immediate male members of the family due to social norms, culture and social pressure. This constitutes a gross violation of the Qur’anicayat regarding provision of inheritance to women.

X. Conclusion

Women were deprived from all sorts of rights especially marital and conjugal rights in pre-Islamic Arab society such as right to get married with her free consent, right to get dower, right to get maintenance, right to divorce husband and right to get inheritance. The position of women in the Arabian Peninsula was dismal, patrified, deplorable and miserable. They were mortified, treated harshly and had no dignity and honour except in few classes. Men were enjoying the dominance over women in matters related to marriage and divorce by having infinite rights of marriage and divorce. They could take as many wives as they wished and could divorce whenever they desire. With the advent of Islam, all the practices and customs of the Arabs against women were abolished and Islam has introduced egalitarianism for all segments of society, specifically women. Some harmful customs, traditions and practices were eliminated entirely, such as female infanticide and burying daughters alive, while others were approved with changes and modifications such as Iila’, Zihar and Khul’. Some were endorsed fully such as Bu‘-Lah marriage. Islam has uplifted the status of woman and granted her a rightful place in the society of man, raising her above the position of goods and chattels and acknowledging her as a dignified entity and a personality unto herself. She was considered an independent social and economic unit functioning in her own individual right, if she desired so. For the first time she was given the right to get married with her own choice, the right to divorce, the right of inheritance and above all she has given a lot of respect, honour and dignity in the society as a girl, as a daughter, as a sister, as a wife and as a mother.

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- ⁴Asaf A. Fyzee, *Outlines of Muhammedan Law*, (New Delhi: Oxford University Press, 5th ed. 2008), 3.
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- See also Shah Abdul Qayyum, *Women in West Asia – A Case Study of Egypt*, *Islam and the Modern Age*, vol. 4, No. 3, 1973, 54.
- ⁷Robertson Smith, *Kinship and Marriage in Early Arabia* (Beirut: United Publishers, 1973), 294.
- ⁸ Ibid.
- ⁹R.A. Nicholson, *A Literary History of The Arabs*, (Cambridge: Cambridge University Press, 1966), 91.
- ¹⁰ The Holy Qur'an, 17:31
- ¹¹A Literary History of The Arabs, 91.
- ¹²Reuben Levy, *The Social Structure of Islam*, (Cambridge: University Press Cambridge, 1957), 92.
- ¹³Jawad Ali, *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, (Dar Al-Saqi, 2001), vol. ٩, 8٩.
- ¹⁴ She was the aunt of Wahab who was the father of Hazrat Amina (RA), the mother of the Holy Prophet (PBUH), See for detail, Ali ibn Ibrahim Al-Halabi, *Al-Surah Al-Halabiyyah*, (Beirut: Dar Al-Kutb Al-'Ilmiyyah, 1427 A.H), 1:68.
- ¹⁵ Ali ibn Ibrahim Al-Halabi, *Al-Sirah Al-Halabiyyah*, (Beirut: Dar Al-Kutb Al-'Ilmiyyah, 1427 A.H),1: 68.
- ¹⁶The Holy Qur'an, 16:58-59 يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ
- ¹⁷ The Holy Qur'an, 81:8-9
- ¹⁸ The Holy Qur'an, 49:13 يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً
- ¹⁹The Holy Qur'an, 4:1
- ²⁰ The Holy Qur'an, 33:35
- ²¹Gustave Lebon, *Hazarat Al-'Arab*, Translated into Arabic by 'Adil Za'tir, (Qahirah: Mu'assasah Hindiwi Le Al-Ta'lim Wa Al-Thaqifah, 2012), 15.
- ²²ZuhairHatab, *Tatawwur Bain Al-Usrah Al-'Arabiyyah Wa Al-Judhur Al-Tarikhiiyyah Wa Al-Ijtima'iyyah Li Qa ٢٢١٧ Al-Mu'asirah*, (Beirut: Ma 'had Al-Inma' Al-'Arabi,1976), 45.
- ²³*Kinship and Marriage in Early Arabia*, 75.

²⁴ Ibid.

²⁵ *Tatawwur Bain Al-Ushrah Al-'Arabiyyah Wa Al-Judhur Al-Tarikhiyyah Wa Al-Ijtima'iyah Li Qaḥaya Al-Mu'asirah*, 75.

²⁶ Abdur Rahim, *Muhammadan Jurisprudence*, (London: Luzac Co. 1911), 7.

²⁷ *Al-Bukhari*, Kitab Al-Nikah, Bab Man Qala La Nikaḥa Illa Bi Wali

²⁸ *Ḥaiz* Marriage is that allowing a son to have his step mother in marriage after the death of his father. The practice of Arabs was that if a husband died and left a widow, his son or anyone from the dead man's heir can get married with a widow, if they wished or they forbade her from marrying anyone till she died. This type of marriage was also called Muqt marriage. It is also known as marriage by inheritance. See for detail: Jawad Ali, *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, (Dar Al-Saqi, 2001), vol. 10, 206.

²⁹ *Mut'ah* Marriage was a purely personal contract, founded on consent between a man and a woman, without any intervention on the part of the woman's kin. Neither witnesses nor consent of a Wali (guardian) were required to the contract of marriage. See: *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 209.

³⁰ *Shighar* Marriage is that in which there were exchange of the daughters or sisters for the purpose marriage without paying any dower. The father of daughter requested to another father, give me your daughter to me in marriage, I will give you mine as well without paying any dower. See: *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 209.

³¹ *Al-Sirah Al-Halabiyyah*, 44.

³² The Holy Qur'an, 4:22

³³ The Holy Qur'an, 4:23

³⁴ *Al-Bukhari*, Kitab Al-Nikah, Bab Ma Jaa Fi Al-Nahye 'An Nikaḥi Al-Shighir.

³⁵ Abdur Rahim, *Muhammadan Jurisprudence*, (London: Luzac Co. 1911), 8.

³⁶ *Al-Bukhari*, Kitab Al-Nikah, Bab Ma Jaa Fi Al-Nahye 'An Nikaḥi Al-Shighar .

³⁷ Shah, Niaz A., *Women, the Koran and International Human Rights Law*, Martinus Nijhoff Publishers, Leiden/Boston, The Netherland, 2006, 32.

³⁸ The Holy Qur'an, 4: 19 يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرْتُوا النِّسَاءَ كَرِهًا

³⁹ The Holy Qur'an, 2:232

⁴⁰ *Sunan Al-Nisai*, Kitab Al-Nikah, Bab: Istimar al-ab al-bikr fi nasiha

⁴¹ The Holy Qur'an 24:32

⁴² *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 204.

⁴³ Ibid.

⁴⁴ Ibid, 204.

⁴⁵ *Kinship and Marriage in Early Arabia*, 96

⁴⁶ The Holy Qur'an, 4:4

⁴⁷ *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 230.

⁴⁸ The Holy Qur'an, 2: 240

⁴⁹ The Holy Qur'an, 2:241

- ⁵⁰ The Holy Qur'an, 65:6
- ⁵¹ *Al-Mufasssal Fi Tarikh Al-Arab Qabl Al-Islam*, vol. 10, 219.
- ⁵² *Tatauwur Bain Al-Usrah Al-'Arabiyyah Wa Al-Judhur Al-Tarikhyyah Wa Al-Ijtimā'iyah Li Qaṭa'ay Al-Mu'asirah*, 45.
- ⁵³ Abbas Mahmmd Al-'Aqqad, *Al-Mar'ah Fi Al-Qur'an*, (Cario: Hindiwi Foundation for Education and Culture, ٢٠١٣), 75.
- ⁵⁴ Gustave Lebon, *Hazarat Al-'Arab*, Translated into Arabic by 'Adil Za'tir, (Qḥ hirah: Mu'assasah Hindi wi Le Al-Ta'lim Wa Al-Thaqifah, 2012), 15.
- ⁵⁵ James Hastings, *Encyclopedia of Religion and Ethics*, (Edinburgh: T.&T. CLARK, 1915), viii: 461.
- ⁵⁶ Muhammad ibn Isma'il, Ibn Kathir, *Tafsir Al-Qur'an Al-'Aleem*, vol. 1, 355.
- ⁵⁷ These were the women of high social status and respect such as Salma bint 'Amro and Fa'imabint Al-Kharshab. See: *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 226.
- ⁵⁸ *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 226.
- ⁵⁹ Ibid.
- ⁶⁰ Ibid., 225.
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- ⁶⁴ The Holy Qur'an, 58: 2, 3, 4
- ⁶⁵ *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 223.
- ⁶⁶ Ibid.
- ⁶⁷ The Holy Qur'an, 2: 226-227
- ⁶⁸ Al-Sarakhsi, *Al-Mabsut*, (Beirut: Dar Al-Ma'rifah, 3rdedn., 1987), vol. 7, 35.
- ⁶⁹ The Holy Qur'an, 6:89
- ⁷⁰ *Kinship and Marriage in Early Arabia*, 113.
- ⁷¹ *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 224.
- ⁷² The Holy Qur'an, 2: 229
- ⁷³ *Al-Mufasssal Fi Tarikh Al-'Arab Qabl Al-Islam*, vol. 10, 224.
- ⁷⁴ Ibid., 225.
- ⁷⁵ Ibid.
- ⁷⁶ The waiting period for widows is four months and ten days as stated in the Holy Qur'an
- وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ
- “If any of you die and leave widows behind; they shall wait concerning themselves four months and ten days when they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And Allah is well acquainted with what ye do.”
- (The Holy Qur'an, 2:234)
- ⁷⁷ The waiting period ('Iddah) for pregnant divorcees is until delivery of the child as Almighty Allah states
- وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

“For those who carry (life within their wombs) their period is until they deliver their burdens: and for those who fear Allah, He will make their path easy.” (The Holy Qur’an, 65: 4)

⁷⁸The waiting period for normal divorcees is three ḥayḍ (menstrual periods) or three ḥayḍ as the Jurists opined and this period is stated in the Holy Qur’an as Almighty Allah says

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

“Divorced women shall wait concerning themselves for three monthly periods. Nor it is lawful for them to hide what Allah hath created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them and Allah is Exalted in Power, Wise.” (The Holy Qur’an, 2: 228)

⁷⁹*Al-Mufasssal Fi Tarikh Al-‘Arab Qabl Al-Islam*, vol. 10, 157.

⁸⁰ Ibid, 234. See also: *The Social Structure of Islam*, (Cambridge: University Press Cambridge, 1957), 96. See also: Robert Roberts, *The Social Laws of Koran*, (London: Curzon Press, 5th ed.1980), 62-63.

⁸¹ *Kinship and Marriage in Early Arabia*, 117.

⁸²The Holy Qur’an, 4:19

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا

⁸³As Almighty Allah says

لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,— a determinate share.” (The Holy Qur’an, 4:7)