

RIGHTS OF WOMEN AND MUSLIM SOCIETIES

Asghar Ali Engineer*

This comment engages with the gap between the Qur’anic pronouncements and Shari’ah requirements pertaining to the treatment of women under Islam. The author historically traces this development from 7th century Arabia till present and examines issues such as wife beating, the capacity of women as half-witnesses, inheritance, marriage and divorce. In doing so, the comment seeks to dispel the myth that Shari’ah laws are divine and hence immutable. It concludes with an examination of the socio-political context of the codification of personal laws and women’s status in contemporary Muslim world today.

INTRODUCTION.....	45
I. SITUATION IN 7 TH CENTURY ARABIA.....	45
II. BEDOUIN SOCIETY.....	47
III. ISLAM AND WOMEN.....	48
IV. COMPARISON OF TREATMENT OF WOMEN UNDER PRE-ISLAMIC AND UNDER POST-ISLAMIC PRACTICES.....	50
V. THE QUR’AN AND WOMEN.....	51
VI. WIFE BEATING AND THE QUR’AN.....	56
VII. IS A WOMAN A HALF-WITNESS?.....	58
VIII. INHERITANCE: IS A WOMAN TO INHERIT HALF OF WHAT HER BROTHER INHERITS?....	60
IX. MARRIAGE.....	61
X. DIVORCE.....	64
XI. STATUS OF WOMEN IN THE CONTEMPORARY MUSLIM WORLD.....	66
XII. CODIFICATION OF PERSONAL LAW.....	68
CONCLUSION.....	70

*A prolific writer and activist, Mr. Engineer is trained in Tafseer, Hadiths & Islamic Jurisprudence. He has received the Right Livelihood Honorary Award (also called the Alternate Nobel Award) for his vision and work at Stockholm, Sweden in December 2004. He has received many honourable degrees and recognitions from universities and institutes all over the world. *Inter alia*, he is a Central Government nominated member of the Society of the Indian Institute of Advanced Study (IIAS), Shimla and a former Vice-President of the People’s Union for Civil Liberties, Mumbai, India.

INTRODUCTION

Muslim women's issues have acquired a great deal of importance for several reasons. Muslim women are opting for higher education all over the world and even amongst the poorer sections of Muslim society the rate of literacy is increasing. Women's education, which was a taboo a few decades ago, is becoming acceptable. This has brought greater awareness amongst these women and they have started demanding their rights. Additionally, there are many women Non-Governmental Organisations ("N.G.O.s") working on women's rights amongst Muslims today and they take up issues pertaining to marriage, divorce, maintenance and custody of children. These tend to be crucial issues.

However, the Muslim clergy is highly reluctant to change. In fact Islamic seminaries still provide training in Islamic jurisprudence, which developed during the medieval ages, when women's role in public life was extremely limited and they were supposed to be subservient to patriarchal authorities. The body of laws developed by the Islamic jurists is known as *Shari'ah* and the methods followed and intellectual efforts made are known as Islamic *fiqh*.¹

It is a common belief among Muslims that *Shari'ah* laws are divine and hence immutable and that it is obligatory for every Muslim to follow them. However, this is not a correct view. The body of Islamic laws developed over several centuries by eminent jurists is a result of human engagement with divine pronouncements in the Qur'an and *sunnah*.²

Since the *Shari'ah* is a result of human endeavours to understand, it is as much human as it is from Allah and cannot be made immutable. The modernist, liberal and reformist Muslims have been campaigning for change to remove gender inequalities and give women equal rights; this is in line with what the Qur'an clearly stipulates. Thus one would see a clear difference between what the Qur'an stipulates and what Shari'ah laws require.

I. SITUATION IN 7TH CENTURY ARABIA

The Arab society during Prophet's time can be divided into two broad categories: urban, that is sedentary and Bedouin, that is nomadic. Culturally and socially, both societies were poles apart.

¹ Jurisprudence.

² The Prophet's pronouncements and practices as reported by his companions and his followers.

Mecca, where the Prophet was born and where he grew up, was a highly urbanized region at the centre of which there was a highly respected religious sanctum sanctorum known as *ka'ba*, so named because of its cubical shape. Mecca was also a centre of highly profitable commercial and financial operations and tribal chiefs, especially those belonging to the tribe of Quraysh, (the Prophet also belonged to this tribe) had acquired great expertise in international trade and accumulated a great deal of wealth.³ Since women were not active economic agents, they had become quite subordinate to men. Moreover, Arab society was highly patriarchal and therefore, women had a very limited role to play in public life. The women were treated as mere chattel, having no rights whatsoever; some powerful women constituted a rare exception to this. One such woman was Khadija. A rich trader, she eventually married the Prophet.⁴ However, as mentioned above, these were exceptions.

It is also important to note that among tribals, there were no written laws. Only oral traditions or time-honoured customs were followed. Consequently, there was a lot of scope for subjective and convenient interpretations of rules. Further, even the oral traditions and customary laws began to be violated by individuals who were wealthy and thus powerful.

This made women even more vulnerable, especially the widows and the orphans, who had no protection. Women in Mecca enjoyed no property rights. Laws such as those permitting the inheritance of and cohabitation with the father's widows by the eldest son existed. Also, a man could marry as many women as he liked without any restriction. Moreover, a woman could also be given away in marriage by her father or uncle or grandfather and the bride price would be pocketed by that male relative. Child marriages were quite common and such marriages could not be revoked later. It became binding when the child became an adult. Also, the woman had no right to divorce, whereas the husband could divorce her any time he liked, just by pronouncing three words "*talaq, talaq, talaq*". Once he pronounced these three words he could not take her back, even if he repented, thus sealing her fate. If at all he wanted to remarry her, she was required to marry another man, who, after consummating the marriage had to divorce her. Only then could the woman marry her former husband. This procedure was called making her *ballalab*.⁵

³ See ASGHAR ALI ENGINEER, *THE ORIGIN AND DEVELOPMENT OF ISLAM* (1980).

⁴ *Id.*

⁵ Permissible.

Another form of divorce was called *zihar*, when a man would tell his wife that she was like his mother. He would utter these words: “*Thou art (henceforth as unlawful) to me as my mother’s back*”. The term mother in this case was a metonym for ‘body’.⁶ This divorce was considered irrevocable. Additionally, the woman could not remarry and had to live in her husband’s custody for her lifetime.

Another form of persecution of the wife was *al-ila*, where the husband would take a vow not to go near his wife for a specified period. This could extend from months to years and she would have to contend with her condition helplessly.

Above all, it was often considered a disgrace to have a daughter born. There was a practice, especially among Bedouins, to bury the female infant alive. The Qur’an refers to this custom and strongly condemns it in verse 81:9. The Qur’an says, “*And when the buried alive is asked for what sin she was killed?*” Muhammad Asad, noted modern commentator on the Qur’an, says that burying alive seems to have been fairly widespread in pre-Islamic Arabia, though perhaps not to the extent as has been commonly assumed. The motives were twofold: the fear that an increase in female offspring would create an economic burden, as well as the fear of the humiliation caused on account of girls being captured by a hostile tribe and they subsequently preferring their captors to their parents and brothers.⁷

II. BEDOUIN SOCIETY

The condition of women in Bedouin society, that is, among nomads, was somewhat different. Meccan society was, as pointed out above, highly commercialized and had developed concepts of property. Tribal bonds were being weakened, if not broken down, and new practices were developing. But nomadic society was quite static and strictly followed customs and traditions. Moreover, in the absence of the concept of property, land or otherwise, they also did not have a strict family institution.

Women had, thus, a little more freedom in sexual matters. According to Tabari, a historian and commentator on the Qur’an, in Mecca - an urban complex – it was the men who could marry up to ten wives. In Bedouin society however, a woman could enter into multiple marriages and could also

⁶ MUHAMMAD ASAD, *THE MESSAGE OF THE QUR’AN* 639 (1980). He discusses verse 33:4 in detail. .

⁷ *Ibid* at 933.

divorce any husband. The method of doing this was also interesting. The Bedouins lived in tents and the entry to the tents had a particular direction. When she did not desire to live with a man, a woman would change the direction of the tent's entry when that man came to cohabit with her.⁸

It is not as if the Bedouin society was perfect. As stated above, female infanticide was prevalent amongst the Bedouins. In another instance, when a woman was captured in an inter-tribal war, and such wars and raids were frequent among Bedouins, the captors could cohabit with her without any formal marriage by treating her simply as their slave. No ceremony of *nikah* was needed and her offspring would belong to the father. This custom prevailed both in Bedouin and among the sedentary populations in Mecca or Madinah. Whether such cohabitation was permissible or not remains a controversial issue till today in Islamic jurisprudence. However such practice did continue for long even after Islam raised the status of women considerably.

III. ISLAM AND WOMEN

After profiling the status of women in pre-Islamic Arab society, referred to as the period of *jahiliyyah*⁹ by Islamic historians, I would like to discuss how Islam brought about a change in the status of women. Is the status of women in Islam as low as is often widely believed? Or is a woman's status in Muslim societies today due to the medieval cultural practices of Muslim countries?

Islam, if we derive its teachings primarily from the Qur'an (*hadith* literature, as I will show below, being controversial) shows that there is a world of difference between Qur'anic teachings and Muslim practices. Nevertheless many practices, understandably Muslim practices, which were less than fair to women for a variety of reasons, are thought to be Islamic practices. It is therefore necessary to distinguish between the two and also to understand the reasons for the difference.

First of all, it is important to understand that the Qur'an was revealed to the Prophet (PBUH)¹⁰ in Arabic society during a period of 23 years in the early 7th century and hence there are many verses in the Qur'an which I call contextual. The Qur'an is the word of Allah and this belief is very basic to Muslims. However, the word of Allah, in order to be meaningful to the followers, cannot be devoid

⁸ See ASGHAR ALI ENGINEER, *THE RIGHTS OF WOMEN IN ISLAM* (2008). The Chapter on "Status of Women in *Jahiliyah*" is of relevance here.

⁹ Period of ignorance.

¹⁰ "Peace Be Upon Him."

of its socio-cultural context. That does not also mean that the entire text of the Qur'an is contextual. Its moral, ethical and value-oriented teachings are universal and normative. In fact much of the Qur'an contains what is universal and normative. However, there is disagreement and even controversy amongst jurists and theologians regarding which verses of the Qur'an are contextual and which have been cancelled (known as *mansukh*). This is important for a debate on certain juristic and *shari'ah* formulations, including those on gender issues.

Another question is of understanding the treatment of an issue by the Qur'an. Generally, many laymen, as well as jurists, pick and choose Qur'anic verses in order to prove their point or for juristic formulation. This practice is not correct. Firstly, the Qur'an has not been compiled strictly, in order of revelation and secondly, the Qur'an treats the same subject in different verses in different chapters. For example, women's issues have been treated in several different chapters like the second, third, fourth, and so on. Thus, one has to study all the verses on a particular subject spread over several chapters and then bring them together to understand the real intent. As far as I know, no jurist has done that, and hence, differences amongst them persist. If we follow the above method of understanding the intent of the Qur'an, many juristic formulations will have to be changed. Also, since certain Qur'anic verses are contextual, there must be core values which are much more important than contextual injunctions.

There is one more factor which impacts Islamic jurisprudence, as it has evolved in the past centuries, especially during the medieval ages. The basis for much of the *shari'ah* formulations was provided by 7th century urban Arab society and culture. Most of the early jurists came from there and were deeply immersed in its cultural traditions. All this contributed to their juristic thinking.

The jurists themselves acknowledge this as Arab *adaat* (customary laws). *Adaat* is a part of the body of *shari'ah* laws; in any reformist venture, Arab *adaat* would not be binding on the reformer. This was indeed a revolutionary step for Muslim women. Islam subsequently spread all over the world with radically different cultures and gender practices. Now, since the 20th century, it is spreading in Europe and North America, which are intrinsically western societies. Now, even a term like 'Euro-Islam' is emerging. Unfortunately, because of a lack of proper knowledge and understanding, most Muslims think even the *adaat* part of *shari'ah* is divine and binding.

In India too, Khojas and Cuttchi Memon communities of Gujarat were following customary law, depriving their women of any share in inheritance until The Muslim Personal Law (Shariat) Application Act of 1937 came into existence. Subsequently, women of these Muslim communities also got a share in inheritance and property. It was for similar reasons that Qur'anic injunctions on gender justice were diluted, since Arabic society was not ready to give complete equality to women, as required by the Qur'an and secondly; they were psychologically conditioned to practice their own customary law which subordinated women to male authority. In fact, it would not be difficult to demonstrate that Qur'anic formulations on women are all rights-based whereas those on men are all duty-based.¹¹ However, for the reasons stated above, the Islamic jurists reversed this order by incorporating their own *adaat* - they made the *shari'ah* discourse duty-based for women and rights-based for men. What is needed today is to bring the discourse in conformity with the Qur'an by reversing it again and making the whole gender discourse rights-based for women and duty-based for men.

IV. COMPARISON OF TREATMENT OF WOMEN UNDER PRE-ISLAMIC AND UNDER POST-ISLAMIC PRACTICES

I will now enunciate on the changes Islam brought about in the status of women in the backdrop of pre-Islamic Arabic practices. The Qur'an adopted a reformist approach in certain matters where sudden change could not have been acceptable and a radical approach in certain respects, where change was much more urgent. Any reform has to be made keeping in note these core changes brought about by the Qur'an.

A gradual change was the abolition of slavery. Abolishing it instantly was difficult since it would have met great resistance from powerful vested interests. The Qur'an, therefore, adopted a gradual approach, initially effecting humanitarian reforms in treatment of slaves. The Qur'an encouraged liberation of slaves for the expiation for sins and even otherwise. Also, it required that slaves be treated with dignity, that they be given the same food as the master ate, the same clothes as the master wore and they be given the same residence as the master. Simultaneously, it was made clear that all human beings have been created from same parents, Adam and Eve, and that the equality of all human beings and equal dignity is a norm.¹² Therefore, according to this verse, slavery has to go

¹¹ See ASGHAR ALI ENGINEER, ISLAM AND MODERN AGE (1987).

¹² See Qur'an 17:70.

if equality of all human beings is to be established in society. Despite such a radical approach, slavery persisted in the Islamic world even after it was abolished in the west.

The Muslims claim the Qur'an to be of divine origin; yet, when it comes to their own culture, values and interests they violate its injunctions with impunity. If Muslims had followed the true Qur'anic spirit and values, they would have been the first to abolish slavery. The same could be said about gender discourse in Islamic countries today. Still, the Islamic world shirks from its responsibility of implementing gender just laws and its *ulamas*¹³ and jurists continue to issue *fatwas*¹⁴ which are violative of gender justice and women's dignity.

V. THE QUR'AN AND WOMEN

The Qur'an came out with a radical declaration that men and women are equal and women's rights are equal to their duties.¹⁵ Maulana Abul Kalam Azad, a noted modern commentator on the Qur'an, describes this verse as a revolutionary declaration of gender equality, enunciated more than thirteen thousand years ago.¹⁶ Thus, there is no doubt that the basic principle in the Qur'an is of gender equality. Nonetheless, as pointed out above, in the context of the then Arab society, there are some injunctions in the Qur'an which are not in line with the principle of absolute equality and thus may be found to be unacceptable in today's context. Nonetheless, as pointed out already, the Qur'an had to adopt a gradual reformist approach in certain respects, maintaining nevertheless, the sanctity of the basic principle – that of gender equality. The shari'ah laws must be updated in light of this basic Qur'anic injunction. Till today, because of resistance on the part of the *ulama* and jurists, this basic principle continues to be in limbo.

The Prophet's Announcements

A major part of the body of *shari'ah* law comprises the Prophet's pronouncements, referred to as the *hadith*; this constitutes another controversial area. On account of *hadith* literature, several differences have arisen among Muslims on a variety of issues including the issue of gender equality. Some Muslim historians tell us that the Prophet (PBUH) himself asked the Muslims not to collect his

¹³ Muslim legal scholars.

¹⁴ Legal opinions.

¹⁵ See Qur'an 2:228.

¹⁶ For the commentary on verse 2:228, see 2 Maulana Azad, TARJUMAN AL-QUR'AN (1980).

hadith as it would have given rise to differences amongst them. That however is what precisely happened.

*Abadith*¹⁷ were collected by several eminent personalities and their number reached hundreds of thousands. Imam Bukhari, one of the greatest collectors of *abadith*, is reported to have collected more than six hundred thousand *abadith*. Besides him, there were five others and through this, we find six authentic collections of the *abadith* in Sunni Islam alone. The Shi'ah Muslims, the Isma'ili Shi'ah Muslims and other sects have their own collections.

It was mainly because of these *abadith* and the interpretations of the Qur'an, that different schools of law arose. Consequently, among Sunni Muslims, of the several schools, four survived – the Hanafi, Maliki, Shafi'i and Hanbali. Among the Shi'ahs, three main schools are prevalent - Ithna'ashari, Isma'ili and Zaidi. Thus, it is interesting to note that the Qur'an is one, its formulations are divine and unambiguous and yet, there are so many different legal schools differing from each other on several issues including issues pertaining to gender laws.

Most of the differences, as pointed out, are on account of two reasons - the first is the varied interpretations of the Qur'anic verses and the second is the different *abadith* employed. Moreover, the jurists were located in different places and each jurist was acquainted with different social and cultural issues, customs and traditions. Therefore, local factors were equally important. When jurists faced new problems and did not find any direct solution in the Qur'an and *hadith*, they used what was called *qiyas*¹⁸ and then tried to obtain some kind of consensus on their *ijma*.¹⁹ Both *qiyas* and *ijma* are human institutions and varied from jurist to jurist and also across the vast Islamic world. The word *Shari'ah* cannot be found in the body of Islamic laws almost for the first three centuries of Islam. This word began to be used around the 4th century.

According to the noted Urdu poet, Iqbal, there were more than hundred legal schools of which only four survived in Sunni Islam.²⁰ There being so many *madhabib*,²¹ one can understand the range of

¹⁷ Plural of *Hadith*.

¹⁸ Analogical reasoning.

¹⁹ Consensus.

²⁰ See SIR MOHOMMAD IQBAL, RECONSTRUCTION OF RELIGIOUS THOUGHT IN ISLAM (1930).

²¹ Legal schools.

differences among Islamic jurists in formulating the role of human endeavours in resolving issues. Since there is no church or priestly hierarchy in Islam, every learned jurist was free to make his own efforts to understand these issues.

Since new issues, which did not exist in the Qur'an and classical *sunnah* (as reported in its earliest time by the companions or wives of the Prophet), kept arising, new *abadith* were needed for their official recognition. Thus began the fabrication of *abadith*. These directly contradicted Qur'anic teachings. Despite this, they were accepted. It was because of such fabrication that many *mubaddithin*²² developed a separate discipline in the field of *hadith*. This discipline dealt with authentic and *hadith* of doubtful origin. In spite of this, several doubtful *abadith* came into origin and these *abadith* became an integral part of the Islamic legal system, depriving women of their rights.

The most important basis of this discipline was what came to be known as *ilm al-rijal*.²³ The experts would examine the character and reputation of the narrator of *hadith* and from whom he or she heard the narration, in order to adjudge the genuineness and reliability of the *hadith*. It was also examined whether the chain of narration reached up to the Prophet or to one of his companions.

Some experts also prescribed the criteria of *dirayat*²⁴ as against mere *riwayat*²⁵ to examine whether the *hadith* being narrated was in keeping with reason and moral standards. However, in Sunni Islam, narration and narrators became more central than reason and morality. In Shi'ah Islam, *dirayat* retained its status as the central concern, yet it was more symbolic than substantial a concern. Thus it would be seen that, in all schools of law in Islam, *hadith* has played a very important role in juristic formulations. Over a period of time, *hadith* gained more importance than the Qur'an. The Qur'anic injunctions in respect of women were not acceptable in a patriarchal culture, given that the injunctions directly challenged the ostensible authority of men and made women equal to men in every respect. For this reason, even very unambiguous formulations of the Qur'an were subjected to strange interpretations with the help of *abadith*, contradicting basic tenets of the Qur'an. These *abadith* represented the cultural ethos of society rather than Qur'anic injunctions. Where the Qur'an

²² The experts of *hadith*.

²³ The science of men reporting or narrating the *hadith*.

²⁴ Reason.

²⁵ Narration.

does not put any restrictions on women, these *abadith* were employed to put severe restrictions on them.²⁶

Therefore, Qur'an and *hadith* became two worlds apart and *hadith* was invoked more and more to subjugate women and to curtail their rights. For instance, one does not find mention in the Qur'an, a dictum to the effect that a single woman cannot venture out of house without being accompanied by a *mehram*.²⁷ On the basis of *hadith* however, jurists have almost elevated this "custom" to the status of an obligatory practice for women. Even today, in Saudi Arabia, a single woman is not allowed to go out alone; by implication she cannot even drive a car herself. This can only be justified if there were frequent cases of molestation; it certainly cannot be elevated to the status of a legally binding practice.

Another example is that of the veil or *purdah* or *burqa*, frequently in the news today. The Qur'an does not prescribe the *hijab*²⁸ for women. In fact, the word *hijab* does not occur in Qur'an for veiling the face of an ordinary Muslim woman. It was only meant for the wives of the Prophet; the Bedouin Arabs would talk freely with the Prophet's wives after dinner, not being acquainted with the pertinent cultural norms. The Prophet did not like it and hence it was revealed that men should leave after dinner; if they talk with the wives of the Prophet, they should talk from behind the curtain, *hijab*. Seen in proper context, it is therefore clear that a reference has only been made to a curtain and not to a face veil.

For other women, the word *hijab* or *burqa* does not occur in the Qur'an at all. The verses which are often quoted in support of veiling women with the help of *hadith* have, in reality, nothing to do with that practice. One verse pertains to the public display of *zeenab*²⁹ and the other to eve-teasing in the mornings when Muslim women went out for relieving themselves, there being no toilets at home.

With regard to *zeenab*, the verse is more advisory than obligatory. It begins with advising men to lower their gaze while meeting a woman and then advising woman also to lower their gaze while

²⁶ See Asghar Ali Engineer, *Qur'an, Hadith and Women*, THE DAWN (Sep. 25, 2009), available at <http://archives.dawn.com/archives/2757>.

²⁷ A male relative whom she cannot marry.

²⁸ A veil.

²⁹ Adornments.

meeting men. Then it further goes on to say: “*And say to the believing women that they lower their gaze and restrain their sexual passions and do not display their adornment except that appears thereof. And let them let them wear their head coverings over their bosoms.*”³⁰

There are two crucial elements prescribed for women in this verse. First, that they should not display adornments, except those that are usually visible and second, that they should also cover their bosoms with their *khimar*.³¹ Additionally, while asking women not to display their adornments, a cultural space has been allowed by the use of the phrase, ‘what appears thereof’. Such phrase has received varied interpretations by different *ahadith*.

More fundamental to Qur’anic prescription is the one with respect to lowering of gaze rather than hiding one’s face behind the *hijab*. There is a Qur’anic verse which states, “*O Prophet, tell thy wives and thy daughters and the women of believers to let down upon them their over-garments. This is more proper so that they may be known, and not be given trouble (or teased).*”³² This verse is not of universal application and does not set a norm for Muslim women. The veil was merely used by women to distinguish themselves from slave girls. Since slavery no longer exists, this practice is redundant now. One cannot impose certain contextual practices of early Arabic society over women today. Unfortunately, some *ulama* continue to use such verses in the Qur’an for justifying the face veil.

It also becomes pertinent to discuss the *burqa* ban controversy in Europe now, Belgium and France having passed legislation to that effect. The justification for this move is that it is necessary for the preservation and protection of the countries’ ‘secular’ culture and for the liberation of Muslim women from oppression. Both arguments are flawed. Today Europe is multi-cultural and all cultures are to be respected. It is no more mono-cultural and such arguments are no more valid. Second, it would be against individual rights to impose what one should wear and what one should not. No imposition, however plausible from a particular point of view, can be imposed on free citizens of a country. Such imposition itself is an oppressive act, replacing, at best, one kind of oppression by another. Third, it is difficult to assume that all women wear a face-veil because of patriarchal oppression. Some might be wearing it of their own conviction and free choice. Moreover, unless a

³⁰See Qur’an 24:31.

³¹ It is similar to the Indian *dupatta*, and used as headgear or for hanging on shoulders.

³² See Qur’an 33:59.

woman complains that she is being coerced into wearing such veil there is no justification for punishing her if she does wear it. Otherwise she will suffer doubly. Her family will force her to wear the veil and if she refuses, she will suffer the wrath of the family. If she does wear it, she will suffer from the wrath of the state by being made to either pay fine or go to jail. In Belgium, roughly, no more than *thirty* women wear a face veil out of a Muslim population of around half a million.³³ Thus reasons must be sought elsewhere rather than the pretentious claim that the ban is for liberation of women or to protect European culture.

VI. WIFE BEATING AND THE QUR'AN

Verse 34, Chapter 4 of the Qur'an, being the chapter on women, has assumed great importance in any debate on women's rights. The orthodox jurists argue that it gives men authority over women and even a right to beat them if they rebel. The modernists are challenging its meaning and debating what certain key words in the verse mean. Do they mean literally what the orthodox jurists claim? Or do they mean something else?

Before I discuss this verse, I would like to state the interpretation of the text given even by some moderate Muslims like Muhammad Asad, who otherwise adopt quite a fresh approach on many issues. Asad renders it as under:

“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 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 thereupon they pay you heed, do not seek to harm them. Behold, God is indeed most high, great.”³⁴

Now, the key words in this verse are *qanwam*, *qanita*, *hafizāt li al-ghayb* and *daraba*, of which *daraba*³⁵ is most controversial. Some orthodox translators render the word *qanwam* as meaning ‘authority’ - implying men have authority over women. *Qanwam* does not have any such shade of meaning even remotely and yet, in a feudal and patriarchal culture such a rendition became acceptable. The word

³³ Correspondent, *Belgian Lawmakers Pass Burka Ban*, BBC NEWS, Apr. 30, 2010, at <http://news.bbc.co.uk/2/hi/8652861.stm>.

³⁴ *Supra* note 6, 109-110.

³⁵ Usually translated as beat.

simply refers to one who maintains or takes care of the financial and other needs of women; since women in general were not active economic agents in those days the Qur'an made it obligatory on men to maintain them and take care of them as they earned and Allah bestowed His bounties on them. Mohammad Asad's rendering of *ba'dabum 'ala ba'din* as on the former (that is, men) than latter (women) is not correct. Such a rendering would mean that men will always earn and women will always be passive agents. The phrase simply means, 'some over the others' and 'some' over 'others' are inclusive of both genders and leaves open the possibility of women becoming active economic agents in future as they have become active agents today. Maulana Azad is nearer to the truth when he argues that *qanmam* is a functional word and if women earn and maintain their family, they also qualify as *qanmam*.³⁶ Today, many women will qualify as *qanmam*.

It is also important to note the context of the verse. The commentator Kasshaf notes that a woman came to the Prophet, seeking redressal after she was slapped by her husband without any fault on her part. The Prophet told her to go and retaliate (*izhabi was iqtasi*). Tabari, another noted commentator, also endorses this story. The women were jubilant and men worried. How will they, who maintain the women and spend their means over them, be able to control them if the Prophet has allowed the women to retaliate? The men also complained to the Prophet (PBUH) to which the Prophet said that it was his personal opinion and that he would wait for revelation from Allah. The abovementioned verse was revealed in that context. Hence the verse begins with a reference to men earning and looking after women. Thus, it will be seen that this verse is purely contextual and does not lay down any stricture regulating behavior.

The most controversial word used in the verse is *idribubunna*; commonly interpreted to mean "beating". Such a translation is rejected, the word *daraba* having, in reality, a variety of meanings. While the word is equivalent to 'strike' in English, in the Qur'an, its usages have multiple meanings such as – to travel, to give an example, to strike, to regret, to ignore, to take away.

The phrase *idribubunna* can be and should be rendered to mean - 'separate them'. If a wife *or a husband*, indulged in disloyalty in marital matters,³⁷ it is better if they are separated from their respective spouses. Therefore, the phrase cannot, in any way, be interpreted to permit the beating of

³⁶ For a commentary on verse 4:34, see *supra* note 16.

³⁷ See Qur'an 4:128.

women. Such an understanding also runs against the core values running through the Qur'an. For example, the Qur'an says "*And of His signs is this, that He created mates for you from yourselves that you might find quiet of mind in them, and He put between you love and compassion.*"³⁸ and "*that believing men and women are one another's friends and they enforce what is good and prevent what is evil*"³⁹ and then, "*even at the time of divorce, men are obliged not to mistreat and leave them with kindness*".⁴⁰ How can the same Qur'an allow men to beat them? As explained above, one must collate all verses together to know the final intention of the Qur'an and selective analysis is to be avoided.

It is also important to note that the Qur'an, except in three places, does not use the word 'husband' or 'wife', as usually, husband implies authority over wife in a patriarchal culture. It either uses common nouns like 'men' and 'women' or even more significantly, it uses the term *zawj*, which refers to the couple as opposed to an individual. This indicates complete equality. It is a unique feature of the Qur'an that it treats men and women on such parity even though it was revealed in a highly patriarchal society. It is unfortunate that Muslims preferred to revert to their old ways rather than abide by the divine instructions.

VII. IS A WOMAN A HALF-WITNESS?

Another legal myth is that a woman is a half-witness compared to man as the Qur'an requires two female witnesses in place of one man in financial transactions. The relevant Qur'anic verse states:

*"O you who believe, when you contract a debt for a fixed time, write it down. And let a scribe write it down between you with fairness; nor the scribe should refuse to write as Allah has taught him, so let him write. And let him who owes the debt dictate, and he should observe his duty to Alla, His Lord, and not diminish anything from it. But if he who owes the debt is unsound in understanding or weak, or (if) he is not able to dictate himself, let his guardian dictate with fairness. And call to witness from among your men two witnesses; but if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two errs, one may remind the other...."*⁴¹

³⁸ See Qur'an 30:21.

³⁹ See Qur'an 9:71.

⁴⁰ See Qur'an 2:221.

⁴¹ See Qur'an 2:282.

This elaborate verse on writing down a debt transaction itself may surprise some people, leading to their questioning its necessity in the Qur'an. Though the Arabs had taken to international trade, very few of them were literate and they hardly ever indulged in written transactions. Most of the dealings were oral and often resulted in disputes. Hence the Qur'an emphasises on writing with the object of minimising disputes. It should also be noted that the tenor of the verse is recommendatory and not obligatory. A requirement of two witnesses indicates that the written agreement was more credible and trustworthy; hence such a recommendation is made. However it is to be questioned as to why the Qur'an required two women in place of one man. Can this lead to the conclusion that a woman was a "half-witness"? It is my opinion that this verse does not warrant any such conclusion.

As I have emphasised before, no verse should be read in isolation; the general approach of the Qur'an must always be kept in mind. The Qur'an makes it clear that men and women are equal in abilities, capacities and intellectual gifts; verse 3:1934 holds that men and women will be equally rewarded, while verse 24:6:9 clearly states that men and women are equal in matters of witness too. The cultural context at the time of revelation needs to be kept in mind. Few women possessed the requisite business expertise; hence this verse was revealed so that "if one of the two errs, the one may remind the other."

There are other explanations as well, offered by some liberal and progressive commentators. Maulavi Mumtaz Ali Khan,⁴² for example, maintains that requirement of two women is a sort of privilege, rather than disability. If one woman is menstruating or has delivered or is suckling her child, the other may go and bear witness. Such privilege has not accorded to man. Moreover, there is no common consensus among jurists that women are half-witnesses as well. Ibn Qayuyim, a prominent disciple of Ibn Taymiyyah, maintains that a single woman, if she is reliable, can be accepted as a witness. He says:

"When the woman is perfect in retaining in memory what she observes, is wise and also religious-minded, the object is served by her evidence alone....On many occasions, the evidence of one woman alone is considered sufficient. The better proposition, therefore, would be that a matter be decided on the evidence of two women and; the oath of the

⁴² MAULAVI MUMTAZ ALI KHAN, HUQUQ AL-NISWAN (1898).

*right holder plaintiff (which means it should not be necessary to produce a male witness along with them). This is what is stated by Imam Malik and it is one of the views attributed to Imam Ahmad....*⁴³

Thus, it will be seen that even Ibn Taymiyyah and his disciple Ibn Qayyim, who are considered quite orthodox in their approach, do not maintain that the Qur'anic verse makes a woman a half-witness. Everything depends on her understanding, honesty, capacity, intellectual ability and experience and even one woman's testimony will suffice. Today, women specialise and deal in complex operations of high international finance. Today one cannot maintain the view that a woman is not capable on her to be a proper witness to a business transaction. The verse was purely contextual and should not be used to deride women today. Ibn Taymiyyah and Ibn Qayyim maintained that one woman was sufficient as a witness in the fourteenth century itself. Given the significant leaps taken by women in the 21st century, it then becomes impossible to argue that they cannot handle financial transactions on their own.

VIII. INHERITANCE: IS A WOMAN TO INHERIT HALF OF WHAT HER BROTHER INHERITS?

This is another aspect of a woman's right which is often held against her by men. The Qur'an does allocate a woman half the portion of that of her brother in her father's property. However, this verse too has to be treated as contextual rather than normative. Women in pre-Islamic society had no right to inherit father's property. A woman came to the Prophet and complained that when her husband died, since she only had a daughter her brother in law seized all her husband's property, arguing that Arabs do not give any share to daughters in inheritance. It was on this occasion that the verse on inheritance was revealed and the Qur'an created inheritance rights for sisters half that of their brothers. Therefore, the Qur'an created an inheritance right when there was none. Moreover, this verse, like the others, has to be understood in context of the circumstances existing then. A woman in those days was not an active economic agent; the Qur'an attempted to improve the situation through gradual change. Additionally, the Qur'an tried to compensate her in other ways. Firstly, she was given the right to demand *mehr* from her fiancé and unlike the pre-Islamic period, she was entitled to keep the *mehr* amount or property and not her father. No marriage was valid without *mehr* being paid to her and Qur'an said she could demand even a heap of gold. Thus, *mehr* tended to

⁴³ IBN AL-QAYYIM, I'LAM AL-MUWWAQ'IN Vol. I 91 (1973).

be a very substantial amount. When an attempt was made to impose a ceiling on the *mehr* amount, a woman, Fatima, objected. She recited the Qur'anic verse about *mehr* and argued, "O Umar, when Allah has allowed us to demand heap of gold who are you to put a ceiling over it?" Umar, the second Muslim Caliph, immediately withdrew his proposal.

Additionally, the Qur'an makes it obligatory for husband to maintain his wife even if she has the means to maintain herself and has substantial property or income. Interestingly, the *Ulama* defined maintenance during Aurangzeb's time (included in *Fatama Alamgiri*) as serving her cooked food (there not being any obligation on the woman to cook the food), stitched clothes, an independent house to live in and if husband cannot afford an independent house, an independent room with separate access as well as other necessities for her health and beauty. The concept of maintenance is, therefore, quite comprehensive in Islamic *Shari'ah*. If the husband does not pay the wife maintenance, *Shari'ah* entitles her to take a loan in her husband's name and the husband will have to pay off the loan. She is also entitled to take the amount due to her from his pocket, without his permission, in case he has not paid her maintenance. Hence, when the verses are seen in totality, even if the sister's share was half of that of her brother's, the man ended up accumulating lesser money on account of the many benefits given to the woman.

Hence, the Qur'an does give full property rights to women, on par with men, and makes it clear that what she earns is hers and neither her father nor her husband can claim that amount.

IX. MARRIAGE

Marriage in Islam, as is well-known, is a contract; not a sacrament unlike in Hinduism; a woman has same rights in a marriage contract as the man. She can stipulate conditions, and if those conditions are violated, it would amount to breach of contract and the marriage would be invalidated. However, it is also important to note that in order to emphasise the seriousness of marriage, Qur'an calls it *mithaqan ghalizā*.⁴⁴

It is therefore a civil contract with an element of spiritual companionship. It, being a strong covenant, should not be broken on petty considerations. Nevertheless, it is primarily a contract of civil nature; without consent from both the parties, the marriage cannot be solemnised. Thus, a

⁴⁴ A strong covenant, *see* Qur'an 4:21.

father has no right to give consent to his daughter's marriage without her specific approval. Her consent should be obtained in the presence of two most reliable witnesses; both witnesses should testify before the *qazī*⁴⁵ and the bride should specify her marriage conditions including the *mahr* amount. Amongst the conditions, she can also specify that her husband will not take another wife absolutely or without her consent and if he does, she is entitled to dissolve the marriage. Many prominent women used to stipulate this condition in their marriage contract in the early history of Islam. Among those, according to some Sunni historians, was the Prophet's grand niece Sakina, daughter of his grandson Imam Husain, the martyr of Karbala (though, according to the Shi'ah historians, she had died in prison in Syria in her childhood). Besides Sakina, there were many learned women who would stipulate such a condition.

Child Marriage

Like any other patriarchal feudal society, the institution of child marriage existed in Arabic society. However, the woman was given the right to accept or reject the marriage on attaining majority. This right in shari'ah language is called *khayar al-bulugh*. . The woman had every right to exercise this option and could not be coerced into accepting the commitment which her father made when she was a child. .

The Inheritance of Women

In pre-Islamic times, women could be inherited. This was strictly prohibited by the Qur'an. The Qur'an says, "O you who believe it is not lawful for you to take women as heritage against their will; Nor should you straiten them by taking part of what you have given them, unless they are guilty of manifest indecency. And treat them kindly...."⁴⁶ This verse is referring to two pre-Islamic practices. The first practice was the practice of the son inheriting his father's wives, except his own mother, on the death of the father. The Qur'an prohibited this in the above verse. The second practice was the practice where Arab men would trouble wives who they did not like, so much that the women would be forced to obtain divorce; this would enable the men to take the dowry amount. This was highly unfair to women and hence, the Qur'an prohibited this. There were some exceptions though – this included indulgence in an extra-marital relationship. The verse also exhorts men to treat their wives with kindness.

⁴⁵ The priest.

⁴⁶ Qur'an 4:19.

The next verse also exhorts men that “*if you wish to have (one) wife in the place of another; and you have given one of them a heap of gold (qintaran) would you take it by slandering (her) and (doing her) manifest wrong?*”⁴⁷ Here too, two things have been emphasized: one, a man should not make false accusations in order to divorce the wife and two, he should not take away dower from her even if he has given a heap of gold.

Guardianship for Marriage

In pre-Islamic times, a marriage guardian, known as *wali*, was required for the conduct of the marriage ceremony. No *nikah*⁴⁸ could be performed without the agency of *wali*. However, the Qur’an does not make any reference to this institution of *wali*. This clearly indicates that an adult woman could enter into a marriage contract herself, without the agency of her father or in absence of the father, her grandfather or uncle or brother. However, similar to other situations, this was too radical a step for Arabs to accept. The jurists retained the institution of *wali* in the case of *bakirah*, a virgin who was marrying for the first time but allowed a *thayyib*, that is, a widow or a divorcee, to marry without a *wali*. The justification rendered was that a virgin was not experienced and hence, required her father or nearest male relative to act as her marriage guardian. However a widow or a divorcee was experienced enough to dispense with the presence of a marriage guardian. With or without a marriage guardian, the consent of the woman was nonetheless absolutely necessary.

The Qur’an has instituted further reforms in the institution of marriage and details of these reforms are given in the verse 4:23. In pre-Islamic days, there was no sanctity of blood relations in marriage and one could marry, *inter alia*, half-mothers, half-sisters, father’s sisters, mother’s sisters. This verse prohibits such marriages. It says:

“Forbidden for you are your mothers, your daughters, your sisters, your father’s sisters, your mother’s sisters, the daughters of your brothers, and daughters of your sister’s your foster mothers who suckled you, your sisters from suckling, the mothers of your wives, and your step daughters residing in your homes from your wives which you have already consummated the marriage with; if you have not consummated the marriage then there is no sin upon

⁴⁷ See Qur’an 4:20.

⁴⁸ Marriage.

you; and the wives of your sons that are from your seed, and that you join between two sisters except what has already been done. God is forgiving, Compassionate.”⁴⁹

This is a very thorough reform of the pre-Islamic institution of marriage which, among other things, restores the dignity of women. It was humiliating for women that they could be married to their husband’s sons or to their step brothers.

X. DIVORCE

The Qur’an did not approve of triple *talaaq*⁵⁰ (divorce) in one sitting as was the case in pre-Islamic days. Such divorce was considered irrevocable unless the divorced woman married another man, the marriage was consummated and then the man divorced her. Only then could the woman become *hallalah*, that is, it became permissible for her to marry her former husband. This was, evidently, a very humiliating practice. The Qur’an brought about thorough reform in this form of divorce and required the three divorces to be spaced at one month’s interval, and to pronounce one divorce at one time, after checking that the woman was not in a state of menstruation. The man could take back his wife before one month was over. If that did not happen and the second pronouncement was made, the man could still revoke the declarations by taking her back before the third pronouncement.

The Prophet also denounced the practice of *hallalah* and forbade it. After pronouncement of the third divorce, the woman could marry another person of her choice. If the second husband divorced her for any legitimate reason, and not for making her *hallalah*, the woman was free to re-marry her first husband. These instructions are specified in the verses 2:229-2:230. They say:

“The divorce is allowed twice. So either remain together equitably, or part ways with kindness. It is not lawful for you to take back anything you have given the women, unless you fear that they will not uphold God’s limits, then, there is no sin for what is given back.”⁵¹

⁴⁹ See Qur’an 4:23.

⁵⁰ Divorce.

⁵¹ See Qur’an 2:229.

“So if he divorces her again, then she will not be lawful from him until she has married another husband. If the other husband divorces her, then they are not blamed for coming back together if they think they will uphold God’s limits.”⁵²

The Prophet (PBUH) strongly denounced combining three divorces in one sitting. There was great wisdom in spacing the declarations over three months. If divorce was pronounced in a state of anger or in haste, a month was available for friends to intervene or arrange for arbitration and bring about reconciliation; another month was available if divorce was pronounced a second time also. Moreover, the idea behind making it obligatory for the man to pronounce divorce only after the woman’s menstrual period was over was that once his anger subsided, the man could cohabit with the woman, and that could make him decide in favour of taking her back.

XI. EFFECT OF THE SPREAD OF ISLAM

Thus, in the matter of divorce also, abuses were removed and women’s status improved considerably. However, subsequently, when Islam spread to parts of the world far and wide and non-Arab societies and cultures became part of the Islamic world; women’s status received a shocking and unfortunate setback. In feudal societies like Persia and Byzantine, woman had a very low status. Thus, women in these areas relapsed to the low status as found during pre-Islamic days. It was worse that many *fuqaha*,⁵³ who interpreted Qur’anic verses or used *abadith*, came from a non-Arab background and their formulations resulted in further lowering the status of women. Further, the capital of Caliphate shifted from Madina to Syria (Damascus), which was part of the Byzantine Empire during the Umayyad period. Subsequently, when the Abbasid captured power, it shifted from Damascus to Baghdad, former part of Persian Empire. Thus, all eminent *ulama* and jurists also flocked to these capitals. Moreover, the local *ulama*, from the non Arab society, came with a thoroughly feudal mindset. Women’s rights suffered in this feudal environment. The Arabs too were not ready to accept any revolutionary change in women’s status and give them equal status. They also had suppressed women for centuries.

Using *qiyas* and *ijma*, the Arab and the non-Arab jurists and *ulama* agreed on the lower status of women. Since the Qur’an could not be tampered with, the *abadith* was fabricated and, as I mentioned

⁵² See Qur’an 2:230.

⁵³ Islamic jurists.

above, the Qur'anic verses began to be interpreted in light of the *ahadith*. In the context of divorce, the practice of triple divorce, though denounced by the Prophet who, as mentioned above, had clearly indicated that the best form of divorce, *talaaq-i-ahsan* was one with spread out declarations, was restored through the *ahadith*.

Another instance of how the later jurists have contributed to the widening gap between the Qur'anic revelations and the *ahadith* is the book, *Bibishti Zaiwar*,⁵⁴ written by Maulana Ashraf Thanavi, an *alim* (jurist) from India, in Urdu. The book discusses the normative behavior of an Islamic woman. Given the subject matter, the book is given as a part of her dowry to many Muslim women in India, to enable them to behave as the ideal wife, mother and daughter. The Maulana's views, such as the belief that women should not get educated as education will enable them to write love letters, are soaked in feudal culture, much influenced by the third century Persian tract, *Perfumed Garden*. Several Muslim women have spent their lives reading this book. It is a perfect example of how Qur'anic teachings have been distorted by Muslims in their own cultural milieu. The misconception that such views are Islamic persists.

XII. STATUS OF WOMEN IN THE CONTEMPORARY MUSLIM WORLD

The Muslim world today is facing two major problems: gender justice and terrorism. The problem of terrorism is limited to certain areas, but that of gender justice has become almost universal in the Islamic world. Saudi society happens to be the most restrictive of women's freedom and empowerment, followed by some other Muslim countries; though, one must concede that changes are taking place and the situation is not entirely static.

It would be interesting to discuss why the Islamic world tends to be lagging behind in giving equal status to women despite Qur'anic teachings to the contrary. Generally, even scholars and academics ascribe the disparity in the status of men and women to Islam and its teachings, as these academics are not well-versed in Qur'an and Islamic studies. However, the causes of Muslim women's backwardness are socio-cultural and political.

Socio-cultural factors influencing the treatment of women

⁵⁴ The Jewellery of Paradise.

The Muslim world, especially the Middle East, was located very strategically from the perspective of western colonial interests. The colonizing countries of the West, especially France and England, supported monarchs and dictators in the Middle East sustained their feudal culture and encouraged the growth of a class comprising feudal elite along with the religious elite. These feudal lords too, in turn, supported the conservative *ulama*, who were against any progressive social change.

There were some Muslim countries which defied this norm. For instance, in Egypt, on account of the presence of intellectual ferment and Western-educated elite like Ahmad Amin and progressive religious clerics like Muhamma Abduh, women's status was slightly better. On the whole, however, the socio-cultural institutions and traditions inherited from the earlier feudal culture are too deeply enmeshed to allow change on a wider scale. The condition of other Muslim countries was worse, that they were ridden with poverty and high rates of illiteracy. Before the discovery of oil, Middle East was immersed in poverty and illiteracy; colonialism remained a great hindrance in bringing about any socio-economic changes.

In Iran, the Shah regime, however politically repressive and reactionary, was in favour of gender equality. Women, especially from the upper classes, enjoyed a greater degree of freedom. The Shah even abolished *hijab*. However, such fiats do not bring about real change in the society until there is thorough change in the socio-economic structure from below. The rural areas in Iran continued to be quite conservative and continued to remain under the strong influence of feudal lords or conservative clergy in alliance with feudal land-holders.

In India, where Muslims are a large minority, the Muslims happen to be poorest and most illiterate, with poverty and illiteracy levels rising by the day. Most of the Muslims are converts from artisan classes and castes and even today the bulk of Muslims belong to these socio-economic categories. The feudal elite migrated to Pakistan after partition, but poorer masses chose to remain in India.

Political Factors

Since western powers formed alliances with authoritarian regimes in the Islamic world, democratic revolution was prevented. For instance, in Saudi Arabia, monarchy is surviving with the help of America, which has established its military base there. In other Gulf countries like Kuwait and Qatar as well, Sheikhs rule with American support and suppress all democratic freedom. Egypt too, till

quite some back, was ruled by the highly suppressive regime of Hosini Mubarak. On account of authoritative regimes in the Muslim world, clergy get greater political importance as they can be depended on to provide religious legitimacy to such regimes. The clergy, in order to strengthen their religious influence, opposed any change and insist on strict application of shari'ah laws. Now however, the winds of revolution are in progress in the Middle East. Democratic institutions will usher in changes; such change however shall be gradual.

XIII. CODIFICATION OF PERSONAL LAW

A panacea often suggested for resolving the many contradictions and problems posed by *ahwal al-shakhsiyah*⁵⁵ is the enactment of secular laws replacing all personal laws. In the context of Muslims, acceptance of this idea seems improbable. The social and cultural conditions of Muslims make such a drastic change untenable for them. A possible solution is codification of the *Shari'ah* laws. The traditional *shari'ah* law is based on the concept of justice. Justice in the Qur'an is so fundamental that even the most conservative interpretation of the Qur'an cannot deny it. Though many *abadith* are regressive and against the spirit of Qur'an, there are some which are in line with it. Codification will help emphasise this spirit. Such codification should be with respect to laws pertaining to marriage, divorce, inheritance, custody of children in case of divorce, maintenance during persistence of marriage and status after the divorce. These are the most important areas of personal law.

Marriage

Marriage is, as already pointed out above, a civil contract in Islam. There is a need to rigorously observe, legally, the nature of the Muslim marriage. The *qazi* or the one who performs the *nikah* must obtain specific consent of the bride herself in person, in the presence of two reliable witnesses. The consent should specify the *mehr* amount (which should include the currency, whether it is gold or silver or property, the details of the property, other conditions such as the condition that the man should not take any other wife). All the details must be filled in the *nikah* form signed by the bride and the bridegroom, two witnesses and the *qazi*.

Mehr

If there is any deferred payment involved, when specifying the *mehr* amount, the former should be properly mentioned along with the time-frame within which it has to be paid and with a statement as

⁵⁵ Personal laws.

to the sum that has to be paid immediately. It is proposed that the minimum *mehr* amount be the aggregate of the salary of the bridegroom for three months. No ceiling should be imposed.

Polygamy

Normally, polygamy is not permissible, as even in the Qur'an it is allowed in certain exceptional circumstances only, such as for instance, to help widows.⁵⁶ A bride can, *inter alia*, stipulate that the husband cannot take any other wife during the subsistence of their marriage. Polygamy should not be treated as the right of the husband. This is in line with the Qur'anic verses. Even if a second marriage happens, the first wife's consent should be obtained. The *qazi* should only permit such a marriage if he is satisfied that the husband will treat both wives equally and justly.

Divorce

Triple *talaaq* should be banned and only *talaq-i-ahsan*, a divorce where the declarations are spread out, should be permitted. The husband should be made to pay the remaining part of *mehr* (*mehr muwajjal*), if any, along with other dues or jewellery or dowry items and what the Qur'an calls *mata*.⁵⁷ Three months' maintenance for the *iddah* period should be paid as well. Divorce should be in writing and with the signature of two witnesses and the *qazi*. Oral divorce should not be admissible. Before divorce is to be finally pronounced, the *qazi* should appoint two *bakamain*,⁵⁸ as per a Qur'anic requirement. The *bakamain* will try to bring about reconciliation and if that attempt fails, the husband should pronounce divorce once for the period of *iddah*.⁵⁹ After the *iddah* is over, the divorce will take place. Written divorce should be made compulsory.

Dissolution of Marriage

A Muslim woman should also have an option of dissolution of her marriage, as per the Dissolution of Muslim Marriages Act, 1939. All the grounds for dissolution have been specified in the Act⁶⁰ and need not be repeated here. This Act has also given her substantial relief and is to her great advantage.

⁵⁶ See Qur'an 4:3, 4:129.

⁵⁷ A one-time consolidated amount which should be substantial so as to help the woman in need or distress.

⁵⁸ Arbitrators.

⁵⁹ A period of three months.

⁶⁰ The Dissolution of Muslim Marriages Act, § 2 (1939).

Inheritance

As pointed out above, women get half the inheritance which their brothers get. Often, the woman does not get even that much on account of lack of awareness and cheating by her brothers. At times, familial pressure, the need to not anger brothers who she might have to approach in case she gets divorced, prevent her from staking her share as well. There is thus a need for, one, creating awareness among women about their rights. Secondly, there is a pressing need for emancipating women. If the triple *talaaq* is banned, the woman may no longer have to rely on her brothers for her financial security.

Moreover, as I have noted above, women should get an equal right in the inheritance. Unlike the situation when this law was enacted, women are now active economic agents, contributing equally to the wealth and income of the household. Her contribution should be recorded separately and given to her at the time of her marriage. Moreover, domestic chores should also be accounted for and counted as work. Iran has taken a lead in this respect. In Iran, even at the time of divorce, the woman is compensated for her domestic chores depending on the number of years she was a wife. This is a radical and a necessary step. Even if the woman does not get married, it should be made obligatory for the father to, at the least, make provision for one-third of the wealth to be willed in her favour. Such a provision should also be made up to one-third if the son predeceases his/her father. It has already been done in most of the Muslim countries.

CONCLUSION

Justice being a very important ingredient for *Shari'ah* laws, it is clear that there is enough scope within the Islamic *Shari'ah* to bring about changes ensuring gender justice. The Qur'an supports gender equality and so any such change will be in line with the Qur'anic framework. This will only help clear the misconceptions and contradictions that have crept in on account of difference cultural and customary practices. In fact, as already pointed out, if Muslims had carried out Qur'anic injunctions, without adding their cultural practices, the Islamic world would have been a great pioneer in ushering gender equality in the world. Unfortunately, feudalism destroyed, in practice, the revolutionary spirit of Qur'an.