

THE STUDY OF JUSTICE IN DETERMINING WOMEN'S RIGHTS IN THE FAMILY ACCORDING TO THE ISLAMIC LEGAL SYSTEM

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ABSTRACT

There has always been debate about women's rights and whether or not their rights are equal to those of men. Different legal systems have taken different approaches to this. The Islamic legal system has chosen a particular approach, based on its principles. This study aimed to determine Although there is no equality of rights between men and women, this does not mean that justice is violated. This study was a descriptive-analytic. It has been attempted to use the sources of Islamic law, such as the Qur'ān and its interpretations as well as to provide the foundations for resolving the problem of the article in the light of books and legal articles written in this field. In the Islamic legal system, there are differences between the rights and duties of men and women. For example, unlike women, men have the right to have multiple wives, but these differences stem from the natural or credit differences that exist between men and women. Justice means dealing with different issues differently. Given this, and given the differences between men and women in nature and in their roles in society, their differences in rights and duties do not necessarily mean that justice is violated.

Keywords: *justice, woman, family law, Islamic Law*

INTRODUCTION

In the pre-Islamic era, among ancient Arabs, women were considered worthless (Noel Coulson, 2014: 30-37). Most girls were killed as infants because Arabs viewed women as an object of shame and disgrace (*ibid.*). The Holy *Qur'ān*, Surah Nahl; Verse 59 mentions such facts. Verse 16: 59 say, “and he hides himself from people because of the bad news, thinking: should he keep the child despite disgrace, or should he bury it in dust? How evil is their estimate of Allah!” (Surah al-Nahl: 59.) The verse highlights the attitude of contempt that people and the society have towards their daughters as a result of their imprudence and ignorance. Also, it questions men who had such shameful feelings and engaged in the act burying girls in the ground (*ibid.*). This particular verse portrays such practices and thoughts as evil deeds. Undoubtedly, in those days it was almost impossible for women to assume even simple rights to life. Consequently, women did not have any vested rights in the society.

After the rise of Islam, women's rights started to come into existence. Therefore, it is not naive to believe women rights has evolved and been inspired because of Islam. Many *Qur'ān* verses indicate the importance of women and their rights. For example, the Holy *Qur'ān* on verse 21 of the Rome Surah pronounced women as precious and valuable phenomena and that men can find tranquility in them (Surah al-Anbiyā': 21).

Today, the issue of women's rights is one of the main topics in societies. The main concern is whether there is justice in determining the rights of this group of society. There is no doubt that the question can be raised about the legal system of Islam. Has Islam considered justice in determining women's rights? This question becomes even more important when there are some differences between men's and women's rights. For example, men have a greater share of inheritance. They have the power to marry multiple women at the same time. Divorce has been given to them. Other examples can be added to these examples. So one of the main issues in Islamic and even non-Islamic societies is what is the approach of the Islamic legal system in determining women's rights? Has the standard of justice been violated or has justice been done in determining women's rights?

There have been various studies on the observance of justice in the determination of women's rights in the Islamic legal system. For example, in an article entitled The Gender Equality and women's Human Rights in Islamic Texts, Ms. Fatma Osman Ibnouf has addressed the issue of justice in women's rights (Ibnouf, Fatma, 2015: 11). This article identifies gender equality and women's human rights in the framework of Islam. The article covers Islamic

texts talk about gender equality and women's human rights in the main sources of Islam. the aim of this article is to identify how the Islam religion has dealt with gender equality and women's human rights. As the title of the above article makes clear, this article focuses on human rights. But in the article ahead, the main emphasis is on women's rights as a member of the family. Therefore, civil rights are emphasized, not human rights.

Another author, Azizah al-Hibri, in an article on Islam, Law and Custom: Redefining Muslim Women's Rights, discusses women's rights in Islam (Azizah al-Hibri, 1997: 2). The author has attempted to prove that Islam in the area of public law has also adhered to the justice of men and women. he writes When the Prophet was selected to lead the Muslims, women participated in that selection. They came to the Prophet as a delegation of the women of Arabia and extended to him their *bay'ah* (vote of confidence). The *Qur'ān* refers to this event as well as to the words of the Prophet on that occasion.

In the article written by Imani Jaafar-Mohammad and Charlie Lehmann, author of women's rights in islam regarding marriage and divorce, has written on the issue of women's rights in Islam (Imani Jaafar, Lehmann, 2011: 2). According to the authors, There are many misconceptions surrounding women's rights in Islam. The purpose of this article is to shed some light on the basic rights of women in Islam in the context of marriage and divorce. This article is only to be viewed as a basic outline of women's rights in Islam regarding marriage and divorce. Therefore, the above article is limited to marriage and divorce.

Given these and similar studies, it seems that the approach of Islamic law to women's rights in the family domain seems to be less explored. Therefore, this article will attempt to address all the issues that a woman faces within the family. These include: Marriage, Child Marriage, Polygamy, Divorce, Child Custody, Women's Financial Rights, Inheritance. After discussing each of these issues, the approach of the Islamic legal system will be discussed. Thus, the innovation of this article is to simultaneously explore women's rights within the family and to examine justice in the determination of these rights by the Islamic legal system. It is also important to note that This research paper aims to provide basic information about women's rights in Islam. The paper focuses on women's rights from legal perspective. The authors' view is that Justice has been observed among the rights of women and men in the Islamic legal system. What the authors mean is that, given the differences between men and women, their rights and duties will naturally be different. These different rights and duties do not mean that justice is violated. Rather, it means that justice is done. Because justice means unequal treatment of unequal issues.

When a woman differs from her role in society and in the family, her rights and duties must naturally be different from those of the man. The present article differs from previous work in trying to prove this hypothesis.

The methodology of this article is to study the source of the Islamic legal system, the *Qur'an*. Also, jurisprudence has been referred to in determining Islamic rules and attempts to examine Islamic rules in determining women's rights and obligations. Alongside these sources, legal Books and articles are also cited. The study intends to outline the definition of equality between men and women and explains their inherent rights from the Islamic point of view. Furthermore, it discusses ongoing misconceptions that undermine women's rights in areas such as child marriage, polygamy, divorce, child custody, inheritance, and financial rights of women.

DEFINITION OF EQUALITY IN ISLAM

1. Equality in Islam

Equality means having the same rights and can relate to issues of justice and fairness (Vanda M. Ribeiro, 2014: 1094.) If the goal is to have identical rights, any difference or exception between men and women amounts to justice. Thus, it is essential to distinguish between what is justice and fairness. Justice refers to a philosophical or legal phenomenon that is characterized by action and practices that can be justified under the given specific circumstances (Ingrid I. Nicolau, 2015: 391). Fairness, in contrast, refers to the practice of treating people as they deserve to be treated at all times. Taking this into account, it is apparent justice may not always mean or amount to fairness. For instance, one may argue that giving the right of divorce to men, and not women do not promote justice in the society. On the other hand, it is possible to argue giving rights of dowry and alimony to only women, can also favor woman over men.

The best way to evaluate equality of rights is to consider how it relates to the concepts of justice and fairness. Hence, assuming any difference as discrimination is not appropriate. Instead, it is critical to show that there are unjustifiable rights that lead to bias and unfairness. Justice means everything is placed in its proper place (Brishen Rogers, 2016: 1543). Men and women were created differently from each other, and this does not have anything to do with discrimination. Men and women complete each other and their differences are rooted in their creation (Ingrid Nicolau, 2014: 711).

There is a misconception that Islam has considered more rights for men and ignored women rights (Delaram Farzaneh, 2017: 201). The right stand is that

Islam has never provided any privilege or preference for men in comparison to women (*ibid.*). Inevitably, because of some physical and emotional differences between men and women, different rights and obligations have been considered for them. It is crucial to state that the *Qur'an* explicitly clarifies that men and women have been created from one soul. Verse 189 of Surah Al-A'raf says "It is He who created you from one soul and created from it its mate that he might dwell in security with her. And when he covers her, she carries a light burden and continues therein. And when it becomes heavy, they both invoke Allah, their Lord, "If You should give us a good [child], we will surely be among the grateful." (Al-A'raf: 7) There is a famous reliable narration from the prophet Mohammad regarding the rights of men and women which continues to influence how Islam perceives these two genders. Prophet Mohamed said that "All people are equal, as equal as the teeth of a comb" (Ina taylor, 2013: 64). this statement means that men and woman should be accorded equal rights (Baharul Islam, 2014: 54). The principle that Islam has defined equality and set out how people should live and treat each other. For instance, childbirth has been given to women, and it is their duty and responsibility and not men's. Indeed, nowadays it has been proven by extensive scientific research that there are some medical, physiologic, physical and emotional differences between men and women.

Saudi Arabia is an example of a nation whose laws on women rights have attracted the attention of legal scholars and researchers around the world (Aljoharh Al-Zamil, et al., 2014: 177). It is important to state from the onset that the legal system in Saudi Arabia, like most other Islamic jurisdictions, is based on and derived from Sunnah and the teachings of the *Qur'an* (Winston Langley, 2013: 1954). Some of the sources of the Shariah laws used in Saudi Arabia include the Islamic Golden age texts and the scholarly consensuses that are developed by influential and medieval Islamic scholars (Afida Mastura & Muhammad Arif, 2014: 38). One of the unique things about the laws that are used in the country is that they are not codified (*ibid.*). Besides, there is a lack of judicial precedent within the legal system, and this trend often leads to significant uncertainties in the nation (Brishen Rogers, 2016: 3). Although the government has shown the interest and intention to codify the laws, nothing has been done so far (Mark Goldfeder, 2017: 105). Thus, various legal issues, including those related to the rights of women continue to be discussed and examined based on the uncoded Shariah laws (*ibid.*).

In the context of the rights of woman, Saudi Arabia is one of the nations in the Middle East that has been accused of discriminating against women (Chaitali Das, 2012: 147). It has been argued that the country does not promote and safeguard the social and political rights of women. Concerns have been raised regarding the lack of autonomy among women as well as the lack of

laws that criminalize violence against women. In Saudi Arabia, woman look for a close male relative who acts as her guardian (*ibid.*). The role of the guardian is to protect the life and the autonomy of the women in question and stop any form of violence that can be directed to them. While the guardians have strived to promote the well-being of women, the Saudi woman continues to face significant hurdles as they try to live a happy and fulfilling life in their country. It is imperative to state that the guardians are usually entitled to make a wide range of critical decisions on behalf of women. The decisions include approval to travel, holding of business licenses, and the choice to study in a college or university (Alexia Tomlinson, 2017: 666). Also, the trend indicates the degree of discrimination and prejudice against women in the Saudi Arabian culture. In the recent years, however, women have been given more rights with respect to driving as well as voting. The goal is to create a fair society in which people are not judged and treated on the basis of gender.

In some cases, there have been attempts to legitimize and institutionalize some of the discriminative practices that Islamic women face because of discriminatory laws and rules. In Saudi Arabia for instance, a group of religious police officers referred to as the Mutawa often imposes restrictions on Islamic women when they are in public place (Kelly J. Shannon, 2017: 573). The restrictions may include a requirement that women sit in a separate section of a restaurant, the need to wear loosely fitting black cloak that covers the whole body and the obligation to conceal hair (*ibid.*).

A few decades ago, women in Saudi Arabia were at a high risk of being arrested when they drive in a vehicle that is driven by a male who is neither a close relative nor an employee (*ibid.*). With the recent changes in rules currently, there are no official laws preventing women from driving cars in Saudi Arabia.

2. Mutual Equality of Men and Woman

There is a misconception that women rights and their existence have been regarded as a secondary issue under Islamic beliefs (Aidh S. Albaqme, 2014: 169). In fact, there are ample of verses in *Qur'ān* which clarifies both men and women are coming from the primary root and have the same value (Shaheen S. Ali, 2017: 117). According to *Qur'ān*, men and women have a full equal entitlement in human nature, and the existence of men and women emanates from a single mutual thing (*ibid.*). There are other examples in *Qur'ān* which emphasize on equality of women and women and equality has been given to both men and women in the worship of God and human prosperity and

evolution (Asifa Quraishi, 2011: 173). Furthermore, there is a complete equality in choosing between right and wrong, faith and disbelief (*ibid.*).

CURRENT ISSUES

As mentioned, The purpose of this article is to prove that justice has been exercised in determining the rights and duties of women and men in the Islamic legal system. To this end, various issues in the field of family law have been selected and attempted to examine the approach of Islamic law in determining the rights and duties of women and men On these topics. These include: Marriage, Child Marriage, Polygamy, Divorce, Child Custody, Women's Financial Rights, Inheritance.

1. Marriage

Before marriage, girls are allowed under the Islamic law to be in their parents' house and seek help from them. Also, the Islamic law allows a daughter to seek help and maintenance from her parents while still in their home as an unmarried woman. This will, however, change in the case of a divorce. In such contexts, the role of maintaining the wife gets back to the parents at the end of the *'iddah* period that is usually about three months (*ibid.*). It is also worth stating that if the woman has children who are capable of supporting her in the context of a divorce, the responsibility will fall upon them.

Naturally, children are expected to take care of their father after divorce, but usually due to the characteristics of the father In terms of independence, finances, more opportunity to remarry, and being less vulnerable than the mother, So it's practically less likely that fathers will need to take care of their children after divorce. They will be expected by law to provide for their mother and ensure that she lives a decent life even after a divorce. Obviously, if a woman has no children, her life after divorce may be difficult. The legal entity of Mehr is mainly effective for such cases And it can prevent many problems for women.

The Islamic law is also clear on the issue of mahr in the context of marriage and property. Mahr is the money or the property that Islamic women get when they decide to enter into the marriage contract. In most jurisdictions, there are two primary types of mahr (Sultana Alam, 2010: 32). The first kind is the prompt type of mahr that is given to the woman at the start of the marriage (Afroza Bulbul, 2013: 217). The second type is the deferred mahr that is usually given to the wife when the marriage comes to an end (*ibid.*). In Islamic

law, the marriage can end because of divorce or death. In either case, the wife will be entitled to the deferred mahr as agreed upon and set out in the laws of the land.

2. Child Marriage

One other main issue of misunderstanding about Islam is that most people wrongly believe that Islam has permitted child marriage. It is notable that *Qur'ān* has not mentioned or specifies any legal age of marriage. However, it provides some guidelines and suggestions for marriage. For example, Surah al-Nisā' Verse 6, points out the marriageable age which can mean childhood or even puberty (Surah al-Nisā', 4: 6). The literal translation of puberty means "reaching something," and in the religious framework, it means reaching an age that sexual instinct appears in both men and women and reproduction becomes possible. According to an Islamic jurist, the age of puberty for girls is nine years old and fifteen for boys (Otto, j. Michiel, 2010: 161). Islam views puberty as a natural and physiological phenomenon whose timing may differ from one person to another. However, getting to the age of puberty should not be considered enough reason to marry a woman. Some additional factors play a more critical role in the determination of a woman's fate with regards to marriage. The premise is based on the fact that this particular developmental milestone determines the overall maturity of a person and the ability to differentiate between what is good or bad (that is wisdom) (*ibid.*).

In addition to knowing the minimum age of marriage in Islam, it is essential to know more about the same concept based on international conventions. For instance, the United Nations Convention calls for the elimination of all forms of discrimination against women, on consent to marriage, minimum age of marriage and registration of marriages (United Nations Human Rights, 2018). Also, it provides a recommendation on consent to marriage, minimum age of marriage and registration of marriages (*ibid.*).

In November of 1962, the United Nations Convention on consent to marriage, minimum age of marriage and registration of marriage does not specify the right age for marriage (*ibid.*). Instead, Article 2 states: "States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses." (*ibid.*) This specific article binds member countries to follow specific legal procedures in determining the age of marriage (*ibid.*). Further, it explains

that nations are not allowed to recognize and accept marriages that do not meet the age requirement.

Later, in November 1965, the convention on the recommendation on consent to marriage, minimum age of marriage and registration of marriages was enacted in this convention (*ibid.*). Principle two of the Act states: "the member states shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses." (*ibid.*) This article emphasizes the importance of the age of marriage and explicitly states that the age of marriage must be more than fifteen (*ibid.*). It seems at least there is a logical approach that has been taken regarding the age of marriage in member countries because it considers the context in which the issue of marriage is viewed and practice in various jurisdictions (*ibid.*).

In September of 1995, the Report of the Fourth World Conference on Women was held in Beijing (United Nations, 1995: 1). The conference specified actions that were required to be taken by governments of member countries. For instance, the section that was designed to eliminate all forms of discrimination against the girl child, reads as follows: "(a) By States that have not signed or ratified the Convention on the Rights of the Child, take urgent measures towards signing and ratifying the Convention, bearing in mind the strong exhortation made at the World Conference on Human Rights to sign it before the end of 1995, and by States that have signed and ratified the Convention, ensure its full implementation through the adoption of all necessary legislative, administrative and other measures and by fostering an enabling environment that encourages full respect for the rights of children." (*ibid.*) In this conference, there was a strong agreement between members' countries to agree on a procedure for determining the age of marriage. Again, puberty from a religious point of view means reaching the age of fifteen for boys and nine for girls (*ibid.*). As pointed out earlier, the age of marriage is not the age of puberty. Puberty is only one of the conditions of the marriage, not the only reason for the formation of the marriage.

3. Polygamy

Polygamy is one of the most controversial topics that need to be explained and addressed thoroughly. Polygamy has been questioned extensively by human rights activists, especially by feminists (Ingrid I. Nicolau, 2015: 391). To better understand the concept of polygamy, We have to say that Generally speaking,

In terms of the possibility of a man marrying multiple women at the same time, there are two types of marriages: Monogamy: That is, a man can only marry a woman; Polygamy That is, a man can marry more than one woman.

Islam did not invent the system of polygamy. It existed long before Islam came into the scene of world events. Islam endorsed this existing practice Because it was needed and in harmony with the state of society (Murtaza Mutahhari, 2004: 22). Explain that The issue of polygamy was raised when men used to go to war, and the number of women was far more than men as the result of casualties of the war (*ibid.*). Tribal wars at that time were many, and naturally after the war, many women were left unattended. There was no one to take care of them. Therefore, given the low number of men Compared with More women, in custom, they were allowed to marry multiple women at the same time. But for women, that was not the case (Ahmed, Leila, 1992: 41). In addition, the possibility of multiple husbands for a woman would result in the mixing of generations. That was unacceptable. Therefore, the difference between men and women in this issue is due to the characteristics of men and women.

However, Islam modified the existing approach in three ways: First, it established the principle that a man can only marry a woman. So, Monogamy is principle and Polygamy is exceptional (Jawad, H. A., 1991: 181). Second, it sets a limit on the number of women a man can marry at the same time, meaning that a man cannot marry more than four women at a time (Reza Shokrani, 2015: 93). In addition, in order for a man to marry more than one woman, There is an important precondition in Islamic law. Justice in dealing with women, That is, a man must deal with multiple women in the same way Both financially and non-financially. Therefore, Islam has accepted this issue (Polygamy) in a limited way (Rohman, 2013: 68). Most people wrongly believe Islam had legitimized or paved the way for polygamy (Ingrid Nicolau, 2014: 711). However, it is important to note that Islam has encouraged monogamy. For instance, Verse 2 of the Surah al-Nisā' discourages the move by men to take away marital gifts after a decision to move to another woman (Surah al-Nisā', 4: 2). Sunni and Shia Muslim may have different views on the law on polygamy, especially on Verse 3 of Surah al-Nisā'. This section of the *Qur'ān* reads that, "If you fear that you might not treat the orphans justly, then marry the women that seem good to you: two, or three, or four.⁴ If you fear that you will not be able to treat them justly, then marry (only) one,⁵ or marry from among those whom your right hands possess.⁶ This will make it more likely that you will avoid injustice" (*ibid.*). So, all the verse really does is give permission to do practice polygamy; it does not necessarily encourage it (Jones, Rachel, 2006: 11). Although all Islamic jurists consider it necessary for men to

observe justice in dealing with their wives, they still disagree about the scope of this duty. Most jurists believe that the administration of justice is confined to Meeting the sexual needs of women. That is, a man must meet his wife's sexual needs equally. Others extend its territory to matters such as food, clothing, and housing among wives as well. These are called maintenance (nafaqa) in Islamic law. That is, the man must pay the living expenses of his wives equally. Minorities, however, believe that men should treat women equally In emotional matters That is, a man must love his wives equally (Emami, 2000: 4). But the majority believe that this kind of justice is impossible to attain because it is impossible to love multiple people equally (Mashhour, 2005: 562).

4. Divorce

A careful analysis and review of the literature on the marriage and polygamy laws reveals that there are two parallel and directly opposing views on the issue of divorce in the context of Islam (Asifa Quraishi, 2011: 173). The first view tends to validate the patriarchal mandates of the classical jurisprudence and strives to protect women in the face of the law (*ibid.*). The other view seems to support the rights of men when it comes to the making of unilateral decisions about divorce (*ibid.*). This particular perspective started with laws and regulation such as the Iranian Special Civil Courts Legislation (SCCL) in 1979 that lead to the creation of new courts to replace the Family Protection Courts (Winston Langley, 2013: 1954).

In the Iranian context, the first Family Protection courts had been established after the Revolution that took place in the country in February 1979 (Krysta Wise, 2011: 11). The newly enacted SCCL had 20 unique articles and three notes related to various issues on marriage and the rights of women (*ibid.*).

Also, the articles and notes strived to define the structure as well as the jurisdiction of the courts that were meant to handle various marriage and family issues in the country. The new courts and guidelines allowed for the registration of divorce through mutual consent (*ibid.*). Article 3 required that when a husband wants to divorce his wife, the case must first be referred to arbitration. However, if reconciliation was viewed to be impossible, the husband was to be given the go-ahead to divorce the wife. This particular article was a contradiction of the historical Shia position on the issue of marriage where men had the rights to make extrajudicial and unilateral decisions about divorce (Krysta Wise, 2011: 11). With time, attempts were made to address the contradiction by making references to the Koranic verses that talked about the importance of an arbitrator in the context of a marital discord and problem (*ibid.*).

A significant change in the sphere of divorce occurred later on with the enactment of the Family Protection Law. The new law curtailed the right of men to engage in arbitrary divorces or polygamy (*ibid.*). The reforms were also supported through the various civil codes that relied on procedural devices to bring harmony in the society and to minimize cases of divorce (Asifa Quraishi, 2011: 173). In particular, the new law required all couples who wanted to divorce to appear before the courts that dealt with all kinds of family and marital issues and disputes (Krysta Wise, 2011: 11). Upon the realization that the problem at hand could not be solved, the courts would issue the 'Impossibility of Reconciliation' certificate (*ibid.*). It is imperative to note that the grounds that were available for men who wanted divorce were parallel to those that women could rely on in such cases. Besides, each of the parties had the right to appoint an arbiter in an attempt to solve the issues at hand (Carolus van Nijnatten & Esli Jongen, 2011: 545). However, the final decision on the divorce as well as the custody of children was a matter that was left for the courts to decide (Krysta Wise, 2011: 11).

Existing laws in nations like Iran make it an offense for one to engage in divorce without a certificate issued by the family courts. The penalty for this offense was six months to one year term in prisons for the involved parties, the registrar included (The Civil Code of the Islamic Republic of Iran, 1935, Article 14). However, attempts were made under the Iranian laws to prevent frictions between the law and the Shariah laws that had recognized the exclusive rights of men when it comes to the issue of divorce (*ibid.*). In particular, the Civil Code that was enacted in 1935 stated that a man had a right to divorce his wife if he wished to do so (*ibid.*).

Under the Family Protection Law, a legal approach was taken when dealing with the problem of divorce. In particular, the requirement of a divorce certificate made it mandatory for parties to follow due procedures when trying to end their marriage contracts (*ibid.*). Also, the law recognized the rights of women and gave them some influence over the divorce process. This was a significant change from the historical times when women had minimal says in divorce issues and proceedings. By making the divorce certificate requirements and essential part of the process of ending the marriage contract, the Family Protection law sets out clear procedural rules as well as the rights of each element in issues to do with divorce (The Family Protection Act of Iran, 1967). Every individual is expected to abide by the requirements of the law before engaging in a divorce.

The marriage and divorce laws in Saudi Arabia also show how woman's rights have been considered and viewed from the perspective of the Islamic

laws. In Saudi Arabia, there are three significant elements of a legal marriage (Cybèle Cochran, 2010: 11). The first element is that the man must discuss the dowry with the woman's father and agree to pay it (*ibid.*). The dowry can be paid in the form of jewelry, clothing, and gold of considerable value (*ibid.*). When the dowry agreement is settled, the second stage is the actual marriage contract. In this case, the woman is asked about the man and requested to indicate whether she had accepted the marriage proposals (Otto, j. Michiel, 2010: 161). When the woman agreed to the proposal, the marriage process moves to the final stage whether the woman is officially handed over to the man in the presence of witnesses (*ibid.*). The handing over process can be accompanied by nights of celebration that marks the official start of the marriage contract (*ibid.*).

In the Saudi context, the Shariah laws allow a man to practice polygamy (*ibid.*). In particular, the Saudi men are allowed to have more than one wife provided that all of them are treated equally and well (Zahia S. Salhi, 2010: 134). In other words, Saudi men can have more than one wife if they can take care of them and provide for their needs (Nooshin Sabour, et al., 2011: 119). While this traditional practice has been part and parcel of the Saudi marriage and polygamy laws, there are constant shifts that are being witnessed in the country (*ibid.*). In particular, some men have deviated away from the practice of having more than one wife. The trend is not caused by the inability of the men to take care of their wives (*ibid.*). Instead, it is being fueled by the increasing independence and assertiveness of the modern Saudi woman (Chloe Safier, 2010: 140). In some cases, women insert a clause in their contract law which restrict the man from marrying another wife (Gaffney-Rhys, 2011: 12). Despite this being the case, polygamy remains a critical aspect of the Saudi laws. Furthermore, it remains one of the vital issues that scholars focus on as they strive to unravel and explore the rights of woman in Saudi Arabia (Anna Rogowska, 2013: 279).

The human rights movements and reformists in the society have significantly contributed to the improvement of the divorce laws. Besides, they have worked hard to ensure that women's rights are protected in cases of divorce even as the society continues to base its laws on the Shariah laws (Carolus van Nijnatten & Esli Jongen, 2011: 545). In 1982, for example, the Iranian Civil Code Article 1130 was amended to give the judge the ability to either withhold or grant a divorce that is requested by a man after considering whether continuation of the marriage would lead to harm or hardship (Krysta Wise, 2011: 11).

Later, in 1991, the pressure by women and the increasing cases of divorce in Iran forced the country to take radical steps to introduce the Amendment to

Divorce Regulations (ADR) (Louise Halper, 2016: 88). The Iranian parliament approved this amendment in 1992 but was significantly disputed by some sections of the society, including the Guardian Council (Krysta Wise, 2011: 11). The amendment outlawed the registration of divorce without a court certificate. Besides, it allowed men to only affect a divorce after paying the wife all her obligations except in a situation where he convinces the court of his inability to meet the obligation. The wife obligations may include the marriage gift (mahr) and maintenance during the waiting period. Also, the amendment allowed the courts to force the man to pay the wife exemplary wages, and monetary compensation for the work that she had done in the course of the marriage (Otto, J. Michiel, 2010: 161). These reformists' laws were meant to protect the rights of women during and after the divorce period and to encourage parties to strive to solve their marital issues and problems before going through a divorce (Cybèle Cochran, 2010: 11).

In countries like India, the law spells out that the husband must strive to provide for the woman even when they decide to go their separate ways (Protection of Rights on Divorce Act, 1986). The famous Shah Bano case in India sets out the responsibility of the man in caring for the woman even after separation (Mohd. Ahmed Khan v. Shah Bano Begum, 1985). In this case, the supreme court argued that the husband need to make fair and reasonable provision to maintain and support his former wife even after divorce or separation in the context of Section 3 of the Protection of Rights on Divorce Act, 1986 (Protection of Rights on Divorce Act, 1986, Section 3). This is a duty that the judges argued that should extend beyond the 'iddah period (*ibid.*). However, the amount or portion given to women may vary depending on the number of children in the family and the context in which the inheritance laws are being applied.

5. Child Custody

Another critical area that has been considered is custody. The Iranian Family Protection Law, for instance, has severely curtailed the rights of the mother of the control of the children after the divorce. In particular, Article 15 of the Family Protection Law has placed the mother at the same level with the paternal grandfather when it comes to natural guardianship over the children following death or divorce (The Family Protection Act of Iran, 1967, Article 15). With the changes introduced by the Family Protection Law to restrict men's rights to unilateral divorce, there were attempts to also compensate and protect women. In 1982, for instance, there were new marriage contracts that were issued (Family Protection Law, 1982). The contracts had stipulations that the notaries were required to read out to the couple (*ibid.*). Also, the new

requirements underscored the vital role of the courts in determining issues of child custody following a divorce. The laws continue to influence the human rights jurisprudence in the country and determine how various marital and family issues are addressed.

6. Women's Financial Rights

By forming a marriage, a man and woman agree that some financial rights and obligations come into play in their union. For example, dowry and alimony must be paid by the husband to the wife after initiation of marriage (Emily L. Thompson & Soniya Yunus, 2012: 361). Dowry or mahr is defined as "[t]he property given by the husband to indicate his willingness to contract marriage, to establish a family, and to lay the foundations for affection and companionship." (*ibid.*) Mahr is a religious duty and obligation that has been addressed in the Shariah law and required by the *Qur'ān*. However, interpretation and payment methods of mahr may differ based on the custom (*'urf*) of each Muslim country (*ibid.*). Marriage portion or dowry also existed during the pre-Islam era but not in the same way. Instead, the dowry was kept by the father of the virgin woman (*ibid.*).

There were a lot of negative perceptions about dowries and most understood it as a way that fathers can sell their daughters by accepting something in return (Ali, Tazeen et al. 2013: 84). However, this concept changed, and after the marriage, the dowry belongs to the woman (*ibid.*). Also, the dowry is treated as the woman's personal property (Emily L. Thompson & Soniya Yunus, 2012: 361). A woman can ask to have her dowry at any time during the marriage, and this has nothing to do with divorce. This is mere respect for the value and recognition of women and their importance in the marital relationship (*ibid.*). There were cases where women misused this system. Nowadays, women are getting into fake marriages and asking for their dowry as soon as they marry (*ibid.*). From legal and religious points of view, the dowry is a powerful lever that is available to women. However, misusing a right by some groups of people should not negate the credibility and validity of that right.

7. Inheritance

Discussions on the rights of women in Islam are never complete without the mentioning of inheritance jurisprudence (Otto, J. Michiel, 2010: 161). The process entails highlighting the Islamic laws that relate to the topic of inheritance in the context of a particular nation and the Islam religion. It is imperative to note that many Islamic countries have based their laws on inheritance on the ideas set out by the *Qur'ān* (Prakash Shah, 2013: 58). It

is also critical to state that the *Qur'ān* has introduced several rights as well as restrictions that relates to the issue of inheritance in the context of family life and the treatment of women (Ismael Saka, 2016: 303). Further attempts have also been made to fix the existing loopholes in inheritance law with the goal of creating a complete and efficient legal system that can bring peace and harmony to the society (*ibid.*).

A review of the existing evidence shows that the *Qur'ān* has strived to improve the status and rights of women and identify some of the areas that countries and the society need to look at to promote the fair and equitable distribution of resources (*ibid.*). However, such guidelines do not take the form of the conventional legal ordinance. Instead, the Quranic instructions and endeavors strive to provide a basis on which nations can build their inheritance laws and promote the rights and well-being of women (Imam Tamim, et al., 2016: 256). Besides, the *Qur'ān* does not make an explicit mention of the shares that every gender is entitled to when it comes to the issue of inheritance. These laws have been explained using Islamic laws with theological and scholars arguing that men are better placed to protect family property (*ibid.*). Therefore, they ought to be given an upper hand in the issue of inheritance.

It is also imperative to state that Muslim scholars have argued that men must get a higher portion of inheritance due to the responsibilities that are bestowed upon them by the Islamic law (Sultana Alam, 2010: 32). It is argued that the Islamic law decrees that women are entitled to dowry and any other provisions set by the parents upon marriage (Issa Khan, et al., 2016: 1695). The man must pay the dowry and take care of the woman and his family. Thus, it is prudent for the law to give men an upper hand when it comes to the issue of inheritance so that they are in a position to meet their dowry obligations and also take care of parents (Afroza Bulbul, 2013: 217).

The Muslim laws and rule of inheritance are usually strict and must always be followed to the letter. In many nations, the rule of the son taking double the share received by the daughter is often used as the baseline for dealing with property and inheritance issues (*ibid.*). However, it is critical to note that once the daughter gets her inheritance, she will have absolute power over it. In other words, the law gives the daughter to manage, control, and own what she inherits as per the Islamic laws (*ibid.*). When there is no son in an Iranian family, the daughter gets half of the share of the available properties or inheritance (Omar Alharbi, et al., 2015: 12). Like in the previous case, the daughter will be given the legal rights to control, manage and event dispose of what she inherits. In other cases, the daughter is eligible to get gifts from those she will be inheriting property from (*ibid.*).

The other critical aspect of the Islamic laws on inheritance relates to inheriting property from children and the disposal of the inherited property. Under the Islamic law, a woman may be entitled to inherit property from her children provided that they are independent (Afroza Bulbul, 2013: 217). When there are no grandchildren to be considered, the woman may get as much as one-third of the properties (Issa Khan, et al., 2016: 1695). However, if there are grandchildren, the woman may be eligible for approximately one-sixth of the dead child's property (Magaji Chiroma, 2014: 264). The Islamic law on disposal of property applies to all cases of inherited and owned property, including those inherited from children. This law often referred to as the *wasiyat*, prevents Muslims from giving away a particular portion of their wealth (*ibid.*). In cases where there is no child or heir to take charge of the remaining estates, the wife will get the upper hand when it comes to the allocation of the property (*ibid.*).

RESPONSE TO THE ISLAMIC LAWS

The manner in which the Islamic law treats and considers women has attracted the attention of various scholars, stakeholders, and groups around the world. Also, multiple views have been aired regarding the right of women to own and inherit property in the context of the Islamic laws. On one side of the divide are people and groups who support the current legislative frameworks and Islamic laws that have been used to share property and determine the portion of the property that a woman can inherit (*ibid.*). This group usually bases their judgment on the *Qur'ān* and Islamic teachings that tend to favor men over women when it comes to property ownership. To this group, women should not play equal to men when it comes to the right to inherit property (*ibid.*).

On the other side of the discussions are individuals who argue that the current laws that are in use in the Arab world are suppressive and discriminatory (Issa Khan, et al., 2016: 1695). To this group, it is a high time that nations changed their laws to consider the current landscape in which societies live and operate. Also, those who oppose the law argue that it is not prudent for a country to deny citizens the right to lawfully inherit and own property just because of the mere fact that they are female (*ibid.*). Judging citizens from the gender perspective, in their view, is not only retrogressive but also unacceptable. Therefore, Islamic nations should consider revisiting the laws and making the necessary adjustments to ensure that woman and men get equal rights to inherit or won property. (*ibid.*).

In the recent years, there has been a significant public interest in the Muslim laws and litigations involving the Islamic rules on inheritance (İlker Tsavousoglou, 2015: 245). In particular, some people and groups who have posited that the current Muslim laws are discriminatory when it comes to the sharing of property. Also, these groups have argued that the laws do not promote equality among men and women. Instead, they give men an advantage and an upper hand when it comes to the sharing of property. These are arguments and views that continue to shape the understanding of the Islamic laws and how it relates to the rights of woman in the society. While some of the concerns made by these groups warrant the attention of governments and policymakers, no significant effort has been made to change the law (Afroza Bulbul, 2013: 217). Instead, Islamic nations continue to act in accordance with the existing laws and their *Qur'ān* teachings that entitles men to a more significant share than women when it comes to the sharing of inheritance.

CONCLUSION

Is there justice in determining the rights of women in the Islamic legal system? There are different answers to this question. The correct answer to this question seems to depend on the correct definition of justice. If justice means formal equality, then it is natural that the answer to the above question will be in the negative. Because in Islam the rights of men and women are not the same. So justice in the formal sense does not exist. But if we take justice to its substantive meaning, the answer to the above question will be different. In substantive justice, the differences of individuals are taken into account And because of these differences, the rights of individuals also change. In this case, there is no formal equality, but there is substantial justice. In this article, we focused on the this meaning of justice.

In various articles, the above question has been addressed. However, these articles focus on specific areas of women's rights. For example, women's human rights or women's rights in relation to government. But this article attempts to emphasize women's rights in the family. For this reason, various topics such as marriage, divorce, polygamy and so on were selected and the approach of the Islamic legal system was seen in these subjects. According to this study, Islam has, in many cases, increased women's rights. This is quite understandable, given the cultural conditions of the time. In addition, the differences between women's and men's rights in Islam are related to the natural and credit differences between men and women. Given the different roles and functions of men and women in the family, Islam has given them

different rights. Thus, it can be said that justice has been observed in the determination of women's rights in the Islamic legal system.

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