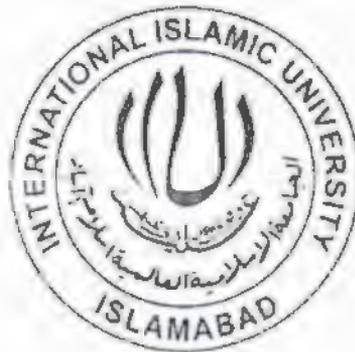


**RIGHTS OF WOMEN AND THEIR OBLIGATIONS
TOWARDS THEIR CHILDREN: A COMPARATIVE STUDY
IN THE LIGHT OF HUMAN RIGHTS LAW AND ISLAMIC
LAW**



Supervised By

Dr. Samia Maqbool Niazi

Submitted By

Madiha Tahir

Reg. No. 81-FSL/LLMHRL/F11

Faculty Of Shari'ah & Law

International Islamic University, Islamabad

2017





Accession No

TH: 18080

WMM

MS

342.0878

MAR

Women - Legal status, laws, etc.

Women's right - Religious aspects - Islam

women's right - Islam

APPROVAL SHEET

“Rights Of Women And Their Obligations Towards Their Children: A comparative study in the Light of Human Rights Law and Islamic Law”

By

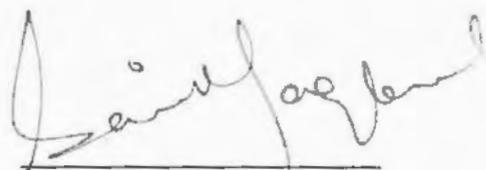
Madiha Tahir

Reg. No. 81-FSL/LLMHRL/F-11

Accepted by the Faculty of Shari'ah & Law, International Islamic University, Islamabad, in the partial fulfillment of the requirements for the award of degree of LLM (Human Rights Law).

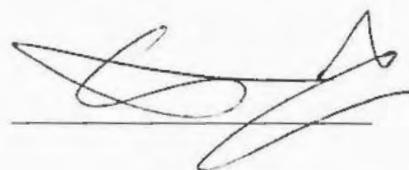
Supervisor

Dr Samia Mqabool Niazi
Assistant Professor, Department of Law
IIUI



Internal Examiner

Dr Sadia Tabassum
Assistant Professor, Department of Law
IIUI



External Examiner

MS Neelam Jehan Khan
Assistant Registrar
Islamabad High Court





BISMILLAH IR-RAHMAN IR-RAHIM

"(I START) IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL"

DEDICATION

I dedicate this to my Beloved Parents and my Husband for all their love and attention which has made it possible for me to make it up to this point.

TABLE OF CONTENTS

LIST OF FIGURES.....	iv
LIST OF ABBREVIATIONS.....	v
TABLE OF CASES.....	vi
ACKNOWLEDGEMENT	vii
ABSTRACT	viii
CHAPTER 1.....	1
INTRODUCTION TO THE RESEARCH	1
1.1 Introduction.....	1
1.2 Literature Review.....	6
CHAPTER 2	10
WOMEN AND CHILD RIGHTS UNDER ISLAMIC LAW.....	10
2.1 Introduction.....	10
2.2 Rights of Women	11
2.2.1 Social Rights.....	12
2.2.2 Economic Rights.....	14
2.2.3 Legal Rights.....	14
2.3 Status of Working Women.....	15
2.4 Woman's Right of Employment	18
2.4.1 Views of Eminent Scholars	20
2.5 Child Rights in Islam	22
2.5.1 Right of custody/ Hidanah.....	24
2.5.2 Fosterage Right of Child in Islam with perspective of Mother's job.....	29
2.6 Analysis.....	33

2.7 Cases decided in Pakistan on the basis of the Doctrine of “The best interest of Child”.....	35
2.7.1 <i>Muhammad Shafi (Petitioner) vs. Muniran BiBi (Respondant)</i>	35
2.7.2 <i>Mst. Aneeta Tanveer (appellant) Vs. Muhammad Younus (Respondent)</i>	36
2.7.3 <i>Shahbaz Ahmad (appellant) Vs. Additional District Judge</i>	37
CHAPTER 3.....	39
WOMEN RIGHT TO WORK AND FAMILY PROTECTION IN INTERNATIONAL LAW..	39
3.1 Introduction.....	39
3.1.1 International Human Rights Instruments	39
3.2 Women Rights are Human Rights	42
3.3 Conventions on Women Rights	44
3.3.1 Women Right to Work and Child’s Right of Protection: A Comparison.....	46
3.4 Child rights as in the Convention on the Rights of Child (CRC).....	48
3.5 Children Rights in the Family	51
3.6 Economic Activity and Child Care Practices.....	52
CHAPTER 4.....	57
APPRAISAL OF HUMAN RIGHTS LAW AND ISLAMIC LAW ON THE RIGHTS OF WORKING WOMEN AND CHILD RIGHTS	57
4.1 Introduction.....	57
4.2 An overlap between Women Rights and Children Rights	59
4.2.1 Women as Conduits of Children’s Rights;.....	59
4.2.2 Personal Choice and Best Interests of The Child.....	60
4.2.3 Protection as a Basis For Women’s Disempowerment	61
4.3 The Prioritization of Human Rights and Human Rights as Absolutes	61
4.4 Child Care as The Sole Responsibility of Women.....	62
4.4.1 Coinpromise between a Child’s Rights and her/his Mother’s Rights.	63
4.5 Advantages and disadvantages of mother’s job.....	64
4.6 Absence of Government Family Welfare Policies.....	67
4.7 Suffering child	71
4.8 Brief Summary of Discussion.....	71
CHAPTER 5	73
CONCLUSION AND RECOMMENDATIONS	73
5.1 Analysis.....	73

5.2 Conclusion.....	74
5.3 Recommendations.....	78
BIBLIOGRAPHY.....	81

LIST OF FIGURES

Figure 1 Rights of Child in Islam	23
Figure 2 A link between Women and Child Rights.....	59

LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRC	Convention on the Rights of Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CERD	Committee on the Elimination of Racial Discrimination
CAT	Convention Against Torture
WID	Women in Development
GAD	Gender and Development

TABLE OF CASES

Muhammad Shafti vs. Muniran BiBi, 1992 CLC, 2348

Aneeta Tanvir vs. Muhammad Younas, 2010 YLR, 513.

Shahbaz Ahmad vs. Additional District Judge, 2008 YLR, 127.

Farah Iqbal vs Muhammad Anwar & 2 Others, 2003 PLD, 131.

Muhammad Tahir vs Mst. Raeesa Fatimah & Others, 2003 SCMR, 1344.

Mst. Shahista Naz V/S Muhammad Naeem Ahmad, 2004 SCMR, 990.

ACKNOWLEDGEMENTS

Firstly, I would like to gratefully acknowledge Allah Almighty, who is most merciful and helpful to complete this work successfully with His countless blessing. Allah almighty always supported me throughout my life in a number of ways and now also because of His blessing; I have been able to complete this dissertation. The most earnest acknowledgement must go to my supervisor Dr Samia Maqbool Niazi for her patient guidance, encouragement, invaluable advice and many fruitful discussions throughout this study. Her critical eyes and enlightened thoughts were instrumental and inspiring.

After that, I owe my deepest gratitude to my parents and family for supporting me throughout all my studies. They helped me in difficulties throughout the course of this dissertation and also encouraged me with patience in my stressed mood. I would like to thank my whole family for providing a loving environment for me. It will be injustice if I don't acknowledge and thanks my best friends and colleagues who have encouraged and support me. I will specially thank to my teachers and mentors. Lastly, I would like to thank Almighty Allah and also to all praying and helping hands for me.

Madiha Tahir

ABSTRACT

RIGHTS OF WOMEN AND THEIR OBLIGATIONS TOWARDS THEIR CHILDREN: A COMPARATIVE STUDY IN THE LIGHT OF HUMAN RIGHTS LAW AND ISLAMIC LAW

By

Madiha Tahir

In our compartmentalized world, the rights of children and women have often been promoted in isolation from one another. Separate international treaties have been forged and specialized UN agencies, governmental ministries, and non-governmental organizations created for whom women and children are the primary focus. The purpose of this research is to explore human rights link between these two groups, the practical implications of considering them together and areas for strategic action.

This section provides a conceptual framework for understanding human rights. It also offers a brief look at the evolution of the women's and children's rights in Islam and the modern rights enumerated in international conventions, e.g. Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Finally, it describes the legal instruments and mechanisms that have been created to protect and promote these rights, foremost among them the Convention

on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The research also highlights that these two conventions are in conflict with each other where the former is stressing upon the rights of women while the later is advocating the child's right. A mother right of employment cannot be fulfilled when the child is given his/her due rights according to the Convention on the Rights of Child. It shows where the rights of women and children intersect and how both conventions and the committees that monitor them can be successfully employed to safeguard these rights.

Gender equality and the protection of human rights, especially of children and those most vulnerable, are fundamental principles of the United Nations. These rights cut across all aspects of the UN's work and are crucial to long-term progress, including achievement of the Millennium Development Goals. The purpose of this research is to explore the human rights links between these two groups and the practical implications of considering them together. The presence of working mothers investigated in the study indicates that due to the absence of proper state care measures, the children of none of the families could grow up in a healthy and congenial environment for their development. The study, therefore reveals that irrespective of socio-economic and cultural divergences in the families, the problems associated with child development became the same for all social groups during the post-globalization era. This demands urgent attention from society, lawmakers and Government machinery.

CHAPTER 1

INTRODUCTION TO THE RESEARCH

1.1 Introduction

The mother plays a vital role in the development of the family. The most important achievement of the mother is the raising of sensible children. It has been said that it is easier to bear children, but it is difficult to raise them well.¹ A good mother gives priority to the needs of her children. Today it can be seen that women in this modern time give priority to their own careers instead of thinking about the wellbeing of their children which is a problem of our society.²

The family is the basic unit of society, and the basis of the family is the division of labor between husband and wife. The upbringing of children is the most significant role of the family.³ Children should be raised within their families. Western countries talk about equality of men and women and there are Declarations and International Treaties regarding discrimination and equal rights, given to all human beings.⁴

¹Kassamali, Tahera. "Raising Children". Al Islam. Org. http://www.al-islam.org/raising_children/1.htm (last accessed October 11, 2012).

² Ibid.

³ Muhammad Tahir Mansoori, *Family Law in Islam: Theory and Application* (Islamabad: Shariah Academy, 2009), 17.

⁴ Universal Declaration on Human Rights, 1948. The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and

Human Rights Law upholds the positive right of all peoples right to marry and form a family. The family is the fundamental and the natural unit of society and requires the full protection of the state.⁵ Human Rights Law seeks to bolster the family unit by specifying state obligations to keep families together and children should be protected as is required by his status as a minor.⁶ It insists on maternity rights for mothers to allow time and space for the bond to develop between mother and the child.

If we see the conventions of the United Nations on Rights of Women and Children it seems a contradiction between their Articles. According to CEDAW⁷ “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women”.⁸ On the other hand, according to CRC⁹ “In all actions concerning children, whether undertaken by public or private social welfare Institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.¹⁰

cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages.

⁵Article 23(1), International Covenant on Civil and Political Rights 1966.

⁶ Ibid , Article 24(1)

⁷Convention on the Elimination of All Forms of Discrimination Against Women, 1979. It was adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

⁸Article 11(1), CEDAW,

⁹Convention on the Rights of Child, 1989.

¹⁰Article 3(1) , Convention on the rights of child, 1989.

Child rights advocates believe that CEDAW focuses too much on a woman's right to self-actualization and may unintentionally subvert the importance of motherhood.¹¹ There are many declarations and conventions which reaffirm the need of special safeguard and care for the child by the reason of his physical and mental immaturity.¹² The Children Act 1989 is based on the belief that children are generally best looked within the family with their parents playing a full part in their lives.¹³

CRC also reaffirms that the child should grow up in a family environment in an atmosphere of love and happiness for the good development of his personality.¹⁴ It is not possible without the cooperation of parents and it seems impossible when both parents are employed because in this case no proper attention is given by the parents to their children which they actually deserve.

Working women may be prone to depression because they bear the double burden of housework and a job outside the home. Because they have to work in two Environments, one is the office environment and the other is the home environment.¹⁵

On some aspects it is assumed that working mothers cannot contribute properly to the well-being of their family. Their attention diverted because of

¹¹“Women and children, The double dividend of gender equality”.Unicef.org. <http://www.unicef.org/publications/files/The State of the Worlds Children 2007 e.pdf> (last accessed October 17, 2012).

¹²Declaration on the Rights of Child Adopted by the General Assembly on 20 November 1959.

¹³Julie Wallbank, Shazia Choudary and Jonathan Herring, Eds, *Rights, Gender and Family Law* (NY: Routledge Taylor & Francis Group, 2010), 45.

¹⁴Convention on the Rights of Child, 1989.

¹⁵Hina Ahmed, Maryam Khurshid and Ishtiaq Hassan, “Marital Adjustment, Stress and Depression among Working and Non-Working Married Women”, *Internet Journal of Medical Update* 2:1 (2007), 19-26.

working in two situations,¹⁶ which badly affects their child's overall development. In all those cases, mostly parents put their children in daycare centers; the question arises here, would it be an alternate to mother care? Can a day care be considered a proper home for the full development of a child? According to the UNICEF¹⁷ report, although childcare can bring educational benefits, but the lack of close contact with parents can make it more difficult for the child to regulate his or her responses to the world.

The authors of the UNICEF report cited British and American evidence linking daycare to anti-social behavior. Younger children are at great risk in child care centers. In particular, long hours of childcare for those under the age of one year are widely regarded as inappropriate.¹⁸

Pakistan being an Islamic country, women are expected to stay home and do housework. Women seem to be responsible for the protection of their children.¹⁹ Islam appreciates that mother should be in custody of child during early childhood because she is more caring and attentive to the child's needs.²⁰

In Islamic Law, the term *hadanah* is used for the custody. Every legitimate child has this right of *hadanah* or custody.²¹ The custody of children belongs to the

¹⁶Ibid.

¹⁷United Nations International Children's Emergency Fund. A UN Agency Working for Children Rights.

¹⁸UNICEF Child Care Report 2008. https://www.unicef-irc.org/publications/pdf/rc8_eng.pdf (last accessed October 10, 2012).

¹⁹Jullie, *Gender and Family Law*, 65.

²⁰"Women's Rights in Islam". Islamswomen.com. <http://women in islam.ws/en/women right in Islam daughters.aspx> (last accessed October 18, 2012).

²¹Mansoori, *Family Law in Islam*, 189.

mother at the early stage of the child's life for the well being of the child.²² According to four Islamic Schools of Law (Hanafi, Maliki, Shafi and Hanabali)²³ the mother has the first right over the child, whether married or separated.²⁴

Observing the instruments on civil and political rights, women's rights and those on the rights of the child, we come across provisions highlighting the importance of family, marriage and best interest of the child at the same time, however, apparently liberating women from their obligations towards family and children is the theme of some instruments, this contradiction has caused serious problems for all, hence we have to recognize the different roles of men and women in the human rights system.

This work would be expected to open new horizons to the readers, to explore answers to almost every query in their minds. This work aims to focus on some issues which are widely debated.

Firstly, to highlight the effects of mother's employment on families.

Secondly, focusing on the infants and the impact of maternal employment on the well-being of children.

Thirdly, to compare the provisions of CEDAW and CRC, which are in conflict with each other regarding employment and child care.

²² Imran Ahsan Khan Nyazee, *Outlines of Muslim Personal Law* (Pakistan: Federal Law House, 2012), 131.

²³ Mansoori, *Family Law in Islam*, 190.

²⁴ *Ibid*, 191.

Fourthly, Rights of women and their obligations towards their children and Impact of child care center on child social development.

Fifthly, Effects of monitoring and supervision of mothers on a child's development.

Sixthly, highlight the concept of working woman and child care in Islam and its comparison with the present situation in Pakistan.

1.2 Literature Review

The issue of child care is still widely debated, with some scholars arguing that children fare best in parental care, whereas others suggest center care may enhance children's development. Lisa N. Hickman in her research article "Who Should Care for Our Children" studies the potential primary caretaker of children. She argues that children who attended daycare centers tend to exhibit more behavioral problems. Compared with peers who were cared for by their parents, children who attended a daycare center had poorer social skills, including less self-control, lower levels of interpersonal skills, and the tendency to externalize problem behavior through fighting, arguing, expressing anger, acting impulsively, and disturbing classroom activity. This article deals with the issue of primary caretaker of a child.²⁵

As of the moment of birth every child has rights due from parents, society and the state to be accorded proper nursing, education and material and moral care. Both the fetus and mother must be protected.

²⁵Lisa N. Hickman, "Who Should Care for Our Children?," *Journal of Family Issues* 27:5 (2006): 652-684.

Jonathan Todres in his study titled “Women's Rights and Children's Rights: A Partnership with Benefits for Both”²⁶ explores the connection between women's rights and children's rights and suggests ways in which they can complement each other thereby furthering the rights of both groups. The author then discusses ways in which women's rights can offer benefits for children and, in turn, how the enforcement of children's rights can support the rights of women.

Abdul Sattar Almani *et. al.* in their “Study of the Effects of Working mothers on the Development of Children in Pakistan”²⁷ study the impact of working mothers on child care in Pakistan. A close observation and analysis of Pakistani society in this respect makes this paper very important for our research. The selection between staying looking after children and going to work is very difficult for Pakistani mothers. The opponents argue that by working, mothers deprive their children from early development and training. Hence, it is not immoral for a mother to have a job, but it is probably not the encouraging activity for her children. The study attempts to find out the effects of mothers' work on the early growth, training and performance of children.

M.Guggenheim in his book “ What's Wrong with Children's Rights?”²⁸ explores the subject of children's rights as a phenomenon, how the expression of

²⁶Jonathan Todres, “Women's Rights and Children's Rights: A Partnership with Benefits for Both,” *Cardozo Women's Law Journal* 10:93(2004), 603-624.

²⁷ Abdul Sattar Almani, Allahdino Abro and Roshan Ali Mugheri, “Study of the Effects of Working mothers the Development of Children in Pakistan”, *International Journal of Humanities and Social Science* 2:11 (2012), 164-171.

²⁸M. Guggenheim, *What's Wrong with Children's Rights?* (Cambridge: Harvard University Press, 2005), 12.

children's rights is used, by whom, and to whose advantage. It describes how the modern children's rights movement began. He argues that although adults need to pay greater attention to the way they treat children and how they might change their behavior to serve them better, they should learn to do these things outside of the rubric of children's rights. The study also carefully examines the dispute over adoption, custody, child welfare and foster care.

Ayesha Rafique in her article "Child custody in Classical Islamic Law and the Laws of Contemporary Muslim world" attempts to analyze the child custody laws in classical Islamic texts and the contemporary Muslim World with special focus on the development of child custody laws in Pakistan.²⁹ It also refers Laws of Fiqh as well as decisions of Prophet Mohammad (ﷺ), his companions and Muslim jurists. This article also suggested that uniform laws can be formulated for the entire Muslim world, in the light of Islamic principles and contemporary practices of the Muslim world.

"Status of women in Islam" by Justice Aftab Hussain in his literary work explains the rights and liabilities of women as a daughter, wife or mother, as a member of an Islamic society and as a citizen of the Islamic State.³⁰ She is as useful as her counterpart. The study emphasis on women's rights by arguing that, Like a man, she has an independent individuality and is economically, socially and politically identified as an entity different from her husband, father or son with the

²⁹Ayesha Rafique, "Child custody in Classical Islamic Law and the Laws of Contemporary Muslim world," *International journal of Humanities and social science* 4:5 (2014), 244-277.

³⁰Aftab Hussain, *Status of the women in Islam* (Lahore: Law Publishing Company, 1987), 4.

right to own property, earn money, vote at elections, hold elections or other public offices and protect her legal and constitutional rights.³¹

J J. Nasir in his book "*The Islamic law of personal status*" provides the Islamic perspective of paternal and maternal care. According to Islamic Law the child's first right is to establish parentage and it may be established through marriage, acknowledgement or evidence. One of the most important right establishes from marriage is parentage i.e. maternity and paternity of offspring of the spouses. The child first right is followed by the right of upbringing and the right to maintenance by the father and fostered and custody by the mother.³²

The above reviewed literature is discussing the subject separately and not comparatively. The whole literature is throwing light on the issue of working women and the child care independently and giving the idea how Islam and human rights instruments have their say about this issue. Previous writings were source of guidance for the writer.

The proposed research is unique in this way that it is a comparative study and both child and women's rights are comparatively discussed here, also the Islamic and modern human rights perspective are discussed in detail. I hope this research is a unique and fruitful addition to the existing work on this topic.

³¹ Ibid, 22

³² J J. Nasir, *The Islamic law of personal status* (London: Graham&Trotman Ltd, 1990), 156.

CHAPTER 2

WOMEN AND CHILD RIGHTS UNDER ISLAMIC LAW

2.1 Introduction

The family is the primary and essential unit of social organization;³³ its proper constitution and functioning is, therefore, necessary for the health and happiness of society. This state is attained through proper upbringing of children. Children are a blessing of *Almighty Allah* as said in the Holy Book “*And Almighty Allah hath given you wives of your own kind, and hath given you, from your wives, sons and grandsons, and hath made provision of good things for you. Is it, then in vanity that they believe and in the grace of Almighty Allah that they disbelieve?*”³⁴

ALLAH has ordered us to fulfill the rights of the children. Primarily, children have two rights: to receive love and to receive a proper upbringing.³⁵ Both these rights are equally important. Love to the child enhances compassion and proper upbringing enhances righteousness. Both the parents have to make an effort to enhance both these qualities only with a joint effort. Parents are fulfilling their respective roles so that their children fulfill a meaningful role in society.³⁶ As the

³³Muhammad Ala-ud din Haskafi, *The Durr-ul-Mukhtar*, Trans. B.M. Dayal (Lahore:law Publishing Company,n.d), 2.

³⁴Abdullah Yousuf Ali, *The Holy Qur 'ān* (Pakistan:DawahAcadmy,n.d), 16:72.

³⁵J. J. Nasir, *The Islamic law of personal status* (London: Graham&Trotman Ltd, 1990), 120.

³⁶Ibid

Holy Prophet (ﷺ) said; narrated by Ayyub Bin Musa: "*Parents can provide nothing their offspring's better than proper upbringing*"³⁷

Islam recognizes all the basic human, social, economic and political rights of women. The Holy Quran has specified these rights and responsibilities in several verses of *Surah*: Al-Baqara, Al-Maidah, Al-Noor, Al-Ahzab, and Al-Tahim. However, in *Surah An-Nisaa* and *Al-Talaq*, precise discussions and elaborations are presented on the subject of women's rights and obligations. Similarly, detailed guidance and insight into this very topic is given in many *Ahadith* of the Holy Prophet Muhammad (ﷺ).

2.2 Rights of Women

The women's rights are closely associated with their obligations in an organized manner. These Islamic assertions about women's rights provide a broader framework which needs to be utilized for upholding the status of women in Muslim societies. The Holy Prophet (ﷺ) said, "*Among you, the most respectable is the one who respects women and the most disrespectful is the one who disrespects the women.*"³⁸

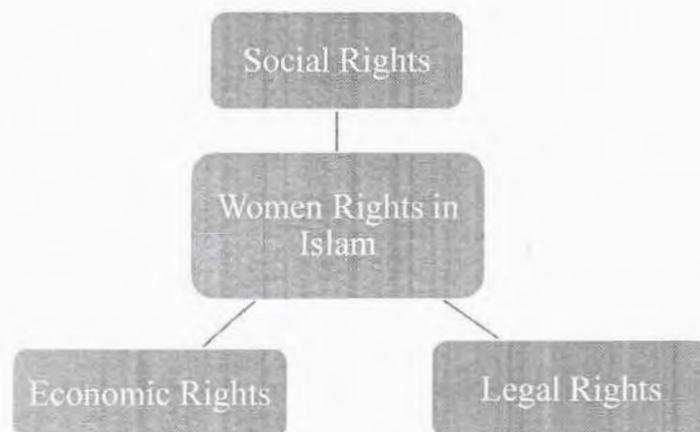
Islam gave women an honorable life and ignite the light of rights in her life.

Before Islam, women were extremely deteriorated by the society. Islam abolished all

³⁷ Imam Tirmidhi, abu Isa Mohammed Ibn Isa, *Sunan al-Tirmidhi*, trans; Abu Khaliyl (Al Riyadh: Darussalam,2007), 1952.

³⁸Imam hafiz Abu dawud Suliman bin Ash'ath, *Sunan Abu Dawud*, tran;yasir Qadhi (Al-Riyadh: Darussalam,2008), 2046.

the dark practices and made the paradise under the feet of the mother, guaranteed paradise to a father who brought up his daughters with love, assured paradise to the husband who cares his wife and made sisters partners in the inheritance.³⁹ For further classifications of women's rights in Islam, let's discuss them under different heads such as social, economic, and legal rights.



2.2.1 Social Rights

There is no discrimination in Islam on the basis of gender and Islam does not prohibit a woman from seeking education. It's her right to get the same education as her brother get. Therefore, nobody can deprive her from seeking education.

Once a lady came to the Holy Prophet (ﷺ) and said that she was forcefully married by her father and she was not happy with her husband, the Holy Prophet (ﷺ) dissolved her marriage then and there and emphasizes for marrying couples by their

³⁹Khurshid Ahmad, *Family Life in Islam* (United Kingdom: The Islamic Foundaton,1974), 28.

consent.⁴⁰ The Hadith validates the consent of females before marriage and made it compulsory for all Muslim parents to seek her consent. She can also demand to see the person before her marriage and she can also talk to him in the presence of her legal blood relative.⁴¹

Once, Hazrat Ayesha (R.A) desired to see the ongoing circus in the street. The Holy Prophet (ﷺ) happily replied to her that she can hide herself at the back of Holy Prophet (ﷺ) and then watch the circus. Ayesha (R.A) did this and enjoyed the circus as long as she can stand there when became tired she went back to home. The Holy Prophet (ﷺ) stands there more than an hour for her entertainment.⁴² This Hadith is highlighting the kind treatment of the Prophet (ﷺ) towards his wife. It also emphasizes the right of entertainment for women. It is a wrong perception by some people that Islam does not give liberty to women. In fact, this is opposite of Islamic teachings. It is also her right that she should be treated with love by her husband as *Almighty Allah* said in the Holy Book "*You and your wives are dresses of each other.*"⁴³

⁴⁰Dr. Muhammad Muhsin Khan, *Sahih Al-Bukhari vol 7* (Al-Riyadh: Darussalam,1997), 59.

⁴¹Imam hafiz Abu dawud Suliman bin Ash'ath, *Sunan Abu Dawud*, tran;yasir Qadhi (Al-Riyadh: Darussalam,2008),524.

⁴²*Sahih Bukhari*, Book of supporting family. "Hazrat Ayesha desired.....", 56.

⁴³ Al-Quran (2:187)

2.2.2 Economic Rights

Allah Almighty knows all strength and weaknesses of His creatures. Therefore, He shifted all the financial burden of women on man's shoulder.⁴⁴ When she is a daughter, she is the duty of her father. If the father dies, she becomes the duty of her brother. When she is the wife she is the duty of her husband and when she is the mother, she is the duty of her son.⁴⁵ In this way she can live her life very comfortably and can take care of the house easily. Subsequently, maintenance is also on the shoulder of men. Father, brother, husband and son have to give her food, clothes and other needs of life respectively. The Holy Prophet (ﷺ) said, "*Anyone who brought his daughters with full care and then marry them. He is as close to me as my two fingers.*"⁴⁶

Allah assigned all the financial requirements of women as a duty of men, but even then He does not make women empty hand in economic rights. Moreover, she has the right to seek employment.

2.2.3 Legal Rights

Before Islam, there was no concept of inheritance for women. Islam gave right to women in the inheritance. Women have half of the part as men have in parent's properties. This does not mean she has half right than man. But as it is mentioned

⁴⁴ Mohammad Afzal, Bean Lee L. and Imtiaz ud din Husain, "Muslim Marriages: Age, Mehr, and Social Status", *The Pakistan Development Review* 12:1 (1973),49.

⁴⁵Khurshid Ahmad, *Family Life in Islam* (United Kingdom: The Islamic Foundation, 1974), 30.

⁴⁶*Sahih Muslim*, Book of good manners. "Anyone who brought his daughter...", 6695.

above she does not have any financial responsibility to fulfill as the men have.⁴⁷ Therefore, she can save or invest her part of the property for her future and make a profit. It is also very clear in Islam that her husband cannot demand a single penny from her wife and she is not bound to give anything to anybody.

In addition to this, she can buy property in her own name as a legal person. She can possess property without anybody's interference. She has complete right on her property as she can sell it, rent out it and can give it to anyone as a gift.

Furthermore, the wife has the right to get the dower from her husband before establishing matrimonial relations. The husband is bound to give her wife's dower at the time of marriage.

By summing up the whole discussion, it can be said that Islam is the first religion that embraces women with light of all social, economic, legal and political rights fifteen centuries ago. Islam cannot be blamed for the present state of women. In fact, it can be said that, it is because of forgetting the teachings of Islam.

2.3 Status of Working Women

It is a biological fact that men cannot give birth to babies nor can they suckle their young ones. Beyond these limitations, it is obvious that men could give sufficient encouragement and early training, share equally in the burdens and joys of child rearing. However, the way our society has evolved, it is nearly always the mother's

⁴⁷Ruqaiyyah Waris Maqsood, *The Muslim Marriage Guide* (Iran: Amana Publications, 2000), 5.

role to take the primary responsibility for both the provision of care to young children and the making of day-to-day decisions about their lives.⁴⁸ It is the mother who works part-time when children are young, who declines opportunities for advancement, who neglects the acquisition of skills that might permit moving to a higher income.⁴⁹ Of course, young children make life forever different for fathers as well; often they may work hard and for longer hours, and there is a considerable amount of off-shifting, where fathers and mothers adjust work schedules to avoid hiring paid caregivers while both works.⁵⁰ However, it seems overwhelming that changes in the child care policy will have more dramatic effects on the daily lives of mothers than on fathers.

Though earning of sustenance for the family is basically the duty of man, yet Islam does not prohibit a woman to engage in any employment, business, profession or vocation, to earn or contribute to the income of the family in case of need. Following verses of the Holy Qur'an are ordinarily quoted to support women's participation in this field:

And in no wise covet those things in which Allah hath bestowed His gifts more freely on some of you than on others: to men is allotted

⁴⁸Abul Ainain Badran, *Huquq al-Aowlād fi -Sharī'ah al-Islāmiyyah* (Alexendria:1981),82.

⁴⁹Faiz Badruddin Tyabji, *Muslim Law: The Personal law of Muslims in India and Pakistan* (Bombay:N. M. Tripathi Private limitd,1968),40.

⁵⁰Barbara Stark, *International Family Law* (England: Ashgate Publishing,2005),13.

what they earn, and to women what they earn: But ask Allah of His bounty: For Allah hath full knowledge of all things.⁵¹

In another verse Allah says

And when he arrived at the watering (place) in Madyan. He found there a group of men watering (their flocks), and besides them, he found two women who were keeping back (their flocks) He said: "What is the matter with you?" they said: "We cannot water (our flocks) until the shepherds take back (their flocks) And our father is a very old man,"⁵²

The Traditions of the Prophet (ﷺ) of Islam on the subject are quoted below:

1. Jabir reported:

My maternal aunt was divorced thrice. She then intended to get the fruits of her palm trees. A man threatened her for her coming out. She came to the Prophet who said: Yes, take your fruits of palm trees. It is, perhaps you will make a gift or do some good act.⁵³

It is obvious from the above Hadith, that the Prophet permitted a woman who had been divorced, to visit her garden and take her fruit.

⁵¹ Al-Quran (4:32)

⁵² Al-Quran (28:23)

⁵³ *Sahi Al-Bukhari*, Book of divorce. "my maternal aunt was divorced", 5327.

2. Narrated by Ar-Rubai' bint Mu'awwidh: "*We were in the company of the Prophet providing the wounded with water and treating them and bringing the killed and the wounded*".⁵⁴

The Prophet allowed the women to render services in *Jihad* like preparing food, nursing the wounded, etc. From this we can conclude that the women can adopt the profession of a nurse and of a doctor.

2.4 Woman's Right of Employment

The woman has right to seek employment. If she wants to do a job and if society needs her then Islam gave her right to seek employment with some conditions. But if she doesn't want to do the job, then nobody can force her to seek employment. Similarly, she has the right to do business and to trade things in order to earn finance.⁵⁵ Hazrat Khadijah (R.A), Wife of the Holy Prophet (ﷺ) was the famous business lady at that time.⁵⁶

During the period of the Holy Prophet (ﷺ), women worked in different sectors such as in wars and in the hospital. Hazrat Umar (R.A) appointed Hazrat Shifa (R.A) as an administrator and account officer for the market. Hazrat Usman (R.A) made Hazrat Umm-e-Kulsoom an ambassador and sent her to Rome.⁵⁷

⁵⁴ *Sahih Al-Bukhari vol 4*, Book of jihad. "we were in the company...", 2787.

⁵⁵ Sir Din shah Fardunji Mulla, *Muhomedan law* 18th ed (lahore:Mansoor Book House,1984), 27.

⁵⁶ Muhammad Ala-ud din Haskafi, *The Durr-ul-Mukhtar*, Trans. B.M. Dayal (Lahore: law Publishing Company,n.d),2.

⁵⁷ *Ibid*.

Earning of livelihood for the family is basically a duty of man. Islamic society makes the man responsible for providing bread and butter for his wife and children and meeting their expenses. However, there may arise situations where the women also have to work for earning a livelihood. So the Qur'an does not debar them from working. This right of earning income through lawful (*Halal*) means is granted to a woman by the Revealed Book when it says: "... *to men is allotted what they earn, and to women what they earn*".⁵⁸ Earning signifies the reward of good deeds in the next world as well as earning of provision for the family in this world.

The incident referred to the daughters of Hazrat Shoaib,⁵⁹ one of whom later became the wife of Prophet Moses. Hazrat Shoaib was an old man and could not look after his flock of sheep. His young daughters tended the sheep and worked for grazing and watering the flock. Prophet Moses, one day reached Madyan and found there some men watering their sheep when two women were holding back. He offered his services and watered their sheep. Afterwards, he was employed by their father with the condition that he would be married to one of the girls in consideration of his services. From this incident reported by the Qur'an, some scholars infer that women can engage in the earnings of bread for the family under economic compulsions.

⁵⁸ Al-Quran (4:32)

⁵⁹ In Tafsir Ibn Kathir, there is a lengthy discussion about the old man of Madyan. Some scholars hold that he was Hazrat Shoaib, while others hold that he was some other pious old man.

Hazrat Saudah, the wife of the Prophet (ﷺ), was skilled in tanning the skins of the animals and used to make a considerable amount of earnings from this vocation. Abdullah-b-Mas'ud was mostly engaged in religious work and had no time to earn for the family. So his wife used to work as artisan to earn livelihood for the family. When the Prophet came to know about it, he assured her reward for this in the hereafter.⁶⁰

A lady named Qailah was a trader. Once she met the Prophet (ﷺ) and asked him some questions about trade. It is also narrated about Asma-bint-Makhramah that she received perfumes from her son in Yemen and sold them.⁶¹

There are many such incidents reported in the books of history, which establishes that the women used to work in the days of the Prophet to support their families and the Prophet never objected to their engagements.⁶²

2.4.1 Views of Eminent Scholars

Islam does not restrict the economic activity of women; what it restricts are those factors which might encourage or incite the spread of obscenity in society. If women take proper care of these things and observe *Shari* instructions, they are not barred from engaging in any lawful activity outside their houses which is necessary for their

⁶⁰Tabaqat Ibn Sa'ad quoted by Encyclopedia of Seerah

⁶¹Iusayn Anşariyan, *The Islamic Family Structure*, trans.; Lisa zaynab Morgan (Iran: Anşariyan Publications, 2003), 9.

⁶²Allama Imadud Din Ibne Kathir, Safi ur Rehman Al-Mubarakpuri, *Tafsir Ibn Kathir* (Riyadh:Darrussalam,2000),6,370.

livelihood, *Allah's Messenger* explicitly permitted this in these words: "*O women! You have been allowed by Allah to go out for your needs.*"⁶³

Dr. Hamidullah writes: In every epoch of Islamic history, including the time of the Prophet, one sees Muslim women engaged in every profession that suited them. They worked as nurses, teachers, and even as combatants by the side of men when necessary, in addition to being singers, hair-dressers, etc. Caliph Umar employed a lady, Shifa bint Abdullah as an inspector in the market at the capital (Madinah), as Ibn Hajar (*Isabah*) records. The same lady had taught Hafsa, wife of the Prophet, how to write and read. The jurists admit the possibility of women being appointed as judges of tribunals, and there are several examples of this kind. In brief, far from becoming a parasite, a woman could collaborate with men in Muslim society to earn her livelihood and develop her talents.⁶⁴

Justice Aftab Hussain, in his book "Status of the women in Islam"⁶⁵ writes: Careerism among women is not a hobby. The object of some in choosing a career is to make themselves useful to the society. For them, money is a secondary consideration. For others, there are economic compulsions. The uneducated widows or deserted wives generally earn money by sewing and needlework, but the literate women avail of their talents in finding many vocations for living honorably.⁶⁶

⁶³ *Sahih Bukhari* vol 7, Book of An Nikah. "O women you have....", 5237.

⁶⁴ Muhammad Hamidullah, *Introduction to Islam* (Lahore: Dar-ul-Ishat, 1973), 54.

⁶⁵ Aftab Hussain, *Status of the women in Islam* (Lahore: Law Publishing Company, 1987)

⁶⁶ *Ibid.*, 67

During this age of inflations and unpredictable rise in the costs of living, educated women assist their husbands, parents, brothers and sisters by putting to use their talents for earning honest money to make the two ends meet. And then the question is why they should not turn out to be useful members of the *Ummah* or society.⁶⁷

2.5 Child Rights in Islam

Allah, the Exalted, states in the Glorious Qur'an concerning the necessity and importance of the preservation and care of newborn children, the very first right of the child: "*And kill not your children for fear of poverty. We provide for them and for you. Surely, such a killing is a great sin*".⁶⁸ Islam requires parents to give their children beautiful names, take proper care of them, take care of all their needs, provide for them reasonably in accordance with the parent's income, and ensure a decent, respected and honorable life for them.

Parents are obligated to treat all their children mercifully and with compassion. Abu Hurairah (may Allah exalt their mention) reported

The Messenger of Allah (Peace be upon Him) kissed Hasan Ibn Ali (his grandson) in the presence of Aqra' Ibn Habis at-Tameemi who said, I have ten children and I never kissed any of them. Upon that,

⁶⁷Aftab Hussain, *Status of the women in Islam* (Lahore:Law Publishing Company,1987),74.

⁶⁸ Al-Quran (17:31)

he looked at him and replied: Whoever does not have mercy will not receive mercy.⁶⁹

A summary of some of the basic rights given to a child in Islam include right of life, an affirmation of his or her lineage (Nasb), a good name, any inheritance given to him/her, right of custody to be levied on the parents both or one of them found eligible for that, right of rida'ah, a right of qisas or diyat in case of any hurt or injury and a right of best possible upbringing and education. Some of the important rights granted to a child in Islamic Law are being mentioned below:

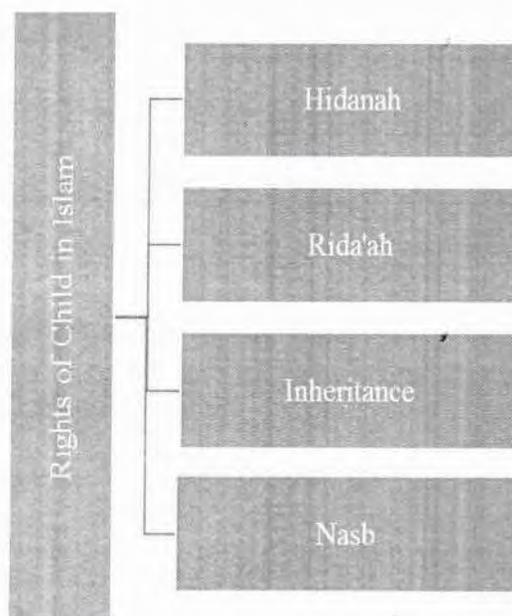


Figure 1 Rights of Child in Islam

⁶⁹Sahih Bukhari vol 8, Book Al Adab. "The messenger of Allah(peace be upon him.....", 5997.

A tradition from great companion Umar (R.A) is narrated that it is a right of a child to his father to provide him a good mother and one authentic prophetic tradition says: "*Verily Allah has prohibited for you to be disobedient and ungrateful to your mothers or to bury your daughters alive...*"⁷⁰

Thus, they have the right of blood money if killed, as it is reported by Ayesha, (may Allah exalt their mention):

Two women from Huthail tribe fought and one threw a stone and killed the other and that which was in her womb, so the Prophet (Peace be upon Him) judged that the blood money is a slave boy or girl, and the blood money of the woman (100 she-camels) was to be paid by her clansmen.⁷¹

Though all the above-mentioned rights of a child have a significant status but due to the limitation of the scope of this research, rights directly related to this research will be discussed further.

2.5.1 Right of Custody/Hidhanah

Care and guardianship of children are the most important right after the right of (milk) nursing by the mother. The mother is entitled to the custody of the child, son or daughter at the early stage of life, between the ages of one and thirteen or fourteen. This applies particularly in cases of divorce due to essential differences

⁷⁰*Sahih Bukhari vol 8, Book of Al Adab. "verily Allah has prohibited..."*, 5975.

⁷¹*Sahih Bukhari vol 9, Book of Blood money. "Two women from huthail....."*, 6904.

between parents. Islam entitles the mother to her child custody during early childhood because she, generally, is more caring and attentive to the child's needs.⁷² Abdullah bin Amr narrated that a woman came to the Prophet (ﷺ) complaining about her husband saying:

My womb held my baby as a fetus, my breast nursed the baby as an infant, and my lap carried the child for a long time. Now the father divorced me and he wants to rip the baby away from me!" He (ﷺ) said: "You deserve the child's custody more as long as you do not remarry."⁷³

In Arabic language, guardianship is termed as '*Wilayat*' and custody as '*Hidhanah*'. Custody means physical or material possession of the children, whereas its Arabic equivalent *Hidhanah* literally means 'training' or 'upbringing of the child'. The term guardianship means the constructive possession of the child, which deals with the care of his or her person as well as property and its Arabic equivalent '*Wilayat*' literally means to 'protect' or 'to defend'. Legally the term guardianship is defined in the Guardians and Wards Act of Pakistan as '*A person having the care of the person of a minor or of his property or of both his person and property*'. The terms custody and guardianship seems to have similar connotations, but it is often argued that guardianship is a superior right.

⁷²Wahbah al-Zuhayli, *Al-Fiqh al-lāslmī wa Adillatuhu vol 7* (Damascus: Dar al-Fikr,1984), 730.

⁷³*Ahu Dawood vol 3*, Book of Divorce, "My womb held my baby...." , 2276.

According to the principles of established Muslim jurisprudence, father is the natural guardian (*Wali*) of the person and property of the minor child.⁷⁴ Whereas custody (*hidhanah*) is a right of the child and not of either of the parents or any other person claiming through them. The basic consideration always is to provide to the child the most natural, most considerate and most compassionate atmosphere to grow up as a better member of the society. Islam keeps the institution of family in high esteem and tries to preserve it. Rights and duties of the spouses have been prescribed in a manner to keep an ideal balance.⁷⁵ While it is the man's job to earn a livelihood and provide sustenance for the family, the wife's duty is to give birth to the children, to bring them up and to groom them.

Law of *hidhanah* in *Sharia* has been framed keeping in view the roles of both parents. That is why mothers give preference while deciding custody of the children. It has been observed in the recorded cases of the classical Islamic era that the judges took into consideration the wishes and welfare of the minors while deciding their custody. It must be remembered here that wish of the ward is subject to the following two considerations:

1. Welfare of the child
2. Reasons of disqualifications of the mother and father to seek further custody.

⁷⁴ PLD 1963 Lah.534

⁷⁵ Ayesha Rafique, "Child custody in Classical Islamic Law and the Laws of Contemporary Muslim world," *International journal of Humanities and social science* 4:5 (2014), 268.

Under Islamic Law, even if the mother has the physical custody of her children, father continues to be the guardian of the child as he is supposed to support the child financially.⁷⁶

In the light of Ahadith available and the decisions of Prophet Mohammed (ﷺ) on the cases brought before him on child custody, three principles have been laid down while deciding the custody of a child.

Firstly, the mother possesses a priority right of child custody so long as she does not remarry. Secondly, in a situation where both parents profess different religions, custody of the child should go to that parent who follows the religion of Islam. Thirdly, when the child has gone past the years of minority (7years) he will be given an option to choose between both parents.⁷⁷

A case of custody of minor decided on the basis of the welfare of the minor by the High Court of Quetta. *Mst.Farah Iqbal V/S Muhammad Anwar & 2 Others (DB)*. Custody of female minor. The welfare of a minor was the paramount consideration in determining the custody notwithstanding the right of the father or mother. The mother could not be refused the custody of minor solely on the ground that she had no independent income of her own. Father was supposed to provide maintenance and mother's inability to provide maintenance would not disentitle her, from the custody of the minor. High Court takes into consideration the welfare of the

⁷⁶Ibid

⁷⁷Ibid

minor, gave the custody of the minor to the mother till the minor attained the age of puberty and directed the father to pay for the maintenance of minor including school fees, clothes etc.⁷⁸

The Islamic Law stipulates that parents must care and pay attention to their children, especially girls for their special needs. Islamic Laws and teachings mandate that parents raise their children with the best manners and offer them a sound, beneficial and healthy education. The Prophet of Allah (ﷺ) said: "*It is enough sin for a person to neglect those for whose care he is responsible.*"⁷⁹

Ibn-e- Umar (may Allah exalt their mention) reported that the Messenger of Allah (Peace be upon Him) said:

Each one of you is a shepherd and each one of you is responsible for those under his care. A leader is a shepherd and is responsible for his citizens. A man is a shepherd of his family and is responsible for them. A woman is a shepherd in her husband's home and is responsible for whatever is under her care. A servant is a shepherd of his master's wealth and is responsible for whatever is under his care. Each one of you is a shepherd and each one of you is responsible for whatever is under his care.⁸⁰

⁷⁸Mst. Farah Iqbal VS Muhammad Anwar & 2 Others, PLD 2003, 131.

⁷⁹Sahih Muslim , Book of repentance. "It is enough sin....." ,2312.

⁸⁰SahihMuslim vol 5, Book of Leadership. "Each one of you is...." ,4724.

Hazrat Ayesha (RA), said: A poor woman came to my door carrying two little girls. I offered them three dates (i.e. Since I had nothing else). She gave each of her a date, and lifted the third one to her mouth to eat. Both her daughters urged her to feed them more, so she split the last date into two pieces and gave one half to each of her two daughters. I admired what the woman had done and told the story to the Prophet of Allah (ﷺ) who said upon hearing it: *"Whoever is in charge of (put to test by) these daughters and treats them generously, then they will act as a shield for him from the (Hell) Fire."*⁸¹

2.5.2 Fostering Right of Child in Islam with perspective on Mother's job

The study of Islamic Law reveals that there is no verse in the Quran on custody of minors, but Muslim jurists referred to the verse fostered⁸² which means that mother should breastfeed their children for two complete years. Therefore, it is inferred that in the early years of infancy the right of upbringing and fostering remains with the mother.⁸³ Allah Almighty tells us the recommended time of suckling a child in the Qur'an: *"And the mothers are to suckle their infants for two years, for those who wish to complete the suckling"*⁸⁴

⁸¹ *Sahih Bukhari vol 8, Book of AL Adab. "Whoever is in charge....."*, 5995.

⁸² Al Quran (2:233)

⁸³ Ayesha Rafique, "Child custody in classical Islamic Law and the Laws of Contemporary Muslim world," *International journal of Humanities and social science* 4:5 (2014), 269.

⁸⁴ Al-Quran (2:233)

TH: 18080

In another verse in the Quran, Allah says that *"We have enjoined upon the human being to treat his parents kindly. His mother bore him with weakness upon weakness, and his weaning is in two years."*⁸⁵

The Prophet's (ﷺ) children too were breastfed. His son Ibrahim had a wet-nurse and when his son passed away, he was only one year and ten months old so there were two months of suckling left in him so the Prophet (ﷺ) after the death of his son Ibrahim said as narrated by Al-Bara (bin Azib): *"There is a wet-nurse for him (i.e. Ibrahim) in Paradise."*⁸⁶

As far as the importance of breastfeeding concerns, our Creator even mentions it in the Qur'an a number of times. Breastfeeding is widely acknowledged now as being the best food for babies. It provides everything your baby needs. It is clean and sterilized, the right temperature, it's fresh, it's easily digested, contains antibodies and anti-allergens and is designed by Allah perfectly for baby's needs.⁸⁷ As a result, breastfed babies have better immune systems and fewer infections. But that is not all; Scientists agree that babies gain many psychological and emotional benefits through breastfeeding too. Some scholars say that the good characteristics of the mother are transferred to the child through breastfeeding.

⁸⁵ Al-Quran (31:14)

⁸⁶ *Sahih Bukhari*, Book Supporting the Family. "There is a wet nurse...", 5365.

⁸⁷ Abu Hamid, Muhammad Ibn Muhammad, better known as-Ghazali, *Ihya' Ulum al-Din*, trans; Fazl-LI-Karim (Karachi: Dar-ul-Ishat, 1958), 39-40.

The child feels ultimate comfort and security through being so close to his mother and their special bond is strengthened, so much. So that in Islam if a non-related woman breastfeeds a child she becomes a foster mother to him and her children are foster sisters and brothers to him who he cannot marry. As the Prophet (ﷺ) said as is related in a number of Ahadith: *“Indeed, Allah has prohibited (marriage) among suckling relatives, as He has prohibited it among birth (or blood) relatives.”*⁸⁸

Breast feeding is very closely bound with attachment and mothering. It is a way of settling a baby to sleep (often repeatedly during a single day or night), calming them down, pain relief for teething or colic, meeting suckling needs; it is their love, their security blanket, and their food. However, focusing just on a child's reliance on breastfeeding is not taking into account, the bigger picture of healthy attachment. It is very desirable for a baby to have a primary attachment figure as this affects a child's emotional health throughout their life. Forming a close bond with one consistent and loving caretaker is an essential need in childhood. Many child development specialists believe that children who are not given the opportunity to develop such a bond, or who experience disruption in the bonding process, will have serious attachment problems throughout their lives.⁸⁹

⁸⁸*Sahih Muslim vol 4, Book of Suckling. “Indeed Allah has prohibited...”*, 3584.

⁸⁹Danic Cicchetti and Sheree L. Toth, “The Development of Depression in Children and Adolescents,” *American Psychological association* 53:2(1998),229-230.

Separation from their primary caregiver (usually the mother) is traumatic for a young baby or toddler, particularly in the first four years.⁹⁰ They are unable to process where their mother has gone and even though they may seem happy when separated but they are still suffering trauma.⁹¹

It may be thought that the child has “settled”, and he or she may appear happy. He may be friendly to almost everyone, except to his mother if she re-appears. Children in this state will often turn away from their mothers or appear not to recognize them. It seems that they cannot bear to have the feelings of hurt and longing brought up again. These reactions are more likely when the child is away from home and in a strange environment. They may be less, or absent, if the child has good substitute mothering, preferably from a known member of his or her own family, throughout the period of separation.

When children have been prevented from developing a secure attachment it is felt as early life stress or trauma. This could lead to developing a stutter, learning problems or developing trauma induced epigenetic changes affecting the child’s mental health.⁹²

Research has shown that children who do not develop a secure attachment with a primary caretaker during the first years of life later are unable to calm themselves down. Insecure children have less impulse control, less ability to tolerate

⁹⁰ Ibid

⁹¹ Dr Peter Cook, *Mothering Matters* (Australia:freedom publishing,1997),23.

⁹² Gh Khodae , Moghadam Z. Emami and M Saeidi, “Healthy Diet in Children: Facts and Keys,” *International Pediatr* 3:6(2015),1183.

stress, and less ability to tolerate frustration than individuals who have experienced more secure childhood.⁹³ They also are more at risk for anxiety, depression, aggression, violence, suicide, and substance abuse.

Young children need the stability and consistency of strong attachment to a single primary caregiver in their early years for their long term emotional health.⁹⁴ Parents should put the needs of their child first and come to an access arrangement where separations from the mother are built up gradually, at the child's pace.⁹⁵ Relying on the legal system to come to a satisfactory arrangement ought to be a last resort because courts may not appreciate the developmental need of a particular child for his mother or for breastfeeding.

2.6 Analysis

When our Prophet (ﷺ) married his daughter Fatima to Hazrat Ali, his son-in-law, he assigned the tasks in the home to Fatima and the tasks outside the home to Ali and said: *"To bring water from the fountain, to knead dough and bake bread, to clean the home and to arrange the things in the house belong to Fatima. The tasks outside the house belong to Ali."*⁹⁶ However, it is permissible for the man to help his wife to do housework and for the woman to help her husband outside the house.

⁹³Dante Cicchetti and Sheree L. Toth, "The Development of Depression in Children and Adolescents," *American Psychological Association* 53:2 (1998), 224.

⁹⁴ Ibid, 227

⁹⁵ Ibid

⁹⁶*Sahih Bukhari*, Book supporting the family. "To bring water....", 5658.

As a matter of fact, the Prophet (ﷺ) helped his family with the housework, and it is stated in the religious books that it is Sunnah for men to help with the housework. The food, clothing, and the residence of a woman has to be provided by her husband within the legitimate conditions. It is necessary to avoid extravagance. Our Prophet (ﷺ) said to a woman, *“Take kindly from the goods of your husband, what will be enough for you and your child.”*⁹⁷

Our Prophet is the best role model for us. The most important reason for the problems we have today is the fact that we have moved away from the Quran and the Sunnah.

The above discussion shows that in Islam the employment of a women can be permitted in some special circumstances, e.g. When her husband died or she necessarily has to earn for the livelihood of her children or other unavoidable circumstances that make her go outside and engage herself in employment. Care is integral to child development and wellbeing and is an activity to which parents and other caregivers attach great value. However, love aside, too much of the responsibility for childcare falls on women, because there is no alternate of mother’s love and attention towards her children. There is an evident ‘care gap,’ in many countries, and financial responsibilities are having negative impacts on the mother-child relationship. A lack of care is also damaging children where mothers are pushed to their limits by the twin demands of caring and providing for their families.

⁹⁷ Sahi Bukhari vol 7, Book of Provision. “Take kindly from.....” ,5364.

2.7 Cases decided in Pakistan on the basis of the Doctrine of “The best interest of Child”

The superior courts in Pakistan decided many cases regarding custody and visitation (interim custody) of the child, keeping in mind the paramount consideration of the best interest of the child as discussed in the following judgments.

2.7.1 Muhammad Shafi (Petitioner) vs. Muniran BiBi (respondent)

The petitioner and respondent had a daughter. After divorce, the respondent has moved the application for custody of minor under section 25 of the Guardians and Wards Act 1890. The mother had claimed entitlement of the custody of minor on the basis that the minor was taken away by force by the father as per averment in her application while the evidence on the record showed that mother herself left minor who was putting up ever since with her father and was being well looked after. The father had not contracted second marriage and minor was attending school under his care and guidance. The mother was not living with her parents and was working at a "Dera" where she was Putting up. The mother was working outside and the minor's life was suffering and mismanaged by respondent due to her own indulgence. Therefore, keeping in view the best interest of the child, the court has denied custody of the child to the mother and awarded her custody to the father who could properly

take care of the minor regarding her health and education. While with the mother she had to put up at the "Dera" where there would be no schooling for the minor.⁹⁸

2.7.2 Mst. Aneeta Tanveer (appellant) Vs. Muhammad Younus (respondent)

This constitutional petition was brought before the High Court of Karachi under Article 199. Brief facts of the case are that the marriage between the parties was dissolved by way of divorce through written deed and the marriage was dissolved by mutual consent. A compromise was entered into between the parties with regard to custody of a minor on the application filed by the petitioner under S.491, Cr. P. C. Custody of minor was with the maternal grandfather of the minor by compromise. Family Court would exercise parental jurisdiction and must consider all aspects relevant to custody of the minor, and decide as to what would be in the best interest of the minor. Any previous compromise or any previous order of the court, could not bind the hands of the Family Court. The court could recall its previous order, provided sufficient grounds were made that after previous order, what were new and evolving circumstances keeping in view interest of the minor.

A compromise between the parties must be looked at by the Family Court, but was not conclusive and binding, as far as Family Court was concerned. The court in appropriate circumstances could pass an order, even setting at naught the compromise. Prime responsibility and obligation of the Family Court was the welfare of the minor, which was the supreme and should not, in any circumstances be lost

⁹⁸*Muhammad Shafi Vs. Muniran BiBi*, 1992 CLC , 2348.

sight of. In the present case there were factors which had been considered by the court which clearly emerged; firstly, petitioner mother of minor had no source of income; secondly, she had remarried and had been blessed with three children after her remarriage; thirdly, her second husband was a stranger as far as minor was concerned; fourthly her second husband had not come in witness box to depose about his income and whether he was willing to shoulder responsibilities of a minor; Fifthly maternal grandfather was a retired servant and received pension; Sixthly a maternal grandfather had his own house, whereas mother and step-father of minor lived in a rented house; Seventhly, real father of minor had no objection if the child would remain with his maternal grandfather. Eighthly, the child had been receiving the education while living with maternal grandfather.

Therefore the Karachi High Court upheld the decision of two lower courts and kept the custody of minor with maternal grandfather observing the welfare of the child that he should be under the custody of his maternal grandfather with the consent of the father of the child.⁹⁹

2.7.3 Shahbaz Ahmad (appellant) Vs. Additional District Judge

Application for custody of minors having concurrently been dismissed by the Guardian Judge and Appellate Court, petitioner had filed the constitutional petition against said judgments. Both minors were in the custody of their mother. A male minor who was a student of class two had a shining academic record. Mother of minors who was serving in a private department had not gone for a second marriage,

⁹⁹*Aneeta Tanvir Vs. Muhammad Younas*, 2010 YLR , 513.

but was looking after her minor son and daughter. Both minors aged 8-1/2 and 4-1/2 years, respectively, who were present in the court, were looking bright and happy with their mother. Minors were living in the company of their mother right from the pronouncement of divorce with their mother by the petitioner. Decree for maintenance allowance passed against the petitioner was not honored by him. The difference of income between father and mother had no over-riding consideration. Father was always bound to maintain the minors even if the mother was jobless and had no source of her own independent income. Therefore, keeping in view the welfare of minor, the court has dismissed the petition of the father for custody of minors.¹⁰⁰

¹⁰⁰*Shahbaz Ahmad Vs. Additional District Judge*, 2008 YLR, 127.

CHAPTER 3

WOMEN AND CHILDREN RIGHTS IN INTERNATIONAL LAW

3.1 Introduction

The need for child care is universal. It is vital to the development of individuals and of societies. Many studies highlight links between early childhood nurturing and adult outcomes, such as a recent systematic review, that suggests impacts on cognitive development, schooling, and labor market outcomes. Child care covers not only such hands-on activities as bathing, clothing, and feeding, it also includes emotional support and is also loaded with moral overtones concerning both duty and love.¹⁰¹

3.1.1 International Human Rights Instruments

After the adoption of the Universal Declaration,¹⁰² the Commission on Human Rights began drafting two Human Rights Treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, these make up

¹⁰¹Nancy Folbre and Julie A. Nelson, "for love or money or both?," *Journal of Economic Perspectives* 14:4(2000), 123.

¹⁰²The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948.

maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.¹⁰⁵

In 1967, United Nations member states adopted the Declaration on the Elimination of Discrimination against Women, which states that discrimination against women is an offense against human dignity and calls on states to “abolish existing laws, customs, regulations, and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women.”¹⁰⁶ Less than a year later a proposal for a legally binding treaty on women’s rights was drafted. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the General Assembly in 1979. Its preamble explains that, despite the existence of other instruments, women still do not enjoy equal rights as men.

The Convention articulates the nature and meaning of sex-based discrimination and lays out the obligations towards the state to eliminate discrimination and achieve substantive equality. As with all Human Rights Treaties, only States incur obligations through ratification. However, the Convention articulates State obligations to address not only discriminatory laws, but also practices, customs, and discrimination against women by private sectors.

¹⁰⁵*Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights* (UNDP: 2008),21.

¹⁰⁶Belinda Clark, “The Vienna Convention Reservations Regime and the Convention on Discrimination against Women,” *American Journal of International Law* 85:2(1991),285.

CHAPTER 3

WOMEN AND CHILDREN RIGHTS IN INTERNATIONAL LAW

3.1 Introduction

The need for child care is universal. It is vital to the development of individuals and of societies. Many studies highlight links between early childhood nurturing and adult outcomes, such as a recent systematic review, that suggests impacts on cognitive development, schooling, and labor market outcomes. Child care covers not only such hands-on activities as bathing, clothing, and feeding, it also includes emotional support and is also loaded with moral overtones concerning both duty and love.¹⁰¹

3.1.1 International Human Rights Instruments

After the adoption of the Universal Declaration,¹⁰² the Commission on Human Rights began drafting two Human Rights Treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, these make up

¹⁰¹Nancy Folbre and Julie A. Nelson, "for love or money or both?," *journal of economic perspective* 14:4(2000),123.

¹⁰²The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948.

maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.¹⁰⁵

In 1967, United Nations member states adopted the Declaration on the Elimination of Discrimination against Women, which states that discrimination against women is an offense against human dignity and calls on states to “abolish existing laws, customs, regulations, and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women.”¹⁰⁶ Less than a year later a proposal for a legally binding treaty on women's rights was drafted. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the General Assembly in 1979. Its preamble explains that, despite the existence of other instruments, women still do not enjoy equal rights as men.

The Convention articulates the nature and meaning of sex-based discrimination and lays out the obligations towards the state to eliminate discrimination and achieve substantive equality. As with all Human Rights Treaties, only States incur obligations through ratification. However, the Convention articulates State obligations to address not only discriminatory laws, but also practices, customs, and discrimination against women by private sectors.

¹⁰⁵*Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights* (UNDP: 2008),21.

¹⁰⁶Belinda Clark, “The Vienna Convention Reservations Regime and the Convention on Discrimination against Women,” *American Journal of International Law* 85:2(1991),285.

3.2 Women Rights are Human Rights

The CEDAW defines discrimination in its Article 1 as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Such discrimination encompasses any difference in treatment on the ground of sex which:

1. Intentionally or unintentionally disadvantages women.
2. Prevents society as a whole from recognizing women's rights in both the private and the public spheres.
3. Prevents women from exercising the human rights and fundamental freedoms to which they are entitled.¹⁰⁷

The Convention also specifies the different ways in which State parties are to eliminate discrimination, such as through appropriate legislation prohibiting discrimination, ensuring the legal protection of women's rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provisions. The Convention foresees that achieving equality

¹⁰⁷ Louis Henkin, "U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker," *American Journal of International Law* 89 (1995), 345.

may require positive action on the part of the State to improve the status of women. To accelerate women's actual equality in all spheres of life, States are permitted to use temporary special measures for as long as inequalities continue to exist.¹⁰⁸ The Convention thus reaches beyond the narrow concept of formal equality and aims for equality of opportunity and equality of outcome. Temporary special measures are both lawful and necessary to achieve these goals. In principle, these measures should be removed once equal status has been achieved.

Importantly, the Convention adds new substantive provisions to the other instruments which also deals with equality and non-discrimination. Article 5 establishes that in addition to recognizing women's legal equality and promoting their de facto equality. States should also strive to eliminate the social, cultural and traditional patterns that perpetuate harmful gender stereotypes and to create an overall framework in the society that promotes the realization of women's full rights.¹⁰⁹

The Convention on the Rights of the Child (Art. 2) and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Art. 7) also prohibit discrimination based on sex. The Convention on the Rights of Persons with Disabilities (Art. 6) recognizes the multiple discrimination that women with disabilities are subjected to, and requires State parties to address this by taking all appropriate measures to ensure the full development, advancement and empowerment of women in the enjoyment of their human rights. In its general

¹⁰⁸ J. Dewar and S. Parker, *Family Law Processes, Practices, Pressures* (Oxford: Hart, 2003), 238-9.

¹⁰⁹ Article 5, Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee on the Elimination of Racial Discrimination (CERD), which oversees compliance with International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), also recognized the gender dimensions of racial discrimination and said it would “endeavor in its work to take into account gender factors or issues which may be interlinked with racial discrimination.”¹¹⁰ The Committee against Torture, which monitors the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment, also regularly addresses issues of violence against women and girls.

3.3 Convention on Women’s rights

Human rights are universal. They apply equally to men and women, girls and boys. Women, for example, are entitled to the same rights to life, education and political participation as men. However, in practice, these rights are violated every day in multiple ways virtually every country in the world. Gender equality and women’s rights are key elements of the UDHR. Yet it was later recognized that certain rights are specific to women, or need to be emphasized in the case of women. These rights are outlined in subsequent International and Regional instruments, the most important of which is the Convention on the Elimination of All Forms of Discrimination against Women.

¹¹⁰Committee on the Elimination of Racial Discrimination, General Recommendation 25, Gender Related Dimensions of Racial Discrimination (Fifty-sixth session, 2000).

CEDAW was adopted in 1979 and entered into force two years later. It defines the right of women to be free from all forms of discrimination and sets out core principles to protect this right. It also establishes an agenda for national action to end discrimination and provides the basis for achieving equality between men and women.¹¹¹ It does so by affirming women's equal access to and equal opportunities in political and public life as well as education, health and employment. CEDAW is the only Human Rights Treaty that affirms the reproductive rights of women.

The specific obligations of States to eliminate discrimination against women in political, social, economic and cultural fields are laid out in 16 substantive Articles. The Convention covers both civil and political rights¹¹² (right to vote, to participate in public life, to acquire, change or retain one's nationality, equality before the law and freedom of movement) and economic, social and cultural rights (rights to education, work, health and financial credit).¹¹³ The Convention also pays specific attention to particular phenomena such as trafficking, to certain groups of women, for instance, rural women, and to specific matters where there are special risks to women's full enjoyment of their human rights, for example, marriage and the family.¹¹⁴

¹¹¹Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?," *Journal of Conflict Resolution* 49:1(2005),503.

¹¹²Article 7, Convention on the Elimination of all forms of Discrimination against women.

¹¹³ Ibid, Article 13.

¹¹⁴ Ibid, Article 16.

By February 2010, CEDAW had been ratified by 186 states, out numbering the signatories of any other International treaty. The Optional Protocol to CEDAW, which entered into force in December 2000, lays out procedures for individual complaints of alleged violations of the Convention by State parties. It also establishes a procedure that allows the Committee who monitors implementation of the Convention to conduct inquiries into serious and systematic abuses of the said rights of women. By February 2010, the Protocol had been ratified by 99 States.

3.3.1. Women Right to Work and Child's Right of Protection: A Comparison

Although the father plays an important role in educating the child, the mother plays a more important and greater role in this process. Rather, it can rightly be said that the mother contributes greater share and plays the best role in the early training and education of her children. Moreover, it is observed that the mother is more loving, kind and patient than the father, she is nearer to the children and they are more attached to her. This makes her more capable of educating and training her children in the most appropriate manner.¹¹⁵

To some extent promoting rights of women necessarily compromises the best interests of her child. For instance, Infants need to be breastfed A mother who chooses to work outside the home must ensure that her child should be took care properly during the crucial early years. When a mother is absent, the child's well-being will suffer.

¹¹⁵Susan H. Landry, *The role of parents in early childhood learning* (USA: University of Texas Health Science Center, 2014), 123.

The promotion of the rights of women benefits both the welfare of women and that of their children. For example, Women with some formal education are more likely to delay marriage and childbirth, ensure their children are immunized, be better informed about their own and their children's nutritional requirements and adopt improved birth spacing practices. As a result, their children have higher survival rates and tend to be healthier and better nourished.¹¹⁶ Education and the resulting economic independence also offer women increased status and greater bargaining power both within the household and in personal relationships. This can often result in the increased allocation of household resources for child health and nutrition.

If men took on their share of child care responsibilities and adequate child care services are available, the best interests of children would be protected. It is not the sole responsibility of women to care for children. Women, practically speaking, are usually the primary caretakers of children. When their rights are violated, there is a greater chance that children will also be deprived from their basic rights.¹¹⁷

Women not only undertake most of the responsibility for child care, but in developing countries, they also do most of the work. Studies in Asia and Africa have shown that on average, women work thirteen more hours per week than men.¹¹⁸

¹¹⁶UNICEF, *The State of the World's Children 2007: The Double Dividend of Gender Equality*. Available at https://www.unicef.org/publications/files/The_State_of_the_Worlds_Children_2007_e.pdf (last accessed 15th sep 2016).

¹¹⁷Joseph Goldstein, Anna Freund and Albert J. Solnit, *Beyond the Best Interests of the Child, Volume 1* (New York: The Free press:1979), 21.

¹¹⁸ Jonathan Todres, "Women's Rights and Children's Rights: A Partnership with Benefits for Both", *Cardozo Women's Law Journal* 10:93(2004),611-612.

When they are denied employment and educational opportunities they are less likely to provide for their families.

3.4 Child Right as in the Convention on the Rights of Child (CRC)

Every individual has rights. However, as with women, certain rights are specific to children or need to be reinterpreted in the case of children. These rights are outlined in the Convention on the Rights of the Child. The Convention was adopted in 1989, a decade after CEDAW and entered into force in 1990. The full list of rights for children and young people under the age of 18 is set out in the CRC, the most accepted standard on children's rights in the world. Children's rights include the right to health, education, family life, play and recreation, an adequate standard of living and to be protected from abuse and harm. Child rights also cover their developmental rights which change with the growth of child.¹¹⁹

The framers of the Convention recognized that those under 18 years of age have specific needs. Moreover, they wanted to make certain that the world recognized that children have human rights, too.

The four core principles of the Convention are; non-discrimination,¹²⁰ the best interests of the child,¹²¹ the right to life, survival and development,¹²² and respect for

¹¹⁹ M. Freeman, *The Rights and Wrongs of Children* (London: Frances Pinter, 1983),176.

¹²⁰Article 2, Convention on the Rights of child, 1989.

¹²¹ Ibid, Article 3.

¹²² Ibid, Article 6.

the views of the child.¹²³ Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. By February 2010, 193 out of 195 States had become the party to the Convention on the Rights of the Child more than for any other Human Rights Treaty.

Non-discrimination means that all children have the same right to develop their potential in all situations and at all times. For example, every child should have equal access to education regardless of the child's gender, race, ethnicity, nationality, religion, disability, parentage, sexual orientation or other status.¹²⁴

The best interests of the child must be "a primary consideration" in all actions and decisions concerning a child and must be used to resolve conflicts between different rights.¹²⁵ For example, when making national budgetary decisions affecting children, the Government must consider how the cuts will impact on the best interests of the child.

The right to survival and development underscores the vital importance of ensuring access to basic services and to equality of opportunity for children to achieve their full development. For example, a child with a disability should have effective access to education and health care to achieve their full potential.¹²⁶

¹²³ Ibid, Article 12.

¹²⁴ J. Eekelaar, "The interests of the child and the child's wishes: The role of dynamic self determinism," *International Journal of Law, Policy and the Family* 8:1 (1992),42.

¹²⁵ I. Fenwick, "Taking the rights of parents and children seriously: Confronting the welfare principle under the Human Rights Act," *Oxford Journal of Legal Studies* 25:2 (1995), 453.

¹²⁶ Ibid

The views of the child mean that the voice of the child must be heard and respected in all matters concerning his or her rights. For example, those in power should consult with children before making decisions that will affect them.

Despite the safeguards provided in the Convention on the Rights of the Child, blatant violations against children continue. An estimated 9.2 million children under the age of five die each year from mostly preventable causes.¹²⁷ Over 450,000 children in the developing world needed life-saving antiretroviral therapy for AIDS in 2008 but did not receive it.¹²⁸ One in four children under the age of five in the developing world is underweight, stunting their motor and cognitive development.¹²⁹ Over 101 million children of primary school age are out of school; more than half of them are girls.¹³⁰ One in six children in developing countries is engaged in child labor.¹³¹ Eighty-six per cent of children are disciplined in ways that are intended to cause physical pain or emotional distress. About 51 million children born in 2007 were unregistered at birth, depriving them of a name, nationality and other fundamental rights.¹³²

¹²⁷United Nations Children's Fund, *The State of the World's Children 2009: Maternal and newborn health* (New York: UNICEF, 2008), 22.

¹²⁸ World Health Organization, United Nations Children's Fund, *Towards Universal Access: Scaling up priority HIV/AIDS interventions in the health sector* (Geneva:WHO, 2009), 87.

¹²⁹ United Nations Department for Economic and Social Affairs, *The Millennium Development Goals Report 2009* (New York:DESA, 2009),12.

¹³⁰ United Nations Children's Fund, *The State of the World's Children 2009: Maternal and newborn health* (New York:UNICEF, 2008), 23.

¹³¹*Women's and Children's rights: making the connection*,18. Available at https://www.unfpa.org/sites/default/files/pub-pdf/Women-Children_final.pdf (last accessed 11th Nov 2016).

¹³² Ibid

3.5 Children Rights in the Family

Article 18 of the CRC recognizes the common responsibilities of both parents for the upbringing and development of the child. Policy formulation must support a family environment that enables shared parental responsibility for children and the reversal of gender stereotypes which segregate and subordinate women in the family and public life. Similarly, Article 16 (d) of the CEDAW asserts the same rights and responsibilities as parents in matters relating to their children; in all cases, the interest of the children shall be paramount.¹³³ CRC in its Article also clearly states that the best interest of the child is the primary consideration in all instances¹³⁴ and the General Recommendations of the Committee addresses the need to modify cultural patterns of conduct of men and women such as child marriage.

Article 16 of the CEDAW requires State Parties to eliminate discrimination against women in the context of marriage and family relations and requires States to provide a minimum age for marriage and to give no legal effect to child marriages. Thus, both Articles of CEDAW and CRC and Recommendation 21 of the CEDAW bestow shared responsibilities of both parents regarding their children. According to the CEDAW Committee jurisprudence, this right also includes securing child support payments after the dissolution of marriage. Article 24 of the ICCPR also gave protection to the children in the family. It states that the children have right to be protected, without any discrimination and their right must be protected by his status

¹³³Article 16, Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

¹³⁴Article 3, Convention on the Rights of Child, 1989.

as a minor on the part of his family and society. The Cairo Declaration on Human Rights in Islam also incurs obligation on parents and society that every child shall be protected and accorded proper nursing, education and moral care.¹³⁵

3.6 Economic Activity and Child Care Practices

Women may perform economic activities within the home, in the informal sector outside the home, in such occupations as a farm laborer, petty trader, or domestic worker in other households (in such cases it may be possible to take young children along), or in the formal sector in factories and offices (where children are clearly not allowed). From this point of view, it is not the occupation that is of importance, but the circumstances in which it is carried out. Women's economic activities will have a negative impact on child care only where the activity is incompatible with simultaneous child rearing or where the mother lacks access to another person able to care for the child.¹³⁶

However, in the demographic literature, the discussion of the relationship between women's work and child mortality has almost focused on paid employment outside the home, which is believed to be a possible cause of child neglect and child malnutrition due to the abandonment of breastfeeding. Put another way, both levels of nutrition and standards of care may be significantly affected by the nature of the

¹³⁵Article 7, Cairo Declaration on Human Rights in Islam, 1990.

¹³⁶Peter Glick, *Women's Employment and Its Relation to Children's Health and Schooling in Developing Countries: Conceptual Links, Empirical Evidence, and Policies* (Cornell university, 2002), 9-10.

mother's employment, but the problem lies in separating the effects of poverty or ignorance from those of the mother's work per se.

Ideally, one would wish to divide mothers who work outside the home into two groups: those who work because of the driving pressure of poverty and those whose work is more like a source of interest and for a higher standard of living. Very little is known about the fate of children in very poor families who are left at home when their mothers go out to work. In the slums of San Salvador, women live with their sisters or mothers so that domestic and income-earning tasks can be shared.¹³⁷

In the Bataan Export Processing Zone of the Philippines, twenty percent of working mothers believed it was impossible to provide adequate care and discipline for their children. Some chose to send their children to stay with their grandparents in the rural areas, while a larger number brought in relatives to live with them and care for the children.¹³⁸

Day care centers for children of working mothers are appearing in the villages of Northern Thailand because grandmothers themselves are economically active and older siblings are at school.¹³⁹ One apparent cost associated with formal workforce participation by the mothers of infants, is the necessary abandonment of

¹³⁷Isabel Nieves, "Household arrangements and multiple jobs in San Salvador," *journal of women in culture and society* 5:1(1979), 138.

¹³⁸Zosa-Foranil, "Female employment and the family: A case study of the Bataan Export Processing Zone. Conference on Women in the Labor Force in Asia (Canberra: Australian National University, 1982).

¹³⁹Anchalee Singhanetra-Renard, *Effect of female labor force participation on fertility: The case of construction workers in Chiang Mai City*, Conference on Women in the Labor Force in Asia (canberra:Australian National University,1982).

breastfeeding. However, the pattern is not quite so simple. In San Salvador, poor women preferring two part-time jobs, so that they could return home to breastfeed at lunch time.¹⁴⁰

Elsewhere, another pattern is for the mothers of young children to avoid work that is incompatible with breastfeeding. In Northern Thailand, female construction workers avoided a period of peak job at the time of birth and do not return to work until the child is at least one year old.¹⁴¹ One might be pardoned for thinking that Asia has an abundance of mothers working in factories while their children die due to early initiation of bottle feeding.¹⁴² In reality, outside of Singapore and Hong Kong, few married women and even fewer mothers are employed in factories.

In Java, women give up working when they become pregnant or at least after the birth of the child. Mothers who do work in the factories, 84 percent live in a household containing at least one other able-bodied female who is responsible for child care. Young girls may be kept at home to care for their younger siblings if their mothers cannot be profitably employed in farming or trading activities to which they can take their un-weaned children.¹⁴³ In South Korea, nearly all rural women work on

¹⁴⁰ Nieves, *Household arrangements and multiple jobs in San Salvador*, 140.

¹⁴¹ *Ibid*, 6.

¹⁴² Andy Chelley, *The Baby Killer Scandal: a war on want investigation into the promotion and sale of powdered baby milks in the Third World* (London: War on Want, 1979), 32.

¹⁴³ D Wolf, *Making the bread and bringing it home: Female factory workers and the family economy in rural Java*, Conference on Women in the Labour Force in Asia Development Studies Centre, (Canberra: Australian National University, 1982).

the farm, but very few married urban women work outside the home.¹⁴⁴ Mothers in the Philippines frequently choose petty trading as an occupation since it interferes relatively little with child care. In Malaysia, the employment of married women in factories is still extremely uncommon.

The elite working mothers stand to lose the most by entrusting the care of their children to poorly educated servants. In Java, educated women realize this and generally avoid paid employment while their children are young.¹⁴⁵ Alternatively, in West Africa, elite women consider it wasteful to postpone entering in a professional career and are beginning to send their children to Western-style day care centers.¹⁴⁶ In Sudan, the mother's participation in the labor force raised infant mortality by 27 percent in the capital, as compared with 10 percent for the country as a whole, possibly because educated women employed in the capital are more seriously disadvantaged by entrusting child care to illiterate maids or relatives.¹⁴⁷

Child rearing is often thought of being incompatible with women's economic activities only where women work in the modern formal sector. However, three factors are relevant here: the compatibility of the task itself with childcare, the

¹⁴⁴Koo, *Trends in female labor force participation and occupational shifts in urban Korea*, Conference on Women in the Labour Force in Asia Development Studies Centre (Canberra: Australian National University, 1982).

¹⁴⁵Rahardjo and V. Hull, *Employment patterns of educated women in Indonesian cities*, Conference on Women in the Labour Force in Asia Development Studies Centre (Canberra: Australian National University, 1982).

¹⁴⁶Barbara Lewis, *Economic activity and marriage among Ivorian urban women in Sexual Stratification*, ed. A. Schlegel (New York: Columbia University Press, 1979), 89.

¹⁴⁷A. Farah and S. Preston, *Child mortality differentials in Sudan, in Demographic Transition in Metropolitan Sudan* (Canberra: Australian National University Press, 1982), 20.

availability of relatives to provide substitute child care, and the distance between the workplace and the home. Neither transplanting paddy nor craftwork is a task compatible with the care of a young child; however, in the villages, older siblings or grandmothers are usually available to care for young infants while a mother is employed at such a job.¹⁴⁸

In South East Asia, with the movement in the town, the grandmother has often been left behind and the older daughter is not available because she is in school or even working in the factory alongside her mother. Similarly, in the town, the woman's workplace is likely to be at such a distance from the home that she is not even available for periodic breastfeeding.¹⁴⁹ Infants living in the village may retain the advantage of being breastfed even when their mothers work over 12 hours a day in the fields, but other aspects of child care may well be neglected and supplementary feeding may be absent or totally not suitable. It was reported that the Indian village mothers discussing the decline in the custom of giving tastes of opium to quiet babies whose mothers had no time to be with them.¹⁵⁰

¹⁴⁸Esayas Muleta, *Mother's work status and infant mortality in ethiopia: a study based on demographic and health survey data* (Ethiopia,2003),87.

¹⁴⁹Manderson, "Infant feeding practice, market expansion and the patterning of choice in South East Asia," *New Doctor* 26:2 (1982), 32.

¹⁵⁰M Luschinsky, *The Life of Women in a Village of North India* (Ann Arbor: University Microfilms,1980),123.

CHAPTER 4

APPRAISAL OF HUMAN RIGHTS LAW AND ISLAMIC LAW

ON THE RIGHTS OF WORKING WOMEN AND CHILD

RIGHTS

4.1 Introduction

There are clear links between the rights of children and those of women. Because women tend to be the primary caregivers, the well being of a mother is necessary for the well being of the child. Healthy, educated and empowered women are more likely to raise healthy, educated and confident sons and daughters. The ability of women to make decisions that affect them and their families is associated with the improved health, nutrition and educational outcomes of their children.¹⁵¹ A woman's educational achievement also has an impact on the child mortality, the higher her level of education, the less likely her child will die before the age of five.¹⁵² Despite the intrinsic links between these two sets of rights, the women's and children's movements did not evolve together. They progressed along parallel and at times competing tracks. During the 1970s, women in development (WID) ideology distinguished between the productive role (i.e. Work) of women versus their

¹⁵¹UNICEF, *The State of the World's Children 2008: Child survival* (New York: Hatteras press,2007),25.

¹⁵²Ibid, 6.

reproductive roles (those related to reproduction and the link to their children), and placed an emphasis on the productive role.¹⁵³

The objective was to define women not only as mothers, but as individuals in their own rights. At the same time, this goal made it difficult for programmers focusing on women to take into consideration the child-rearing role. Children's programs on the other hand, focused on women solely as mothers without taking into account other roles and individual rights. While WID ideology gave way to gender and development (GAD) in the 1990s and a move towards addressing power relations between women and men and the causes of female subordination.¹⁵⁴ Child programming evolved from an emphasis only on survival in increasing attention to the overall development. Nevertheless, the tension between the two movements remained. Both, however, continued to progress in their own understanding of the specific needs of those they sought to serve.

¹⁵³Shahrashoub Razavi and Carol Miller, *From WID to GAD: Conceptual Shifts in the Women and Development Discourse* (Geneva: UNRISD, 1995), 3-4.

¹⁵⁴ *Ibid.*, 12-13.

4.2 An overlap between Women Rights and Children Rights

The perceived link between the Rights of Women and Rights of Children are as follows:



Figure 2 A link between Women and Child Rights

We can see an overlap between these two types of rights, and a balance between these two is the ultimate goal of the international law.

4.2.1 Women as Conduits of Children Rights

Child rights advocates accentuating the role of women in the family and community setting, thus curbing the legitimacy of their individual rights. For example, CRC states in its Article that, "*State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of*

children."¹⁵⁵ Having adequate child care facilities is essential, but if the provisions is being supportive of women, relieving them of their child care responsibilities and free to do other things, it perpetuates the view that child care is not a woman's responsibility alone.

4.2.2 Personal Choice and Best Interest of the Child

Many also note the perceived conflict between a women's right to choose and develop versus ensuring that the best interests of the child are upheld. For example, although an increasing number of women are entering the workforce, their expanded participation is not always matched by an improvement in a child's welfare.¹⁵⁶ This often leads to a need for substitute caretakers, which may affect the quality and level of care.¹⁵⁷ It also puts girl children at particular risk of dropping out of school in order to care for younger siblings or to perform household work or both. A survey conducted in Pakistan showed that eldest daughters are more likely to be taken out of school to help their working mothers, care for younger siblings and take on household responsibilities.¹⁵⁸ Similarly, increasing female employment has resulted in children, particularly girls, dedicating more time to household activities.¹⁵⁹

¹⁵⁵Article 18(2), Conventions on the Rights of Child,1989.

¹⁵⁶ M. Guggenheim, *What's Wrong with Children's Rights?* (Cambridge: Harvard University Press, 2005), 1.

¹⁵⁷Ibid

¹⁵⁸Toseef Azid and Rana Ejaz Ali Khan, "Who are the children going to school in Urban Punjab (Pakistan)?," *International Journal of Social Economics* 37: 6 (2010),445.

¹⁵⁹Ibid

4.2.3 Protection as a Basis for Women's Disempowerment

The child rights framework places an emphasis on the creation of a "protective" environment where children may develop to their full potential, women's group is cautious about the misuse of the term, which has historically been invoked to entrench women in the private sphere as victims and vulnerable beings.

International Conference on Population and Development (ICPD) stresses that the empowerment and autonomy of women and the improvement of their political, social, economic and health status is both highly important end in itself and necessary for the achievement of sustainable human development. It further states that "Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility are priority objectives of the International Community."¹⁶⁰

4.3 The Prioritization of Human Rights and Human Rights as Absolutes

By implementing the CRC and CEDAW, legislators face the difficulty of making sure that one Convention does not undermine the rights set forth by the other and that the rights enshrined in the two Conventions are translated into reality. Freedom is not absolute, and at times, parents or primary guardians of children have to make compromises in order to uphold the best interest of their children.

¹⁶⁰United Nations Population Information Network (POPIN) UN Population Division, Department of Economic and Social Affairs, with support from the UN Population Fund (UNFPA), Guidelines on Women's Empowerment (Principle 4 of the ICPD Programme of Action).

4.4 Child Care as the Sole Responsibility of Women

The fact that women bear and breastfeed the child leads many to interpret that they are solely responsible for childcare even when their offspring grow older. In most cases, this is not seen as a shared responsibility with men. It is therefore can be assumed that not only the de facto conflict between the interests and the rights of women and children, but also a conflict of women's rights with the interests of men as fathers are the cause of the problem. In most parts of the world, familial ideology entrenches women into an inferior position, judging women as 'good wives' and 'sacrificing mothers'.¹⁶¹ Social norms determine the distribution of responsibilities, resources and rights, whereby men seem to be primary wage earners and women as caregivers. This perpetuates the conflict within family relationships between the rights of women and the rights of children. In other words, it can also be presumed that gender inequality is a factor that is the cause of tension between both sets of rights.

Nevertheless, this conflict looks as unnecessary. While tension exists at the practical level, theoretically, there appears no basic conflict between the best interest of the child and the rights of his/her mother as a woman. The CEDAW and the CRC work as sister treaties linked in a shared objective to transform communities towards the full realization of human rights. The two treaties should be made complementary,

¹⁶¹J. Fortin, "Children's rights: Are the court now taking them more seriously," *Kings College Law Journal* 15:2 (2005), 259.

both calling for precise rights and responsibilities and filling crucial gaps that may exist when either stands alone.¹⁶²

4.4.1 Compromise between a Child's Rights and her/his Mother's Rights

In most societies, during the first few years of a child's life, her/his mother is the only or primary caregiver. This responsibility can impede the fulfillment of the mother's rights to education, employment and/or her engagement in politics. The age of the child can have an impact on the intensity and the type of care required.¹⁶³ Once children are older and enter into school, the education system takes on more responsibility and thus lessens the pressure on women to compromise their own rights in order to uphold the best interests of their children.

Women are entitled to the same rights as men and should not have to compromise their rights to promote their child rights any more or less than men should. Child care is a shared parental responsibility involving both women and men. Arrangements should be made by employers to ensure that female employees with young children are able to breastfeed and maternity leaves should be made compulsory.

¹⁶²UNICEF, *Human rights for children and women: How UNICEF helps make them a reality*, 15. Available at https://www.unicef.org/publications/files/pub_humanrights_children_en.pdf (last accessed 5th sep 2016).

¹⁶³J. Bekelaar, "The interests of the child and the child's wishes: The role of dynamic self-determinism," *International Journal of Law, Policy and the Family* 8:1(1992),53.

4.5 Advantages and Disadvantages of Mother's Job

Women's role has significantly changed over the past all over the world. They are now equally educated as men, in fact, they are contributing financially to their families. Although this role has exposed women to many challenges, but women are motivated to cross these hurdles. This role became more difficult when it comes to motherhood, especially with the mothers of Pakistani society as they are never encouraged to continue their jobs after they had their first baby.¹⁶⁴ They are usually suggested to stay home if they don't want their children to be ignored.

It is a common myth that working mothers harm their children, but many studies have proved it wrong as Elizabeth Harvey, a psychologist at the University of Massachusetts said: "Being employed is not going to harm the children, it entirely depends on how mothers balance their life". This paper highlights positive effect that working mothers can have on their children's upbringing, the secret behind the success of working mothers and how Pakistani culture can influence the working mother's role.

There are certain advantages that working mother passes on their children. Firstly, they spend quality time with their children, for example, a working mother

¹⁶⁴ J. Goldstein, A. Freud and A. Solnit, *Beyond the Best Interests of the Child* (New York: Free Press,1973), 42.

who spent two hours of quality time each day with her child will perhaps create a better bond compare to the mother who is pampering her child all the time.¹⁶⁵

One of the studies by Hoffman and Lise Youngblade, a psychologist at the University of Colorado, found that working moms are more affectionate with children than those who don't work.¹⁶⁶ Furthermore, working mothers tend to express more verbal expression of love, hugs and kisses to their children.

The third benefit is that fathers seem to be more concerned with child rearing in the absence of mothers that usually does not happen in our cultural context. The outcome is that the child gets attention from the father and the father also realizes his roles and responsibilities towards the child. Finally, Hoffman and Lise Youngblade research also suggest that children of working mothers have higher academic achievements, their reading and listening skills are good and they got higher scores in math and science.¹⁶⁷

One more secret behind victory of working mothers is that they keep communication open with their children, spouse and close family members. Furthermore, they are able to negotiate assertively with their husbands regarding the division of domestic workload so that workload can be shared and equal attention by

¹⁶⁵Il. Reece, "UK women's groups' child contact campaign: So long as it is safe", *Child and Family Law Quarterly* 18:6 (2006), 538.

¹⁶⁶Lois Hoffman and Lisa Youngblade, *Mothers at Work: Effects on Children's Well-Being* (UK: Cambridge university press,1999),109.

¹⁶⁷ibid

both parents can be given to children.¹⁶⁸ Certainly, they also keep time for themselves and share relaxation with their partner at the end of each day, which is must for any healthy family relation.

The last point that I would like to share and appreciate about the cultural benefit that mothers can have in our society is that mothers can avail maximum advantage for their child rearing issues in our culture as the majority of our family structure is extended type which I believe is the best opportunity for mothers to keep their children in safe hand of family member like grandparents and it also gives satisfaction and confidence to mothers that their child will be safe in their absence.

There are also some disadvantages along with the advantages of working mothers. Being a working mother, women are occupied with so many tasks like they have to work outside and at the same time they are responsible for all household chores and also responsible for bringing up their kids.¹⁶⁹ This makes them tired because on the one end they have to look after their family and on the other, the tension in their work. Therefore, she has to maintain a balance between the two.

Another disadvantage is that they're prone to health issues because of having the same daily routine with little or no rest can put a mother's health at risk, which can

¹⁶⁸Shazia Choudhry and H. Fenwick, "Taking the rights of parents and children seriously: Confronting the welfare principle under the Human Rights Act," *Oxford Journal of Legal Studies* 25:456 (2005),463.

¹⁶⁹A. L. James, A. James and S. Mc Namee, "Constructing Children's Welfare in Family Proceedings," *Family Law* 33:12(2003),890.

result in more problems.¹⁷⁰ The biggest disadvantage is that their children may indulge in bad activities because of lack of supervision.

In the nutshell, by keeping in mind the constructive child rearing by working mothers, their dual capacity as efficient workforce and mothers, their efforts cannot be denied. In today's world, particularly in our economic crisis situation where every family is living hand to mouth and each member of the family needs to support the family unit financially, a dual role of a woman is essential. Working women can use our particular social fabric to enhance child rights protection and their economic autonomy hand in hand.

4.6 Absence of Government Family Welfare Policies

Implementation of Child Right as the priority and the protection of the new generation of the population have still not come under the welfare program of the government. In the absence of regulatory provisions to supervise the working of the laws, no mechanism has yet been adopted for the implementation of policies for the protection of the children. This negligence on the part of the Government increases the sufferings of the younger generation of the country, especially those born to be underprivileged mothers. Similarly, in the absence of any conscious effort to offer shelter to the children of the working mothers, their families suffer along with them, which exacerbates the sufferings of the society too. If the younger generation is not

¹⁷⁰ Ibid

nurtured properly, society will suffer due to the absence of a well-equipped manpower.

The need of the moment is to think of children's rights as a matter of priority. It is high time that proper care is extended to the children, so that they could grow up as responsible citizens of the country, enjoy the benefits of the right to education, and in future work for the development of the country.

To the researcher, the lack of effort on the part of the policy makers to create an environmental empathy towards most important social organization, the family, and to nurture the young generation with utmost care as is observed in developed countries. An initiative for setting up day care centers should be considered as a part of the employment policy. Corporate welfare policies are expected to include this as a part of their welfare program. Unfortunately, not much has done in Pakistan. But countries like U.S had made policies for the welfare of working mothers which benefits the children in return, for example, The U.S. Patient Protection and Affordable Care Act, signed into law on March 23, 2010, amended Section 7 of the Fair Labor Standards Act (FLSA)¹⁷¹ to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child.¹⁷² The

¹⁷¹ The Fair Labor Standards Act of 1938 (abbreviated as FLSA; also referred to as the Wages and Hours Bill) is a federal statute of the United States, which establishes minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.

¹⁷² Section 7(r), Fair Labor Standards Act 1938.

amendment also requires that employers provide a place for an employee to express breast milk.¹⁷³

It is imperative that alternative arrangements are urgently made for the protection of the children so that working mothers can be relieved of unnecessary tension while leaving them at home in order to meet their professional demands since a lot of these women are made solely responsible for the management of their family affairs. This research suggests that the absence of any positive arrangement, on the whole, is feared to have adversely affected the children and the youth that constitute 52 percent of the total population of the country. The present paper, intends to inform the government of the country that the lack of organized effort on their part to overcome the problems of the children might adversely affect the existing socio-economic structure of our society where the younger generation of the country has an important role to play.

Many countries have made arrangements for the protection of children under the age of three. For example, in Italy, most formal childcare is provided as a public service governed by national laws, and made available by local municipalities. Generally speaking, childcare in Italy is of high quality because of strict national hygienic and structural guidelines for child care facilities, and because of the specific training personnel are required to undergo.¹⁷⁴ Compared to other European countries

¹⁷³ Ibid

¹⁷⁴ M Naldini and C Saraceno, "Social and family policies in Italy: Not totally frozen but far from structural reforms", *Social Policy and Administration* 42:7, 739.

the number of places available for children under age three is quite low in Italy, although the number has been increasing over time as female labour force participation has grown.¹⁷⁵

There are several different types of childcare services available in Italy, which vary with the ages of the children they serve, their means of financing, and their level of flexibility. Institutionalized care for children from ages three months to three years is mainly provided by day care centers, which can be public and thus managed by municipalities, or private and operated through agreements with the local administration.¹⁷⁶

The present research intends to inform the government that unless opportunities are offered to the families to take proper care of the children, the country cannot thrive in spite of a large regiment of youth being available for service to the society. There should be ancillary arrangements in mills and factories that are essential for the survival of the people, but the development of modern industries failed to create any such exemplary welfare programs for the people of this third world country and in none of the cases the government seems to be aware of the need for the development of day care centers.

¹⁷⁵ Ibid, 740.

¹⁷⁶ Ibid

4.7 Suffering Child

The question that remains unresolved under the present day situation is the question who suffers?, it is the children of the society that suffer the utmost due to the absence of their parents and their own people from home. It has been since their birth, the children of today are compelled to adjust to the circumstance because their parents are off from the house and no family member stays back to look after them. Also, they are compelled to survive in an artificial environment that fails to match with their own surroundings. The researcher, therefore, is of opinion that our society should work out an effective means for the protection of the younger generation of our country, whose proper upbringing in the long run will help the society to come up as an ideal society with rightly educated future generation of our country. They constitute the majority population of our country.

Thus, it is not only the sufferings of the parents or the children if they do not get a proper environment for their right upbringing, it is the society that is expected to suffer the utmost, therefore, it is high time that day care centers grow up in Pakistani society for the proper care of the children of working mothers so that a healthy society can be offered to our future generation.

4.8 Brief Summary of Discussion

A comparative analysis women and child right in Islamic Law and International Law reveals that both of these legal systems provide protection and due care to both women and children. Though a very close relation between child right and women

right brings delicacy into this matter, but there is a wide scope of resolving the issue with ease and sophistication. Economic activity is a right of every woman and no hurdle in this should stop her from achieving her due share. Islamic Law draws a vivid line to protect the rights of every person in the society. The concept of divine obligations and *dhimma* clarifies the responsibilities of one person towards the other. Moreover, in the Islamic legal system, women have never been considered in the primary workforce. On the other hand, a woman has been given complete autonomy for her economic activities as far as no breach of obligations towards any other person or her religious duties occur. International Law provides a basic infrastructure to protect both of the vulnerable groups of society i.e. women and children. Some of the obvious conflicts have been discussed earlier. The conflicts arise due to the overlapping effect of the rights of women and children. These conflicts can be removed with sophisticated and efficient legislation locally and Internationally.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Analysis

The analyzes upbringing of children, both in the educated as well as uneducated, low-paid worker families, following the sudden change in the lifestyle of Pakistani families, mainly after globalization and the liberalization increase in the employment status of women after 1990's with the local support system available in the society for the protection of the children failing to keep pace. The study seeks to address the gap that prevails in Pakistani society regarding the woman's right of employment and the upbringing of children in the absence of a social support system expected to be provided by the state or the employers of the working mothers as a part of Corporate Social responsibility. As an Analytical Strategy, Our research includes an examination of the scholarly literature on custody and support written by sociologists, psychologists, and social workers, and articles by judges, attorneys, and court mediators on the adjudication for the welfare of minor children.

Eliminating gender discrimination and empowering women are among the paramount challenges, the world is facing today. When women are healthy, educated and free to take the opportunities life affords them, children thrive and country flourishes, reaping a double dividend for women and children. In the 27 years since the adoption of the CEDAW, much has been done to advance the progress of women.

But we have fallen far short of what we need to achieve the Millennium Development Goals.

5.2 Conclusion

By the grace and glory of Almighty Allah who has given me the courage to complete this work, this research is being concluded with final remarks. The Family is an essential and primary unit of the society and children are the main factor to rejuvenate us for the participation in the betterment of society. This research examines differences in the antecedents and consequences of work-family conflict, a form of inter-role conflict that occurs when the demand for work and family are mutually incompatible in some respect.

Mother's role in the family cannot be denied and ignored. She is particularly important because she is with her children for much longer time than any other person and her instructions reflect a very strong influence on attitudes, abilities, and behavior of children. She gives her children love, affection, and care since birth. Child care has become a major issue in most of the countries of the world. It is a universal truth that children require the love of a mother the most. It is absolutely a very hard decision for a woman to select between working out and staying home with the children. She should ask herself about the main purpose of her working and compare her earnings and the needs of children and home. She may work out of a financial compulsion, a desire to fulfill herself or to supplement the family income.

She could find a suitable job that saves time and energy and which is compatible with child care. Along with motherhood, a successful career adds to the completeness of being a woman.

Women have to face many challenges. They are diverted in many directions. A working woman is expected to be a good wife and mother before anything else, never mind her professional status or skills. Many women themselves put a premium on being a good mother at the cost of their work or career. Some have their own choice of employment while others are forced to do the work. Whether she is working or staying home does not matter if her work is compatible with child needs.

The effects of maternal employment on children are sometimes positive and sometimes negative. Studies reveal that a major part of children's cognitive, affective and psychomotor growth takes place at an early age below three years. There are many studies which have proved that absence of parents' attention at an early age is very harmful. The child of working mothers' scores comparatively lower than the child of household matters. So, it is necessary for a mother to nurture and take care of her children more at an early age. She must create a good relationship with her child. It has been observed that children all over the world look out for due care, love and affection. Is career of mother more important? Definitely, the answer will be no. The mothers who prefer to remain at home are more fruitful to their children. They can help their children round the clock.

The job of the mother affects the infant development because of early separation due to employment which will affect both mother and children. The Primary caretaker should be a mother. No one can play the role of mother as no company allows an employee to hire someone else to do the job in place of that employee, so how a mother can expect to hire someone else to raise her own child. Besides, all these facts working mothers can have a positive impact on her growing children, but many variables need to be considered. The most important are obviously the availability of childcare facilities. Childcare facilities for protecting the best interest of the child and provide support to women's economic participation.

There is no substitute for a mother's unconditional love. Children start trusting others when mothers are with them during the early period. In case the mother goes for a job, they feel lonely and lose their confidence and security. This makes them feel inferiority anxiety, insecurities, and mistrust in the world. It is the only mother who can build the foundation of a child strong.

Besides their role as a mother, they also have some rights as women, which we should consider their due as a distinct individual. We cannot deny the importance of motherhood, but as a human being, women have some Human Rights which must be respected, protected and fulfilled. Under International Human Rights Treaties, governments are perceived as duty bearers bound by these treaties. This means, in the case of women, programming must address the elimination of disadvantage. The goal is to realize equality in practice. The CEDAW advanced Women Human Rights by

reinforcing certain rights already covered by the CRC. Special provisions in CEDAW for education and vocational training to enhance employment opportunities for women.

Islamic law also does not deprive a woman from the right to work within the limits that protect her honor and dignity. Islam permits the woman to personally conduct her business contracts and financial transactions. The work that the women engage outside the home must not conflict with her duties and responsibilities to their husband and children.

5.3 Recommendations

1. It has been observed that the child's infancy period suffers badly due to the mother's employment. In that case she should be more careful. She should realize the fact that the quality of time spends with her children is much more important than the quantity of time. Women should treat them as they treat their customers. They should schedule time with them and do everything for them. While returning from office as their first priority should be to sit with children either playing with them or listening to them interestingly whatever they say is it interesting or boring. Mothers should give them proper attention. They should wind up all the activities while sitting with children. They should enjoy the company of each other. This will lessen the isolation and enhance the emotional development and attachment.

2. Lack of monitoring and supervision is observed in most of the families where mothers are employed. In that case, mothers should monitor and supervise the children through the phone. They should call the children after every hour to make them understand that their mothers are with them. Such steps will infuse in children the sense of monitoring.

3. Now the question arises that how they are able to balance all these forms of duties. Here is the answer that they follow a strict routine to accomplish daily tasks. First and foremost, they learn to identify their priorities in life in which they always keep children on top, they also manage their time effectively and give specific time each day to their children and be concerned with their academic progress that eventually reassure the child that his mother is caring.

4. Maternity leave provisions are essential for a working woman to effectively complete the transition from pregnancy to motherhood. Premature termination or too short maternity leave may have undesirable consequences. In fact, the maternity law is not being implemented in many organizations that employ women, especially in the industrial and commercial sectors. Studies often cite early return to work as one of the reasons for premature termination of breastfeeding. Shorter maternity leaves were associated with less sensitivity in interaction with the infant and more maternal

depressive symptoms.¹⁷⁷ Much less of the employed mothers continue breastfeeding as compared to the mothers employed part time or unemployed mothers. So there is a need of provision that every company should have child care facilities to cope with this important issue, so that women and child rights are protected.

5. A number of initiatives have been taken by the government of Pakistan, donors and non-governmental organizations to increase women's empowerment and ensure their legal, economic and political equality.¹⁷⁸ However, since the problems are complex, multi-dimensional and overwhelming it will take a long time for women to achieve empowerment and equality. All discriminatory Laws should be amended and women's equality as enshrined in the constitution should be ensured.
6. With regard to paid employment women suffers in both the formal and informal sectors of the economy. There are very few women in the formal sector (which encompasses all jobs with normal hours and regular wages) where conditions of work are marginally better. However, even in this sector, workers, both men, and women, seldom enjoy the benefits of the minimum wage, medical facilities, accident insurance, old age benefits, limitation of working hours and transport. The great majority of workers, especially women, is not registered with institutions such as the Employees Old Age Benefits Institution so that even workers in the formal sector are

¹⁷⁷Jayita Poduval and Murali Poduval, "Working Mothers: How Much Working, How Much Mothers, And Where Is The Womanhood?" *Mens Sana Monogr* 7:1(2009), 75.

¹⁷⁸Rubina Saigol, *Women's Empowerment in Pakistan* (Islamabad: Aurat Foundation, 2011),12.

denied the rights granted to them.¹⁷⁹ Although Pakistan has signed ILO¹⁸⁰ Convention 100 regarding equal pay for equal work, in practice employers find all kinds of ways to avoid these Laws. Social security and benefits should be ensured for women working in all sectors. Legislation ensuring equal pay for equal work should be instituted and enforced. It is the duty of government to implement these Laws in practice. Also, a strict supervision of government is needed for the employers to implement these Laws.

Good governance must now be perceived in terms of realizing all human rights norms, including the actualization of CEDAW and CRC at the domestic level in conformity with Islamic Law. Laws are needed not only to uphold the rights of children and women, but also to provide them with a basis to claim their rights as rights holders. The Law can also act as a tool for social change and transformation. The government should act to empower women and should take steps to eliminate inequalities between men and women through laws, regulations and other appropriate measures, for women to combine the roles of breastfeeding and childrearing with participation in the workforce.

¹⁷⁹ Ibid

¹⁸⁰ The International Labour Organization (ILO) is a United Nations agency dealing with labour issues, particularly international labour standards, social protection, and work opportunities for all.

BIBLIOGRAPHY

Books

- Abd al-Ati, Hammudah. *The Family Structure In Islam*. USA: American Trust publication.
- A D, Ajjola Alhaji. *The concept of family in Islam*. India: Adam Publishers and distributors, 1999.
- Ahmad, Khurshid. *Family Life in Islam*. United Kingdom: The Islamic Foundation, 1974.
- Ali, Abdullah Yousuf. *The Holy Quran*. Pakistan: Dawah Academy, n.d.
- Anşariyan, Husayn. *The Islamic Family Structure*. Iran: Anşariyan Publications, 2003.
- Anwari, Khawaja Arshad Mobeen. *The Manual Of Family Laws*. Lahore: Khyber Law Publisher, 1981.
- Arendell, T. *Mothers and divorce: Legal, economic, and social dilemmas*. Berkeley: University of California Press, 1986.
- Badran, Abul Anain. *Huquq al Aowlad fi al-Shariah al-Islamiyya wal Qanoon :The Children's Rights under the Islamic Shariah and the Law*. Alexandria, 1981.
- Baillie, Neil B E. *A Digest of Mohunmudan Law*. Lahore: Premier Book House, 2011.
- Burton, Frances. *Family law*. London: Cavendish publishing Limited, 2003.
- Baderin, A. Mashood. *International Human Rights and Islamic Law*. New York: Oxford University press, 2003.
- Chetley, Andy. *The Baby Killer Scandal: a war on want investigation into the promotion and sale of powdered baby milks in the Third World*. London: War on Want, 1979.
- Conway, Helen L. *Family law*. New York: Routledge, 2 Park square, 2014.
- Cummings, M F, and P. Davies. *Children and marital conflicts: The impact of Family dispute and resolution*. New York: Guilford Press, 1994.

- Doi, Abdhur Rehman. *Shariah, The Islamic Law*. London: Law Publishing Company, 1987.
- Freeman, M. *The Rights and Wrongs of Children*. London: Frances Pinter, 1983.
- Furstenberg, Jr F F and A. J Cherlin. *Divided families: What happens to children when parents part*. Cambridge: Harvard University Press, 1991.
- Fyzee, Asaf A A. *Outlines of Muhammadan Law*. New Dehli: Oxford University press, 1949.
- Farah A, and S. Preston. *Child mortality differentials in Sudan, in Demographic Transition in Metropolitan Sudan*. Canberra: Australian National University Press, 1982.
- Goldstein, J, Anna Freud, and A.J Solnit. *Beyond the Best Interests of the child*. New York: Free Press, 1973.
- Gross, James J. *A Legal Guide to Protecting the Best Interests of Your children*. Naperville, USA: Sphinx Publisher, 2004.
- Guggenheim, M. *What's Wrong with Children's Rights?*. Cambridge, MA: Harvard University Press, 2005.
- Haskafi, Muhammad Ala-uddin. *Durr-uL-Mukhtar*. Lahore: law Publishing Company, n.d.
- Hashemi, Kamran. *Religious Legal Traditions, International Human Rights Law and Muslim States*. Boston: Martinus Nijhoff publishers, 2008.
- Ibne Kathir Imaduddin, Al Mubarakpuri. *Tafsir Ibn Kathir*. Riyadh: Darrussalam, 2000.
- Ibn e Hajaj, Muslim. *Sahih Muslim*. Riyadh: Darussalam Publishers, 2000.
- Lewis, B. *Economic activity and marriage among Ivorian urban women*, in *Sexual Stratification*, ed. A. Schlegel. New York: Columbia University Press, 1977.
- Lindenbaum, S. *The Influence of Education on Infant and Child Mortality in Bangladesh*. Dhaka: International Centre for Diarrhoeal Disease Research, 1983.
- Mansoori, Muhammad Tahir. *Family Law in Islam Theory and application*. Islamabad: Shariah Academy, 2009.
- Nasir, Jamal J. *The Islamic Law Of personal Status*. U.S.A: Kluwer Academic group, 1990.

- Nyazee, Imran Ahsan Khan. *Outlines of Islamic Jurisprudence*. Islamabad: Fedral Law House, 2002.
- Pearl, David. *A Textbook on Muslim Law*. London: Croom Helm, 1979.
- Rizvi, Sayyid Muhammad. *Marriage & Morals in Islam*. Canada: Vancouver Islamic Educational Foundation, 1990.
- Rogers, B. *The Domestication of Women: Discrimination in Developing Societies*. New York: St. Martin's Press, 1980.
- Shafqat, C M. *The Muslim Marriage, Dower and Divorce*. Lahore: Law Publishing Company, 1979.
- Smart, C. *Children and the transformation of family law*. Oxford: Hart Publishing, 2003.
- Stark, Barbara. *International Family Law: An Introduction*. USA: Ashgate publishing, 2005.
- Suliman bin Ash'ath, Imam Hafiz Abu Dawud. *Sunan Abu Dawud*. Tran; Yasir Qadhi Al-Riyadh: Darussalam, 2008.
- T, Arendell. *Mothers and divorce: Legal, economic, and social dilemmas*. Berkeley: University of California Press, 1986.
- Wallbank, Jullie, Shazia Choudary, and Jonathan Herring. *Rights, Gender and Family Law*. NY: Routledge Taylor & Francis Group, 2010.
- Waris, Maqsood Ruqaiyyah. *The Muslim Marriage Guide*. Iran: Amana publications, 2000.
- Zafar, Farceha. *Finding our way: reading about women in Pakistan*. Lahore: ASR Publications, 1991.
- Zuhayli, Al-Wahbah. *Al Fiqh al Islami wa Adillatuhu*. Damascus: Dar al-Fikr, 1984.

Articles

- Ahmed, Hina. Maryam Khurshid and, Ishtiaq Hassan. "Marital Adjustment, Stress and Depression among Working and Non-Working Married Women." *Internet Journal of Medical Update* 2:1 (2007), 19-26.
- Azid, Toseef and Rana Ejaz Ali Khan. "Who are the children going to school in Urban Punjab (Pakistan)?" *International Journal of Social Economics* 37: 6 (2010), 442-465.
- Almani, Abdul Sattar, Allahdino Abro and Ali Roshan Mugheri. "Study of the Effects Of Working Mothers on the Development of Children in Pakistan." *International Journal of Humanities and Social Science* 2:11 (2012), 164-171.
- Andrew, I Shepard. "Children, Courts, And Custody: Interdisciplinary Models For Divorcing Families." *Journal of Marriage and Divorce* 92: 28 (2004).
- Bacon, B, L., and Mc Kenzie. "Parent education after separation/divorce: Impact of the level of parental conflict on outcomes." *Family Court Review* 42:1 (2004), 85-97.
- Bowman, M E, and C R Ahrons. "Impact of legal custody status on fathers' parenting post-Divorce." *Journal of Marriage and the Family* 2:47 (1985), 483-488.
- Cicchetti, Dante, and Sherce L. Toth. "The Development of Depression in Children and Adolescents." *American Psychological Association*, 53:2 (1998), 221-241.
- Choudhry, Shazia, and Helen Fenwick. "Taking the rights of parents and children Seriously confronting the welfare principle under the Human Rights Act." *Oxford Journal of Legal Studies* 25:13 (2005), 453-492.
- Clark, Belinda. "The Vienna Convention Reservations Regime and the Convention on Discrimination against Women." *American Journal of International Law* 85:2 (1991), 281-321.
- Eekelaar, J. "The interests of the child and the child's wishes: The role of dynamic self-Determinism." *International Journal of Law, Policy and the Family* 8:1 (1992), 42-61.
- Folbre, Nancy and Julie A Nelson. "For love or money or both?" *journal of economics perspective* 14:4 (2000), 123-140.

- Feroze, Muhammad Rashid. "The Reforms in Family Laws in the Muslim World." *Islamic Studies* 1:1 (1962), 102-130.
- Furstenberg, F. F, and C.W Nord. "Parenting apart: Patterns of child rearing after Marital disruption." *Journal of Marriage and the Family* 47:8 (1985), 893-904.
- Folberg, Jay H, and Graham Marva. "Joint Custody of Children Following Divorce." *Child Welfare* 12:523 (1979), 523-581.
- Fortin, J. "Children's rights: Are the court now taking them more seriously." *Kings College Law Journal* 15:2 (2005), 253-272.
- Fagan, Patrick F. William L. Saunders, and Michael A. Fragoso. "How U. N Conventions On Women's and Children's Rights Undermine Family, Religion, and Sovereignty." *Family North Carolina Magazine* (2009).
- Henkin, Louis. "U.S. Ratification of Human Rights Conventions: The Ghost of Senator Brieker." *American Journal of International Law* 89 (1995), 341-350.
- Hickman, Lisa N. "Who Should Care for Our Children?" *Journal of Family Issues* 27:5 (2006), 652-684.
- James, A L, A. James, and S. Mc Namee. "Constructing Children's Welfare in Family Proceedings." *Family Law* 33:12 (2003), 889-895.
- Judith, A Seltzer. "Children's Contact with absent parents." *Journal of marriage and the Family* 12:50 (1988), 663-677.
- Manderson, L. "Infant feeding practice, market expansion and the patterning of choice in South East Asia." *New Doctor* 26:2 (1982), 27-32.
- Neumayer, Eric. "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution* 49:1 (2005), 484-507.
- Nieves, Isabel. "Household arrangements and multiple jobs in San Salvador." *journal of Women in culture and society* 5:1 (1979), 134-142.
- Paterson, J and Zill, N. "Marital disruptions, parent child relationship, and behavior problems in children." *Journal of Marriage and Family* 48:9 (1986), 295-307.
- Philip, Morgan, and Paul D Allison. "Paternal participation and children's well-being after Marital disruption." *American Sociological Review* 52:9 (1987), 695-701.

- Rafique, Ayesha. "Child custody in classical Islamic Law and the Laws of Contemporary Muslim world." *International journal of Humanities and social science* 4:5 (2014), 267-277.
- Todres, Jonathan. "Women's Rights and Children's Rights: A Partnership with Benefits for Both." *Cardozo Women's Law Journal* 10:93 (2004), 603-624.
- Weigel, Daniel J. "The Concept of Family." *Journal of Family Issues* 29:11 (2008), 351-377.

Selected Legislative Tools

- Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
- Convention on the Rights of Child, 1989.
- Cairo Declaration on Human Rights in Islam 1990.
- Declaration of the Rights of Child Adopted by the General Assembly on 20 November 1959.
- International Covenant on Civil and Political Rights (ICCPR).
- The Children Act, 1989.
- Universal Declaration on Human Rights, 1948.
- Uniform Child Custody Jurisdiction and Enforcement Act, 1929.

Web Sources

- http://womeninislam.ws/en/women-right-islam_daughters.aspx
- http://www.violence.de/books_of_the_century.html
- <http://www.hec.gov.pk.com>
- <http://www.thefreelibrary.com>
- <http://www.globalpost.com>.
- <http://www.islamic-world.net>.
- <http://www.jstor.org>
- http://www.unicef.org/publications/files/The_State_of_the_Worlds_Children_2007_e.pdf

<http://www.islamhouse.com>.

<http://www.essortment.com>

http://www.naturalchild.org/peter_cook/feminism.html

http://www.peacewomen.org/assets/file/Resources/NGO/part_promotingwomen_globalaction_2010.pdf