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EVOLUTION OF WOMEN RIGHT REGARDING FAMILY MATTER UNDER ISLAMIC LAW

AUTHORED BY - SIFAT AASIYA AJMERI

ABSTRACT

The application of a certain body of law to individuals determines whether the laws in question are territorial or personal. To those who identify with a certain religious group, the body of civil law known as "personal law" applies. Therefore, Muslims in India are subject to Mohammedan law. The law of Mohammed is a personal law. An individual's "personal matters" are governed under the subset of civil law known as Muslim personal law.

Muslims in India are subject to what is known as "Muslim personal law," which is a branch of Islamic civil law. Injunctions from the Quran, Sunnah, and Ahadis, as well as the consensus view of jurists (Ijma), and the logical inferences from these three sources (Qiyas²) make up Muslim personal law.¹

In India, people of different faiths coexist. The country's strict enforcement of personal laws is a result. Christians, Hindus, and Muslims all have a say in India's legal system. Personal laws differ from other types of laws in that they are based on religious principles, which are inherently subjective.

A subset of Muslim theology, Islamic law establishes the rules for how Muslims should behave towards God and one another in conformity with Islamic teachings. It is the obligation of every Muslim, according to PBUH, to adhere strictly to Muslim law as it is a mandate from God and the rulers of Muslim nations. Muslims are those who have embraced the notion of peace through submission to God, as outlined in Islam, which signifies peace through submission and obedience to God's will and commands.

HISTORICAL BACKGROUND OF ISLAM

One must be well-versed on the Pre-Islamic Era's history, origins, and development of Islam in order to comprehend the actual character and extent of Muslim law. It was no easy work to piece together the history of pre-Islamic Arabia in the 630s, before Islam came into the picture. Few

¹ Carroll, Lucy. "The Muslim family in India: Law, custom, and empirical research." *Contributions to Indian sociology* 17, no. 2 (1983): 205-222.

archaeological sites were investigated, and there is a dearth of indigenous written records. Importantly, the research takes into account both written materials from other faiths and oral traditions that were subsequently documented by Islamic academics. In order to comprehend how Islam spread to India, one must examine the history of pre-Islamic Arabian society.

Ancient Arabian Civilization:

The birthplace of Islam is Arabia, however pre-Islamic Arabian society is often believed to have been just as morally and culturally desolate as the region itself. Daytime temperatures reached dangerously high levels, but evenings were chilly. In the distance, all that could be made out were palm and date trees, along with a few desert plants. The unkind character of the land made life very difficult for the inhabitants. With the exception of a few of cities like Mecca and Medina, there was no permanent social structure. The Arabian people relied heavily on commerce and livestock rearing for their livelihood. The Arab people did not adhere to a single faith. Some of them revered supernatural beings, while others held nature in high esteem. Because there was no established religion, prophet, or sacred text at this time, it was called "Jahiliyah" (the Days of Ignorance). The people of the desert obviously didn't know anything about religion or God since they were too busy focusing on making a living to devote any mental energy to contemplating these abstract concepts. There was no permanent community since the people who lived there were always on the move. Government and administrative authority over the people were therefore nonexistent. Elected chiefs oversaw the several subtribes that made up the larger tribes. Head leaders were known as caliphs or khalifas.²

The practices and habits that were common in the pre-Islamic era were quite strange, and many of them were downright cruel and illogical. They practiced burying undesired female children alive, which seemed unbelievable. The norms of the society were skewed towards the masculine gender. Women were in a terrible position. They treated women like property and did not treat them with any respect whatsoever. They were so despised by society that they were effectively enslaved. He is free to marry as many women as he desires since there is no legal limit on the number of spouses he may have. The freedom to divorce a woman at any time was unfettered even for Arab husbands.

Besides, women in the pre-Islamic era had it so bad that not even their modesty and virginity were protected; they were bought and sold. Women were mortgaged to men in the Age of Ignorance.

The harsh penalty for crimes was another key element of the pre-Islamic era. Both deterrence and

² Basu, Srimati. "Separate and Unequal: Muslim women and un-uniform family law in India." *International Feminist Journal of Politics* 10, no. 4 (2008): 495-517.

retaliatory purposes were served by punishment. As punishment for stealing, the criminal had his right hand severed. Also, the crime of adultery carried the death penalty of being stoned.

We may therefore get a clear picture of pre-Islamic Arabian society from the preceding topics. To sum up, pre-Islamic Arabian society was savage and morally rotten.

The Advent of Islam and the Reforms under Prophet Mohammad:

In a world when injustice, cruelty, and oppression are on the increase, religion must emerge as a means for society to govern the conduct of its members. Some believe that religious institutions do a better job of inculcating moral fibre, respect for authority, and honesty in a community than secular ones. A common bond that many individuals have is their religious beliefs. Through the establishment and maintenance of moral principles and values, religion aids in the improvement of society and brings about peace, justice, quality of life, and prosperity.

Society in pre-Islamic Arabia also struggled with injustice and violence. As a saviour, the PBUH presented a new faith to the Arab world; he dubbed it Islam. PBUH was born at Mecca in the year 571 AD. Amina and Abdullah were his parents. In Mohammad's childhood, both his uncle Abu Talib and grandfather Abdul Muttalib played important roles (PBUH). At the tender age of thirteen, Mohammad joined his uncle in business, displaying a serious demeanour that had been with him from childhood. During a trading mission to Syria, Khadija, an affluent widow, met Mohammad (PBUH) when she hired him to oversee her land. She was deeply affected by Mohammad's (PBUH) virtue and offered him her hand in marriage. In contrast to Mohammad's twenty-five years of age, she was forty. Prophet lived with her till the day she passed away. Prophet married various widows after Ayesha Begum's death, with the exception of the fourth. As a result of their marriage, Muhammad and Khadija produced six children: two sons and four daughters. His sole surviving daughter was Fatima, the fourth in the family.³

The PBUH spent a great deal of time alone himself. He was a thoughtful guy and a devoted Christian. A cave on Mount Hira was his frequent retreat for contemplation and prayer. Official recognition of Mohammad as a prophet came when he received his first Wahi, or message from God, in his forty-first year of life. A voice was heard by him. Gabriel, the archangel, was speaking. There was a great deal of fear, doubt, and anxiety for Mohammad (PBUH) when the angel departed. Therefore, Mohammad memorised this as the first revelation. The Holy Quran, on the other hand, is a compilation of revelations that were later documented by the companions of Mohammad (PBUH). Thus, the Quran is more accurately described as a divine revelation than

³ Rahman, Fazlur. "A survey of modernization of Muslim family law." *International Journal of Middle East Studies* 11, no. 4 (1980): 451-465.

a work of fiction. This was the original method of creating Islam in 610 AD.

Not only was Mohammad (PBUH) a great preacher of Islam, but he was also an outstanding social reformer. By establishing new standards of living for the benefit of society, Mohammad (PBUH) hoped to eliminate the social problems that afflicted it. Khadija, the prophet's (PBUH) wife, was commanded to believe and accept the divinely-manumitted directives. Nonetheless, these lectures were opposed by the majority of Meccans. There were several confrontations between those who followed the religion and those who did not. Nonetheless, due to the prophet's (PBUH) magnetic personality, most Arabs converted to Islam very rapidly.

HISTORICAL DEVELOPMENT OF MUSLIM LAW

The development of Muslim law may be divided into five periods.

The First Period (622-632 AD): The legislative term begins in 622 and ends in 632. The foundation of Muslim law may be traced back to 622 A.D. (Hejarat) and concludes in 632 A.D. At Mecca in 609 A.D., Allah spoke to the Prophet (PBUH) for the first time. Afterwards, the people of Mecca were apprised of the divine revelation that was sent to the Prophet (PBUH) on a periodic basis. The revelations in Mecca, however, were mostly spiritual rather than religious and did not contain any positive legislation (Fiqh) as the majority of people did not accept Mohammad (PBUH).⁴

When PBUH travelled to Medina in 622 A.D., the people there readily accepted the revelation he had brought. The disclosures were sufficient and significant to resolve all societal issues. Revelations of any significance occurred between the years 622 and 632 A.D. Teaching people the right and wrong ways to live was the Prophet's (PBUH) primary mission.

The final decade of the life of the Prophet (PBUH) is the basis for the first two canonical sources of Muslim law: the Quran and the Hadith. It was at this time that the majority of the Quran's legal passages, as well as many of his most important judicial rulings and traditions, were revealed. The Quran's verses are considered to be revelations from on high, while the traditions are considered to be revelations from below. Thus, Islam's first historical era is appropriately referred to be the "Legislative Period".

The Second Period (632-661 AD): The Caliphate Period is another name for this time frame. This time frame consists of thirty years. The first four Islamic caliphs are known to have lived during this time. No one is selected to succeed the Prophet (PBUH) after his death. The result was an election where Abu Bakr became victorious. This officially recognised Abu

⁴ Sezgin, Yüksel. "The Promise and Pitfalls of Women Challenging Muslim Family Laws in India and Israel." *Sexuality in Muslim Contexts: Restrictions and Resistance* (2012): 98-123.

Bakr as the first caliph of Islam. Notably, the youngest bride of the Prophet (peace be upon him) was the daughter of Abu Bakr. Caliph Abu Bakr enjoyed widespread acclaim. Omar succeeded him as Second Caliph upon his death in 634 A.D. The third caliph was Osman, and the fourth was Ali, chosen immediately after. Because of their strong relationship with the Prophet (peace be upon him), these four caliphs were referred to as the correctly guided caliphs. Following Mohammad's passing, the holy messages were dispersed. The second period saw the gathering and writing together of the dispersed revelation to provide its ultimate form. Zaid, a companion of the Prophet (PBUH), compiled the original Quran, but the third caliph requested that he edit and modify it because of certain passages that contradicted each other. So, Osman's Compilation is the only genuine Quran version that we have today.

The Third Period (661-900 AD): Following Ali's murder, the third caliph of Islam entered a new era in Islamic legal thought: the Third Phase. The sons of Ali were Hussain and Hasan. Hasan was appointed Caliph upon Ali's demise. Caliphate was the standard for regular kinship. By the year 750 A.D., Islamic law had already expanded far and wide, particularly inside the Sunni Caliphate. During this time, Muslim law evolved in many ways, which is a major accomplishment. The first step was to gather and analyse the dispersed Sunnat and Ahadis of Muhammad (PBUH). During this time, Bukhari, Muslim, and Malik Ibn-Anas were among the most influential scholars. An further innovation that was considered the most scientific approach to lawmaking was analogous reasoning, also known as Qiyas.⁵

The Fourth Period (900-1924): When it comes to Islamic legal history, the Fourth Period is up there with the best of them. During this time, the traditions and precepts were compiled. When it comes to collections, Bukhari is considered the most authoritative.

During this time, the fourth Sunni Schools are being established. His dynasty lasted until 1517 AD, when Abdul Kasim Ahmed of the Sunnis Sect became caliph. The growth of Muslim law came to a standstill at this time, which is an important point to remember. That is, no one with the knowledge or scholarship to propose new legal ideas arose after the death of the Profounder of the Fourth Sunni Schools. Once the four jurists established their rules of law, society began to obey them. Nonetheless, a number of other scholars began issuing their own rulings, or Fatwas. The fatwas, or views, are not, however, canonical in Muslim law. Fatwai Qadi Khan and Fatwai Ailamgiri were two of the most significant fatwas.

The Fifth Period (1924 A.D. to Till Date): After the Caliphate was abolished in 1924 A.D., the contemporary Period of Islamic Law started. Traditional Islamic law was not administered or

⁵ Narain, Vrinda. "Muslim women, family law and equal citizenship in India." *Journal for Semitics* 16, no. 2 (2007): 498-517.

enforced since there was no Caliph Head. Ijtihad, or independent reasoning, was more useful in shaping Islamic law in this context. Putting one's own judgement on a matter or the rule of law to the test is the technical definition of these words. It is also believed that the ulema—a group consisting of muftis, Maulvi or Moollah, Kazi, Mujtahid, and jurists—have helped shape Islamic law. A new era of law emerged thereafter within Islamic jurisprudence. A number of Acts passed by the British government altered the system in India. Marriage, divorce, dower, gifts, wills, inheritance, and other family-related matters were subject to Muslim personal law. In spite of this, all Indian nationals were subject to the same laws and statutes, including the Indian Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Contract Act, etc. The Dissolution of Muslim Marriages Act was enacted in 1939, after the Shariat Act of 1937. The Parliament has established many additional statutes that govern Muslim personal law. Thus, the existing Muslim law of India comprises both the canonical texts and the codifications of statute and case law.⁶

Quran as the Foundation of Muslim Law:

The correct definition of the term "Quran" is "that which ought to be read" or "The reading." As the primary text for Islamic law, the Quran is a divine revelation to the Islamic prophet (peace be upon him). As far as Muslim law is concerned, it is paramount and superior. The first revelation, or Wahi, reached the Prophet (PBUH) in 609 A.D., as previously stated. After then, it lasted for another 23 years, in bits and pieces, until 632 A.D. Therefore, it was the literal manifestation of God's words as they were conveyed to the prophet (PBUH) by Angel Gibriel. There are over 66,66 verses in the current version of the Quran, which is organised into 114 chapters. Under the direct instruction of the Prophet, the chapters were synced. Ayat are the individual verses in the Quran, while Sura are the chapters that make up this sacred text. As a result, the Quran is the cornerstone of Islamic law. Being the perfect law and a direct decree from Allah, its importance is spiritual and holy.

Matters where Personal law is applicable to Muslims:

The first two groups are the only ones to whom Muslim law applies. Muslims do not rely on their personal law when dealing with issues of criminal law and evidentiary law.

⁶ Larouche, Catherine, and Katherine Lemons. "The narrowness of Muslim personal law: Practices of legal harmonization in a Delhi family court." *The Journal of Legal Pluralism and Unofficial Law* 52, no. 3 (2020): 308-329.

LEGAL STATUS OF MUSLIM LAW IN INDIA

India stands apart from other countries due to its religious pluralism. For as long as anybody can remember, Islam has been a thriving religion in India. The following two aspects of Muslim law must be understood in order to comprehend its legal standing in India: Before the British Empire Those in charge of Indian kingdoms were granted complete religious freedom. Thus, the Muslims were subject to their own code of law and did not allow their rulers any meddling. Similarly, Muslim rulers in India do not meddle in the religious affairs of the country's many faiths and communities. During the British Period, there were two categories: Dar-ul-Islam and Dar-ulHarb. When a Muslim takes power in India, the country might be considered Dar-ul-Islam according to this categorization. Furthermore, Dar-ul-amn refers to a nation in which Muslims and non-Muslims peacefully coexisted under a joint government.⁷

Islamic Law under British Rules:

A system of British law was introduced into India when the British colonisers took control of the nation. The Indian system of Pluralism already has this component. The English colonisers in India introduced their system of law known as common law and the statutes they had passed. In time, they began enforcing various forms of British law on India while claiming Lex Loci as their legal cover. The British Parliament even acknowledged that India needed a system of law immediately. As a result of the Law Commission's recommendations and the charter Acts of 1833–1853, India adopted a large body of British codified law. The Indian Penal Code of 1860, the Indian Succession Act of 1865, and the Indian Evidence Act of 1872 are only a few examples of the laws enacted in the aftermath of the 1857 uprising.

Outside of these statutes, rules that were originally associated with religion remain unaltered. Muslims in India came into being as a result of the Indian people's autonomy and the fact that their religious traditions were permitted to rule themselves. Assisting those with expertise in Muslim law, the Anglo-Indian Courts primarily oversee matters pertaining to Muslim law. The Anglo-Indian Courts transcribed the "Fatawa-e-Alamgiri" from the Ithna Ashari Shia Law code so that it could run smoothly. Sharai-ul-Islam by Najmuddin al-Hilli, a two-volume compilation of Muhammadan legal treatises. This meant that the Anglo-Indian courts had access Islamic legal texts translated into English.⁸

Rapid adoption of the English method of codifying legally enforceable decisions into books and digests occurred in Islamic law. Principles and precedents of Muhammadan law (Calcutta, 1825)

⁷ Giunchi, Elisa, ed. *Muslim Family Law in Western Courts*. London: Routledge, 2014.

⁸ Niaz, Noorjehan Safia, and Zakia Soman. *Seeking justice within family: A national study on Muslim women's views on reforms in Muslim personal law*. Notion Press, 2023.

by W.H. MacNaghten was the first outstanding collection of Anglo-Muhammadan" judicial precedents. Dinshaw Farideenji, another significant masterpiece, emerged a century later. *Muhammadan Law as Presented by the Mulla (Bombay 1906)*.⁹

The employment of Mulla is commonplace in both the higher and inferior courts of British India. Despite the presence of works by Abdur Rahim and Ameer Ali, they were not widely used. The code that Mulla developed, organised by part, was approved by the court.

The Islamic Sharia plainly forbade that.

MUSLIM LAW UNDER THE PRESENT LEGAL SYSTEM

The Indian Constitution makes particular reference to "Personal Law" in the seventh Schedule appended to Article 246. This schedule has three lists of "Subject Matters of laws made by Parliament and by the State Legislatures of States."

The following matters were included in the list under entry 5: marriage and divorce, adoption, minors and babies, intestacy and succession by will, joint family and partition, and any other matters that the parties involved in the legal processes had personal jurisdiction over prior to the start of this condition.

Status of Muslim Women in Pre-Islamic Period:

Numerous authors and researchers have examined the position of Muslim women in pre-Islamic societies, and their findings are not novel. Traditional tribal law did not recognise women as full members of society during the pre-Islamic era. Muslim women before then had no legal protections and were instead bought and sold for the benefit of their guardians. No rights of succession or property were bestowed upon them. There was unrestrained polygamy and female infanticide mentioned in various literary sources. There were several forms of marriage common in the time before Islam, including patrilineal marriage.

Before Islam came to Arabia, women did not have the same rights or perform the same roles as males because of the different social statuses of the two groups. Some evidence suggests that women in Arabia (the Nabataea Kingdom) had separate legal identities; for instance, in Makkah, a number of privileges were bestowed to the female members of society. In addition to this, a few of them have been in positions of significant authority.

Among the most well-known practices in pre-Islamic Arabia was the practice of burying live female newborns. There were primarily two reasons for this: first, the financial burden of caring for a baby girl, and second, the fear of torture at the hands of the hostile tribe.

⁹ Bilimoria, Purushottam, and Renuka Sharma. "Muslim personal law in India: colonial legacy and current debates." *The Case of India* (2014).

According to a Hadith in Bukhari, the second Caliph Umar remarked, "we never used to give significance to ladies in the days of the Pre-Islamic period of ignorance, but when Islam came and Allah mentioned their rights, we used to give them their rights but did not allow them to interfere in our affairs." This verse suggests that Islam elevated the status of Muslim women.

It is not simple to comprehend the ideal family structure during this period as research on the formation of families in pre-Islamic Arabia has not provided a clear picture. From a macro perspective, it seems that the family structure is mostly patriarchal. Because of the widespread belief in their inherent superiority, families preferred to produce sons rather than daughters. Even after the father's death, the woman would have no legal claim to the bequest as her only rights were those inside the family. To be more specific, bearing male progeny is the supposedly crucial function of women inside the family. Chores around the home include cleaning, laundry, buttermaking, making clothing for renters, and spinning wool. Women in the pre-Islamic era did not have many rights, as a result.¹⁰

Position of Women in Islamic Society:

Muslims of both sexes are expected to fulfil their religious duties, which include worship, prayer, fasting, and pilgrimage to Mecca, as they are seen as equal in God's view. "I will not allow the labour of any of you, male or female," the Quran declares. Each of you comes before the others. (Mohammed 3:195).

The prophet Muhammad (peace be upon him) brought forth several commendable advancements. It was at Mecca, in particular, that Muhammad sought to institute a matrilineal system to supersede the patrilineal one. Fundamental protections for women were bestowed upon them by Muhammad (PBUH), who instituted several significant rights, including the right to inherit, the ability to own property, and the freedom to divorce. The standing of women in society was elevated in the 7th century by changes to three areas: marriage, divorce, and inheritance rights. The Oxford dictionary of Islam calls for women's independence, which includes ending female infanticide and recognising women as complete human beings. According to the prophet, the bride price that was once given to the father is now considered a marital gift that the woman keeps as her own property. It was previously not considered necessary to get the bride's assent to the marriage in the pre-Islamic era, but Muhammad's reforms made it absolutely necessary. Patriarchal societies have also liberalised the ability to inherit, which was historically reserved for males.¹¹

¹⁰ Sezgin, Yuksel. "Do Not Betray God or Your People: Negotiating Women's Rights Under Muslim Family Laws in Israel and India." *J. Int'l & Comp. L.* 4 (2017): 81.

¹¹ Subramanian, Narendra. "Making family and nation: Hindu marriage law in early postcolonial India." *The Journal of Asian Studies* 69, no. 3 (2010): 771-798.

The Islamic era saw tremendous progress in women's standing compared to the pre-Islamic era, mostly as a result of law. Muhammad further raises women's standing by protecting their rights in the fields of education and economics. Women were also active in the workforce, working in a variety of professions and engaging in commercial activities. Research into Muhammad's life reveals that he sought advice from women and gave their opinions great consideration. When the Quran was canonised, women played a crucial role in the process. Patriarchal cultural standards, rather than Quranic values, dictated how women were to be treated in pre-modern Islam. Therefore, elevating women's position becomes an important concern in contemporary reformist Islam.

Provision of Quran upon the Status of Women:

Out of all living things, Allah values females the most. "And we have surely honoured the children of Adam and brought them on land and sea and provided for them of the good things and preferred them over much of what we have created, with [definite] preference," according to verse 17:70 of the Quran.

According to the Holy Quran, men and women are treated equally in matters of punishment and reward. There is no greater significance than doing Islamic duties and taking part in religious ceremonies. O human race, without a doubt, the Quran states it directly. We separated you into many groups based on gender so that you could understand and respect each other's cultural backgrounds. Allah looks at the most upright among you with the highest regard. According to al-Hujurat, Allah is acquainted with one [49:13].

They are also obligated to each other and have equal rights according to the Quran. As for partners in a relationship, it is also permissible to urge them to fulfil their responsibilities [AI - Baqarah, 2:228].

Holy Quran criticises pre-Islamic era's abuse of women in [An Nah, 16'58-59]. Muslims are commanded to treat women with love and tenderness in An-Nisa 4.19 of the Holy Quran. "Load them of where you dwell out of your means and do not harm them in order to oppress them" is another important provision from the Quran, as mentioned in verse [Al-Talaq 36.5]. You should hasten the birth if they are expecting a child. The Holy Quran also states, "Then, either hold [her] in a respectable way or release [her] with decent care" [Al-Baqarah, 2:229], thus it's important to pay them if they're nursing you and have a mature conversation about it.¹²

The passage from the Quran states that one's status in society, race, gender, or ethnicity have no bearing on who has precedence or supremacy. Taqwa, also known as God Consciousness, is the

¹² Menski, Werner F. "South Asian Muslim law today: an overview." *Sharqīyāt: journal of the Dutch Association for Middle Eastern and Islamic Studies* 9, no. 1 (1997): 16-36.

central focus of Islam, as taught by the Prophet Muhammad (PBUH). Allah prioritises taqwa (respect) over gender. So, it's crucial to acknowledge the position of women at that era as well, in line with what the Quran says.

The Holy Quran also taught us that men and women are not meant to compete with one another but to be equal partners in life, supporting and uplifting one another. In order for a community to stand, both of these duties are essential. This is obvious even in paradise. Because of their inherent inseparability, Allah (SWT) created Eve (Hawwa) specifically for Adam (Adam). Islam acknowledges that men and women are equal, but that people's actions speak volumes about who they are.

Pre-Islamic societies often engaged in cruel and savage rituals. A female child that was unwanted would be laid to rest by them. Women were seen as nothing more than objects. One was not restricted in the number of wives they may have. Divorce might be declared by anybody at any time. It was a discouraging life for the ladies. Men mortgaged women in other instances as well. With the new religion of Islam, the Holy Prophet Muhammad (PBUH) arrived in Arabia as a rescuer and liberator. He spent much of his time alone in the Mount Hira cavern. The Quran and hadith were revealed to Muhammad by Angel Gabriel in 610 AD, when he was forty years old. Islam came to be. Muhammad (PBUH) was a great social reformer who worked for the benefit of society. There were many conflicts between Muslims and non-Muslims since the inhabitants of Mecca were so resistant to the teachings of the Holy Prophet (PBUH). The prophet also aspired to rid society of its pervasive social issues. Regardless, the most of the Arabians converted to Islam during the lifetime of the Prophet (PBUH), whose magnetic charisma inspired them to intellect.¹³

The Holy Prophet (peace be upon him) instituted several reforms, including the following: the unification of diverse tribes, the safeguarding of women and society as a whole, the domination of Islam over pagan practices, the abolition of infanticide, the prohibition of adultery and prostitution, and the liberation of slaves. Divorce as an institution was changed. Women now have the legal right to divorce their spouses, when formerly only a restricted number of husbands could utilise talaq.

There were changes in the educational system as well. Because of their paramount significance, everyone felt driven to educate Muslim women. This chapter also includes a chronology of Muslim law that divides its development into five periods. In the first stage, which lasted from 622 to 632 AD, revelations were sent to the Holy Prophet (PBUH). The inhabitants of Mecca

¹³ Abdullah, Raihanah. "Maintenance Rights for Muslim Wives in India: Legal Response." *Jurnal Syariah* 15, no. 1 (2007): 43-54.

flat-out rejected the revelation that had come from Medina. In the last ten years of his life, the prophet produced two canonical texts: the Quran and the Hadith.

The years 632–661 were known as the Second Caliphate. After the death of the Holy Prophet (PBUH), no one is selected to succeed him. Divine messages were sent in different directions. Being a close colleague of the Prophet (PBUH), Zaid was tasked with gathering the fractured revelation. If you are looking for an authentic Quran, your only option is Osman's Compilation. During the Third Period (661-900 AD), Muslim legal theory and practice were at their peak. The scattered Sunnat and Ahadis were collected and examined by them. The scientific method of lawmaking during this period was analytical deduction, often known as Qiyas. The era known as the Golden Age of Islamic Law, which lasted from 900 to 1924, is the Fourth Period. Four Sunni schools came into existence during this period.¹⁴

Starting in 24 AD and continuing up to the current day, the fifth period is considered the beginning of the modern age of Islamic law. Dissolution of the Caliphate (System) The Ulema, which includes jurists, Muftis, and Moolah, made significant contributions to the evolution of Islamic law.

After then, the British government changed things with a slew of laws. In addition to the Shariat Act of 1937 and the Dissolution of Muslim Marriages Act of 1939, Parliament also passed legislation addressing Muslim governance in India.

In the seventh schedule of Article 246 of the Indian Constitution, the term "Personal Law" is used explicitly. Also covered in this chapter is a history of Mohammedan law and how it came to be. There are two main places from which Mohammedan law is drawn. Both primary and secondary sources may be used in research. The primary sources are the Quran, Sunnat or Ahadis, Ijma, and Qiyas; secondary sources include things like custom, judicial decisions, legislation, justice, equality, and good conscience.

The foundation of Mohammedan law is the All-Quran, which was revealed to the Holy Prophet (peace be upon him) of Islam. Hadith and Sunnah are the words and actions of the Holy Prophet (peace be upon him). All Mohammedan law, whether it civil, criminal, or religious, is based on the Hadis, or laws of the Prophet (peace be upon him). The first suggestion for organising the canonical traditions came from Malik-Ibn-Anas.

The ijma, or unanimous verdicts, of Muslim jurists are significant because they have shaped the development of Muslim law. Jurists are expected to provide their ijma, or opinions, on any matter that has not been specifically handled in the Holy Quran, the Sunnah, or the Ahadis of the Prophet

¹⁴ Fournier, Pascale. "The reception of Muslim family law in Western liberal states." *DOSSIER 27 A Collection of Articles* (2005): 65.

(peace be upon him). It takes complete consensus among all jurists to establish an Ijma.

Finally, the fundamental text for Muslim law is Qiyas. Qiyas, the Arabic term for measurement, alludes to the reasoning based on analogy. Qiyas is the next line of defence when the Quran, Ahadis, or Ijma do not provide an answer. However, qiyas must conform to the teachings of the Quran.

On rare cases, while examining the secondary sources of Mohammedan law, custom was cited as a further source, even though it was not a major source in and of itself. In addition to being ancient, universal, territorial, and timeless, customs should not clash with state policy.

Decisions made by the highest courts as well as those of subordinate courts are collectively known as judicial judgements. These may be used as models in India. *Begenu v. Abdul Gafoor*¹⁵ and *Shah Bano Begum v. Mohd. Ahmed Khan*¹⁶ are two notable instances.

The majority of Mohammedan law is based on statutes. Justice, equality, and good conscience are cornerstones of Muslim law. • The laws enacted by India's parliament apply to all people, including Muslims. This chapter has also discussed the numerous Muslim legal schools and sects. According to Mohammedan law, there is a Juristic Preference that may be used to fill special requirements. Sunni, Shia, and other schools make up Motazilla's religious landscape. Those who adhere to Sunni law will be classified as Hanbalis, Malikis, Shafis, and Hanafis. The three main schools of Shia thought are the Ithna Asharia, Ismailya, and Zaidya schools.

The founder of the Hanafi School was Abu Hanifa. He became famous for his advocacy of juristic opinion, or Istihsan, which contributed to the codification of laws. The legal ideas put out by Imam Abu Hanifa were grounded on the teachings of the Quran and the Hadith. The Maliki School of thought emerged in Madina, where Imam Malik was a major figure. Most of his time was spent studying Islamic law and Hadith. More weight is given to Medina's traditions and practices by him. A significant addition to the field was Malik's book, *Muwatta*. Prophet Muhammad (peace be upon him) founded the Shafi School. He is the one who created Islamic law, which is based on the Holy Quran. Based mostly on Hadith, he was a devout follower of the Ijma School of thinking.¹⁷

Those who supported the Hanabali School were Imam Hanbal. The Hadith, he said, also had a major role. He thought that Qiyas was a necessity and that Ijma may be employed in dire situations. The majority of Shia belong to the Ithna Asharia School. Iraq, Pakistan, India, and

¹⁵ AIR (1987) SC 1103.

¹⁶ 1985 (1) SCALE 767; 1985 (3) SCR 844; 1985 (2) SCC 556; AIR 1985 SC 945

¹⁷ Welchman, Lynn. *Women and Muslim family laws in Arab states: A comparative overview of textual development and advocacy*. Amsterdam University Press, 2007.

Lebanon are the four nations represented among the followers of this school.¹⁸

The Ismailyas originally settled in what is now India, Pakistan, Central Asia, and Syria.

The line of Zaidya ancestors is the line of the Zaidya School. The Motazila, the third school of Muslim jurisprudence, had its strongest adherents in southern Arabia. In Motazilas, there are no subschools. This school of thinking is held by a small minority.

Notably, the chapter delves into the role of Muslim women throughout the pre- and post-Islamic periods. There were no laws protecting women in the pre-Islamic period, and practices such as female infanticide, limitless polygamy, and patrilineal marriage were widespread.

Patriarchy reigned supreme, men had infinite power, and women endured horrific conditions throughout the pre-Islamic era.

A lot of patriarchal traditions died away as Islam spread. There was also a degree of power given to the women of the community. Women had the Holy Prophet's (PBUH) undivided attention and tolerance. The formerly restricted power to inherit was also changed. The right to divorce was extended to women by Khula. With Mahr, she becomes the only owner. The consent of both men and women is necessary for a marriage to be valid. Numerous verses in the Quran affirm the value of women. According to the Holy Quran, men and women should be treated with equal respect. (Surah Nisha 4:19 and Al-Baqarah 2:229). Men and women are on equal ground in Allah's eyes.

Marital Rights of Muslim Woman:

The status of Muslim women, both socially and legally, has undergone substantial transformation from the pre-Islamic era to the post-Islamic period, greatly influenced by the teachings of Prophet Muhammad (PBUH). Understanding these changes is crucial for comprehending the advancement of women's marital rights under Islamic law.¹⁹

The Pre-Islamic Context

In pre-Islamic Arabia, the rights of women were severely restricted under the prevailing customary laws, which were overwhelmingly patriarchal. The primary roles of women were limited to sexual fulfillment and childbearing within marriages that lacked uniformity and recognition of the woman's rights. Essentially, women had no established marital rights, rendering their status within society extremely precarious.

Transformation Post-Islam

The advent of Islam marked a revolutionary shift in the status of women. Prophet Muhammad (PBUH) championed significant reforms that acknowledged women's individuality and human

¹⁸ Rahman, Fazlur. "A survey of modernization of Muslim family law." *International Journal of Middle East Studies* 11, no. 4 (1980): 451-465.

¹⁹ Jones, Justin. "Towards a Muslim Family Law Act? Debating Muslim women's rights and the codification of personal laws in India." *Contemporary South Asia* 28, no. 1 (2020): 1-14.

dignity. These reforms provided women with rights concerning property, inheritance, education, marriage, and divorce, thus elevating their position in society.

Islamic Perspective on Marital Rights

1. **Mahr (Dower):** Islamic law ensures that a wife receives her dower, a form of financial security, as stipulated by legal requirements.
2. **Maintenance:** A wife is entitled to financial support from her husband, covering her living expenses and wellbeing.
3. **Residential Rights:** She has the right to a living space that is dedicated to her and her husband's joint use without external interference.
4. **Equitable Treatment:** A wife is guaranteed equal treatment and fair division of attention and resources from her husband.
5. **Marital Dissolution Rights:** She possesses the right to seek a divorce under lawful circumstances or specific pre-agreed conditions in the marriage contract.

Independent Legal Status and Conjugal Rights

A legally married Muslim woman retains her independent legal identity. She can initiate legal proceedings in her name and does not have to take her husband's surname, maintaining her affiliation with her father's family and her rights therein. The husband has no claim over his wife's property, and similarly, she does not automatically acquire rights over his property during his lifetime.

Employment and Property Rights

The Quran explicitly supports the notion that what a woman earns is her own. Historical precedents, such as the business acumen of the Prophet's wife, Khadija, underline the Islamic validation of women's right to work and earn independently. Any domestic arrangements do not undermine her ability to seek employment, unless voluntarily agreed otherwise.

Maintenance and Conjugal Rights

Islamic law imposes a clear obligation on the husband to provide for his wife, which includes necessities like food, clothing, suitable accommodation, and healthcare. A wife's right to maintenance is contingent upon her fulfilment of marital obligations unless exempted under specific legal conditions.

Rights to Sexual Relations and Use of Contraceptives

A Muslim wife may rightfully refuse conjugal relations under certain conditions, such as the non-

payment of dower, lack of maintenance, or instances of cruelty. Forced sexual relations, even within marriage, are prohibited under modern legal frameworks, including the Indian legal system where such acts are criminalized.

Restitution of Conjugal Rights

The doctrine of restitution of conjugal rights is a fundamental aspect of Islamic marriage, entitling the wife to live with her husband unless legally separated. This right ensures that a wife can demand the fulfillment of marital engagements, and it is enforceable through judicial decree.

Constitutional and Universal Rights

Under the Indian Constitution, Article 21 assures every individual the right to life and personal liberty, which extends to the right to marry. This is supported by international declarations such as the Universal Declaration of Human Rights.

The Debate on Polygamy

While historical Islamic texts permit polygamy, it is regulated strictly under the Quran, which advises monogamy unless justice among multiple wives can be assured. The practice was initially a solution to social issues of the time and is not encouraged without just cause in contemporary settings.

ORIGIN AND CONCEPT OF MAHR OR DOWER UNDER PERSONAL LAW

A provision in the Quran states: "give women their dowries freely; and if they are good enough to remit any of it themselves, then devour it with good digestion and appetite." This provision lays the groundwork for the Mahr legislation.

Undoubtedly, Mahr or Dower is one of the major topics of the Islamic Society. In exchange for their marriage, the husband owes his wife a certain amount of money or a certain quantity of property. In an effort to promote gender parity in society, Islam has traditionally endorsed a clear division of labour within the home, with women handling domestic administration and men tending to the financial needs of the married couple.

There is widespread agreement among Muslims that a Muslim woman has a monetary right to receive Mahr, also known as Dower, as stated in the Holy Quran and the Sunnat of the Prophet (PBUH). Dower or Mahr may take several forms, including money, jewels, land, animals, profit, trade goods, and profit itself. Knowing the precise or approximate value of the Mahr or Dower is the only prerequisite. All the schools of thought hold that, with the exception of the Maliki School, value has no bearing if it cannot be determined. Marriage contracts are considered null and void by the law before to consummation, but they are considered lawful after consummation has taken

place, according to the Maliki School.²⁰

At the moment of marriage, a Muslim woman has the right to the Mahr in Islam according to the Shafi, Hanafi, and Hanabali Schools of Islam. The groom or his father is legally obligated to provide a sum of money or possessions to the bride as a mahr, which is then legally considered her property, when they are married. Although money is the most common Mahr, the bride and groom may agree on anything, including jewels, handmade items, or anything else.

Words like "Mohar" in Hebrew and "Mahra" in Syrian, both of which mean "Bridal Gift" but originally meant "purchase money," are linked to mahr. The term suggests a present that is given willingly rather than as a consequence of a contract, but according to Muslim religious law, it is a gift that the groom is required to give to the bride when they enter into a marriage contract and which thereafter belongs to the wife.

Although dower is a necessary condition for a marriage to be legally binding, the validity of the marriage is not contingent on its explicit mention. Therefore, even if no dower is settled at the time of the contract, the fact that it is not settled does not impact the validity of the marriage. In such a case, the wife becomes entitled to the dower customary in her family. However, the law holds the husband legally liable by giving the lady the usual dower in cases when it is stipulated that there would be no dower.

The marriage contract stipulates that the husband must pay his wife dowry as a token of his appreciation and remuneration for his sexual relations with her.

Mahr in Pre-Islamic Society:

Before Islam came to Arabia, there was a great deal of social, economic, and political inequality in the region. Patriarchy and male dominance were evident in every aspect of society. In those days, it was common practice for a man to have complete authority over a woman. If one were to turn back the pages of history and wipe the dust off a lady's portrait, they would see a teary-eyed woman. She, too, endured terrible treatment, and her role in the home is that of an object.

When entering into a marriage, a woman was never given the freedom to choose. Her male relatives, such as her father, brother, cousin, or guardian, would often be granted this privilege upon her marriage. Her marriage is legally binding regardless of the women's permission. The bride's family, including her father, brother, or cousin, would traditionally receive the amount of Mahr.

Many other types of sexual interactions between men and women were common in ancient pre-Islamic Arabia, before the institution of marriage as we know it now emerged. A few were short-

²⁰ Mir-Hosseini, Ziba. "Moral contestations and patriarchal ethics: Women challenging the justice of Muslim family laws." *Shari'a law and modern Muslim ethics* (2016): 65-83.

lived and not much better than prostitution. It was common practice for men to abandon their spouses after they had robbed them. There was no structured system of law, therefore the old practice of settling specific amounts for the wife's maintenance in the event that she was cast out was commonly ignored. Someone called SHIGHAR had a gadget that was all the rage. This kind of marriage occurs when one man marries off his daughters or sisters to another, and the other guy does the same with his own daughters or sisters. That meant there would be no dower for either of the spouses. A common method of denying a woman her dower was to falsely accuse her of being unchaste.²¹

The bride was referred to as Sadiqa, meaning female acquaintance, and the wedding present was called Sadaq in a so-called Beena marriage, in which the husband paid her visits but did not bring her home. Sadaq and Mahr are interchangeable terms in Islam; both refer to dowries. The two terms have different meanings from the start. A sadaq is a present for the woman, whereas a mahr goes to the wife's parents; the latter is a matter of dominion in a baal marriage, in which the wife receives compensation. In these types of marriages, the woman would own any gifts that were presented to her. Ascertaining dower, which becomes her sole property, was a necessary prerequisite for a marriage to be recognised in traditional marriage ceremonies.

Mahr in Islamic Society:

In the seventh century AD, when PBUH was at the height of his power, the position of women was greatly elevated, and he outlawed the heinous practice of female infanticide, which was practiced by some. A new Nikah was instituted with the proclamation of Islam, which did away with the old practice and outlawed unfair treatment of women and girls, as well as philanthropy: "it is not permitted to you to appropriate the goods you have once given to them." This practice has its roots in ancient times, when husbands would provide financial assistance to their wives when they were elderly or cared for by someone else. In order to elevate the status of the woman in Islam, the Prophet also acknowledged Mahr in the baal marriage form; when coupled with Sadaq, it becomes a settlement or provision for the wife. Mahr is considered a gift or bride's price in Islamic law, although traditionally it has belonged to the wife.²²

The fact that Mahr is obligatory in all circumstances, regardless of its amount or value, is clarified in the Hadith. Who knows? It may be an iron ring. Offering it with an open heart is the primary goal. If this is so, then the standing of the persons involved must be considered while deciding Mahr.

²¹ Balchin, Cassandra. "Family law in contemporary muslim contexts: triggers and strategies for change." *Wanted: Equality and Justice in the Muslim Family* (2009): 209-36.

²² Mir-Hosseini, Ziba. "Justice, equality and Muslim family laws: New ideas, new prospects." *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition* (2013): 7-34.

The Mahr is a fully acknowledged component of Muslim personal law in India. Because of anti-dowry laws, it will not be enforced. The dissolution of Muslim marriages Act, 193960 states that a ruling of divorce cannot impact a wife's claim to Mahr.

Nevertheless, when it comes to the functioning of the Mahr institution in India, there is a lack of consistency in documenting the real behaviours that are common in various regions or among families. Even within a single region, the Mahr rate varies. While it's greater than ideal in certain circumstances, it's lower than tolerable in others. From fifty rupees to many crores, it begins at the bottom. Where no sum is indicated in the Nikahnama, the courts settle the cases according to the traditions common in various areas. In most circumstances, the Mahr is fixed at the marriage, known as prompt, while in others, it is given after some time, known as postponed dower.

