

Islamic Stance on Rights of Women in Marriage

- Neelofar Rafeeq

Abstract

Women play a vital role in the society and in the human development. From the beginning of mankind, they have played very important role in every sphere of life. From an Islamic perspective, the personality of a woman is defined by the Qur'an and Sunnah as she plays many roles throughout her life, be it as mother, as daughter, or as wife. The life of a nation depends on the stability of the family and marriage is the backbone of the family. Today, women worldwide demand equal rights. We hardly find a single system of law that preserves, maintains and protects what truly women's rights are, as much as Islamic law does, whether in the past or in modern times.

In Islam, women have always been given many rights but a lot of women have misconceptions regarding their rights, especially with regard to their status and rights in marriage. This study attempts to present an assessment of legal status of women in Islam by highlighting the importance and purpose of marriage as well as the rights granted to women.

Key Words: *Islamic law, Marriage, Consent, Mahr, Reconciliation, Family, Legal Rights.*

Introduction

Islam deals with women comprehensively in the context of her relationship with her creator and lord (Allah), with herself as part of humanity and with man, her partner and natural spouse in the family. The basic foundation of society is the family -the husband and the wife are co-partners in that family upon which a Muslim home is established. For the success of the family and tranquillity of the home, Islam grants each spouse certain rights and duties. In Islam, women have always been given many rights but a lot of women have misconceptions regarding their rights. Especially, with regard to their status and rights in marriage, they do not fully understand their rights regarding this sacred bond. These rights are discussed briefly in this paper which Almighty Allah has given women from the beginning of the humankind.

Islam is the only religion in the world that always gives women full rights (at least theoretically) regarding marriage, especially the right of choice, *Mahr*, maintenance, inheritance, and termination. But still, many Muslim women are not aware of those rights. These rights are discussed below according to the Qur'an and *Sunnah*. Muslim women always demand equal rights but we hardly find a single system of law that preserves, maintains, and protects what truly women's rights are as much as Islamic law does whether in the past or in modern times.

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Importance of Marriage in Islam

In Islam, marriage is a blessed contract between a man and woman, in which each is permitted to the other and they begin the long journey of life in a spirit of love, cooperation, harmony, and tolerance, where each feels at ease with other and finds tranquillity, contentment and comfort in the company of other. The concept of marriage is cited twenty - three times in the Qur'an, and the terms of wife, husband, and spouse are cited eighty-one times.ⁱ The Qur'an has described this relationship between men and women which brings love, harmony, trust, and compassion in the most moving and eloquent terms:

O humanity! Be mindful of your lord who created you from a single soul, and from it, He created you from a single soul, and from it, He created its mate, and through both He spread countless men and women. And be mindful of Allah-in Whose Name you appeal to one another- and 'honour' family ties. Surely Allah is ever watchful over you.(Qur'an 4:1)ⁱⁱ

He is the One Who created you from a single soul, then from it made its spouse so he may find comfort in her. After he unites with her, she carries a light burden that develops gradually. When it grew heavy, they prayed to Allah, their Lord, "if you grant us good offspring, we will certainly be grateful." (Quran 7:189)ⁱⁱⁱ

And Allah has made for you spouses of your own kind and given you through your spouses' children and grandchildren. And He has granted you good, lawful provisions. Are they then faithful to falsehood and ungrateful for Allah's favours?(Qur'an 16:72)^{iv}

And it is Allah Who created you from dust, then developed you from a sperm-drop, then made you into pairs. No female ever conceives or delivers without his knowledge. And no one's life is made long or cut short but is written in a record. That is certainly easy for Allah. (Qur'an 35:11)^v

"And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your [hearts]: verily in that are signs for those who reflect".^{vi}(Qur'an 30:21).

Glory be to the One Who created all things in pairs be it what the earth produces, their genders, or what they do not know! (Qur'an 36:36).

And created you in pairs.(Qur'an 78:8).^{vii}

The marriage or *Nikah* is ordered by Allah for human beings. As for man, Allah has distinguished him over the rest of his creation by assigning to him a suitable system whereby man's dignity and honour may be maintained, and his esteem may be preserved through *nikah*. Such a procedure secures a relationship between man and woman that is based on mutual respect and consent. Thus man's natural needs are fulfilled soundly to preserve posterity and protect a woman from being a common (sexual) object.^{viii}

Purpose of Marriage in Islam

Islam doesn't regard marriage as a union between man and woman only for the gratification of sexual desires, but a social contract with wide and varied responsibilities and duties. The reason behind it is that, according to the Divine Faith, a woman is not a plaything in the hands of man, but a spiritual and moral being who is entrusted to him on the sacred pledge to which Allah is made a witness. The wife is, therefore, not meant to provide sensuous pleasure only to the male, but to fully cooperate with him in making the life of the family and ultimately of the whole humanity significantly meaningful.^{ix}

In various prophetic traditions, Prophet Muhammad commanded us to avoid unnecessary delays in the marriages. In one hadeeth, the prophet said:

Narrated Abdullah: We were with the prophet while we were young and had no wealth. So Allah's Messenger said, "O young people! Whoever among you can marry, should marry because it helps him lower his gaze and guard his modesty(i.e. his private parts from committing illegal sexual intercourse, etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power."^x

There are many logical reasons for ordaining marriage, some of these are as follows:

1. It helps preserve the human species through continuous procreation resulting from marriage.
2. It helps both a man and woman to satisfy their natural desire legally.
3. It enables a man and a woman to bring up their offspring and give them a worthwhile life.
4. It regulates relationships between a man and woman based on mutual rights and fruitful cooperation in an atmosphere of love and respect.^{xi}

Thus, the main purpose of marriage is sexual gratification in a legal way, parenthood, and preserving the human race by building a family. It includes preservation of lineage, keeping the society free from immorality and debauchery, spiritual and psychological tranquillity, cooperation between spouses for building the family, and raising children with good morals. In Islam, the purpose of marriage is not merely to seek physical pleasure. Islam gives deeper meaning to marriage which involves developing a loving relationship and intimate knowledge and commitment to another human being and building a family^{xii}. Islam recommends marriage because, first, it helps men and women to lead a life of chastity, that is, it secures them against promiscuous sexual indulgence; secondly, because it prevents the formation of secret sex relations. These two values are the cornerstone on which the institution of marriage rests and Islam's conception of woman's rights in marriage flows logically from them.^{xiii}

Rights of Muslim Women in Marriage:

The basic foundation of society is the family. The husband and the wife are co-partners in that family upon which a Muslim home is established. For the success of the family and tranquillity of the home, Islam grants each spouse certain rights and duties. Hence, in Islam women is considered as a subject rather than an object in the marriage contract. when we talk about the rights of Muslim women in marriage these include; the right of choice, Right of Mahr, Right of maintenance, Right of Inheritance and the Right of Termination.

Choice: A woman has got as much right to marry as a man has. The Qur'an says:

“Marry off the ‘free’ singles among you, as well as the righteous of your bondmen and bondwomen. If they are poor, Allah will enrich them out of His bounty. For Allah is All-Bountiful, All-Knowing. (Qur'an 24:32).

The woman has been granted as much freedom in the choice of her husband as the man has been granted in choosing his wife. Nobody has the right to give her away in marriage without her consent. ^{xiv}Islam always stresses the point that her permission is essential in a marriage tie. Thus Qur'an has mentioned that a virgin has the full right to choose her spouse without any hesitation. Prophet Muhammad ﷺ has also encouraged women to choose their husbands.

Narrated Abdullah Ibn Abbas: A virgin came to the prophet and mentioned that her father had married her against her will, so the prophet [S.A.W] allowed her to exercise her choice.^{xv}

Narrated Abu Huraira: The Prophet said, A matron should not be given in marriage except after consulting her, and a virgin should not be given in marriage except after her permission. The people asked, O Allah's Messenger How can we know her permission? He said, Her silence [indicates her permission].^{xvi}

Narrated Aisha: I said, O Allah's Messenger A virgin feels shy. He said, Her consent is [expressed by] her silence.^{xvii}

Narrated Khansa bint Khidam AL Ansariya: that her father gave her in marriage when she was a matron and she disliked that marriage. So she went to Allah's Messenger and he declared that marriage invalid.^{xviii}

Mahr: Mahr (dower) is another right of the wife and is given regardless of her own wealth. The eminent jurists have stressed that the mahr is not a “bride's price”, but as a token of affection, esteem, and respect that a man feels for a woman he is about to marry. Women's unconditional and unrestricted rights to receive Maher (dower) from her husband have been guaranteed by the following verses of the Qur'an:

- 1: *Give Women you wed their due dowries graciously. But if they waive some of it willingly, then you may enjoy it freely with a clear conscience.(4:4).*^{xix}
- 2: *O Prophet! We have made lawful for you your wives to whom you have paid their full dowries as well as those bondwomen in your possession, Whom Allah has granted you. And you are allowed to marry the daughters of your paternal uncles and aunts, and the daughters of your maternal uncles and aunts, who have emigrated like you. Also allowed for marriage is a believing woman who offers herself to the prophet without dowry if he is interested in marrying her- this is exclusively for you, not for the rest of the believers. We know well what rulings we have ordained for the believers in relation to their wives and those bondwomen in their possession. As such, there would be no blame on you. And Allah is All-Forgiving, Most Merciful.(33:50)*^{xx}

The Qur'an and hadith have laid down the following rules and regulations regarding 'Haq Mahr' or dower, the payment of which by the husband to the wife is obligatory. Payment of dower to his wife is obligatory on the husband. It is an essential part of marriage. However, the marriage is not valid if the mahr is not paid or contracted, or fixed before marriage.^{xxi} The Islamic Shari'ah does not prescribe any perimeter on the amount of mahr. It can be increased or brought down according to the financial status of the person entering the marriage contract. However, Sharia'h certainly proposes it to be an amount that the man can easily pay. The jurists differ on the issue of fixation of the minimum amount of mahr. Those belonging to the Hanafite school of jurisprudence put it at not less than ten dirhams. It is evident from the above that Mahar, whether less or more, is a legal right of women.^{xxii}

Maintenance: Under certain conditions and under a valid marriage contract, maintenance is the legal and lawful right of the women. Maintenance involves the husband providing for his wife, at his own expense and to a standard expected according to his means, food, clothing, suitable housing with bathing facilities, toiletry necessities, and all medical fees and medicines that may be required.^{xxiii} Before her marriage, the responsibility of the upkeep of the girl devolves on the father and brother. After marriage, her maintenance becomes the concern and a binding one too, of the husband. According to Shariah, the maintenance of the wife is compulsory for her financial status. The Hanafi school says that if the husband and wife are both wealthy, the maintenance of the wife shall be according to her status in life. In the case of the wife being at a financially lower status, her maintenance shall be the mean between the rich and the poor. However, if the reverse is the case, he shall spend on her according to his means, and any deficiency shall become a liability as credit due from him to pay to her at his convenience. If the woman is rich, she is also entitled to a servant. If the wife does not want to live together with the husband's relatives, she can demand a separate house. It is her legal right and the husband has to meet it. In this connection, it would not be improper to mention here that according to Hanafite Fiqh, service to her husband and doing

household chores is not the duty of the wife. If she undertakes, it is her courtesy and the urge of her moral virtue. She cannot be compelled to undertake it.^{xxiv}

Inheritance: One of the most important branches of family law is that related to inheritance. It is a significant part of the shari'ah which prescribes the mode in which the estate of a deceased Muslim, whether male or female, shall be distributed among his heirs after certain legal requirements in that respect have been compiled with. Islamic law has two terminologies for succession "*ilmulMirath* and *ilmulfaraid*, I.e. the knowledge of succession and that of the distribution of estate respectively. Both refer to the Islamic law, knowledge of who is, and who is not entitled to inheritance. In the Arabian society of the pre-Islamic days, inheritance was denied to women. The Arabian society was not alone in keeping the woman deprived of her share in inheritance.^{xxv} In the non-Muslim nations and communities of the ancient and medieval ages the woman enjoyed practically no rights whatsoever of inheritance and succession to property movable or imovable of their close ascendants or descendants.^{xxvi} There are many verses in the Holy Quran which are related to the rights of women regarding inheritance, some are as under;

1: From men, there is a share in what their parents and close relatives leave, and for women, there is a share in what their parents and close relatives leave-whether it is little or much. These are obligatory shares.(Qur'an 4:7)^{xxvii}.

2: Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two or more females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth- after the fulfillment of bequests and debts. Be fair to your parents and children, as you do not fully know Who is more beneficial to you. This is an obligation from Allah. Surely Allah is All-Knowing, All-Wise. (Quran 4:11).^{xxviii}

There are also some Ahadith regarding the inheritance rights of women some reports are as under;

Jabar bin Abdullah said:

“The wife of sa'd bin Ar-Rabi came with her two daughters from sa'd to he Messenger of Allah and said; O Messenger of Allah These two are daughters of sa'd bin Ar-Rabi who fought along with you on the day of Uhud and was martyred. Their uncle took their wealth, without leaving any wealth for them, and they will not be married unless they have wealth. He said: Allah will decide on that matter. They ayah about inheritance was revealed, so the Messenger of Allah sent word to their uncle saying: Give the two daughters of sa'd two thirds, and give their mother one eighth, and whatever remains, then it is for you.^{xxix}

Saad –b-Abi Waqqas reported: The holy prophet came to me while I was ill. He asked: Have you made a will? ‘Yes, said I. He asked: To what extent? I replied: to the extent of the whole of my property in the way of Allah. He asked: what then have you left for your children? (Saad had only two daughters) I replied: They are rich in wealth. He said: Bequeath one-tenth. Then I continued to think it little till he said: Bequeath one-third and one-third is too much (Tirmizi)

Allah has apportioned the inheritance with His wisdom and His knowledge. He has distributed among the relatives in a better and more honest way, in conformity with His extensive comprehensive mercy and knowledge. The verses of inheritance and Ahadith(prophetic traditions) have brought forth comprehensively all possible incidences of inheritance. The Quran has established the rights of inheritance between husband and wife and in favour of certain close female blood relatives —the mother, the daughter, and the sister by prescribing fractional parts (*faraid*)of the deceased’s estate as the entitlement. Women were therefore made to inherit their husband’s and vice versa. And daughters, mothers, sisters, and granddaughters were granted the right to inheritance as their male counterparts.

Termination: Islam with its realistic and practical outlook on all human affairs recognizes divorce, but only as a necessary evil, inevitable in certain circumstances. It is said in a hadith:

“Of all permitted things divorce is the most abominable with God”.

Who can deny the fact that there do arise certain situations in which it is not humanly possible for the couple to lead a happy and useful life by continuing as husband and wife? Instead of dragging on with a bitter and miserable existence in forced partnership will it not be more conducive to the welfare of the parties to part with grace and goodwill? Divorce, since it distinguishes the family unity, is, of course, a social evil in itself, but it is a necessary evil, it is better to wreck the unit of the family than to wreck the future happiness of the parties by binding them to companionship that has become odious. The analysis of marriage and divorce laws recognized by Islam clearly shows that the martial tie is to be respected and continued as far as possible.^{xxx} So Islam has provided facilities for both men and women to terminate the marriage according to certain conditions which are clearly mentioned in the Quran. Islam has not only given the right of divorce to men but also women to terminate the marriage when it is not possible for wife and husband to live together. If a woman wants to get separation from her husband, there should be no hurdles in its path and she may go her own way. while giving the right of divorce to a man, it has granted a women in turn, the same right in the form of ‘*Khula*’.*Khula* literally means to remove something or pull it off or break it off, that is, remove or pull yourself out of your marriage.^{xxxii}

The right to divorce which Islam confers on Women, if understood in its true perspective, will indeed be found dazzling. A wife having subjective satisfaction that it is no more possible for her to live with her husband, may simply tell him that she wants a divorce.

He can, thereupon, attempt persuasion and reconciliation, but cannot force the wife to cohabit. The only thing he can demand is that wife forgive her *Mahr* (dower) which is in case of a divorce by *talaq*, a husband has to pay. If the wife agrees to it, and the husband peacefully relents, there follows a *Khula* which means a divorce at the instance of the wife.

The rights of the women in respect of divorce and the law governing the procedure of divorce is discussed in the light of the verses of the Qur'an as under:

“Those who swear not to have intercourse with their wives must wait for four months. If they change their mind, then Allah is certainly All-Forgiving, Most-Merciful. But if they settle on divorce, then Allah is indeed All-Hearing, All-Knowing.(Qur'an 2:226-227).^{xxxii}

Divorced women must wait for three monthly cycles ‘before they can marry’. It is not lawful for them to conceal what Allah has created in their wombs. If they ‘truly’ believe in Allah and the Last Day. And their husbands reserve the right to take them back within that period if they desire reconciliation. Women have rights similar to those of men equitably, although men have a degree ‘of responsibility’ above them. And Allah is Almighty, All-Wise. (Qur'an 2:228)^{xxxiii}

Divorce may be retracted twice, then the husband must retain ‘his wife’ with honour or separate ‘from her’ with grace. It is not lawful for husbands to take back anything of the dowry given to their wives unless the couple fears not being able to keep within the limits of Allah. So if you fear they will not be able to keep within the limits of Allah, there is no blame if the wife compensates the husband to obtain a divorce. These are the limits set by Allah, so do not transgress them. And whoever transgresses the limits of Allah, they are the ‘true’ wrongdoers. (Qur'an 2:229).^{xxxiv}

If you anticipate a split between them, appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware. (Qur'an 4:35).^{xxxv}

Divorce is the most hated and unpleasant thing in Islam. Narrated Abdullah ibn Umar: The Prophet said: Of all the lawful acts the most detestable to Allah is divorce.^{xxxvi}

It is Narrated by ‘Abdullah Bin Umar’: that he had divorced his wife while she was menstruating during the lifetime of Allah’s Apostle. ‘Umar Bin Al- Khattab asked Allah’s Apostle about that. Allah’s Apostle said, Order him (your son) to take her back and keep her till she is clean and then wait till she gets her next period and becomes clean again, Whereupon, if he wishes to keep her, he can do so, and if he wishes to divorce her before having sexual intercourse with her; and that is prescribed period Which Allah has fixed for the women meant to be divorced.^{xxxvii}

If the khul is uttered using the same expression, the concerned woman observes one menstruation as her *iddah* but if is uttered with the word of divorce, the majority of the scholars are of the view that she observes a waiting period of three menstrual periods. A man who grants his wife divorce under khul has no right to take her back while she is observing her *iddah* because the khul has made the separation irrevocable.

Conclusion

Today the rights of women are among the critical issues not only in the Muslim societies but among the non-Muslims as well which have been discussed in every corner of the world. But Muslims (both men and especially women) have lot of misconceptions regarding their rights especially rights regarding marriage which Islam has already discussed briefly. The rights of women, especially her legal status in marriage are gaining wider acceptance across all cultures and religions. There is lot of misconceptions as well as the misrepresentation of Islam and women rights in Islam among non-Muslims. It is due to the lack of knowledge of original texts among the majority of non-Muslims and even many Muslims are facing this problem as well. There is a tremendous need to highlight the issue of the legal rights of women in Islam and to spread this information across all the cultures and religions of the world, so that woman can enjoy what Allah has bestowed to her. This paper has briefly analysed and discussed the legal rights of women in Islam by looking deeply into the Quran and Authentic Ahadith and thus is a modest attempt both in the direction to highlight the real perspective of Islam on this issue as well as to eradicate the misconceptions associated with the issue of women's legal status in marriage.

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