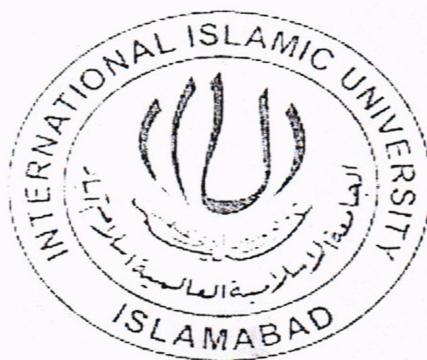


THE FINANCIAL EMPOWERMENT OF WOMEN IN ISLAMIC AND INTERNATIONAL LAW

Research Work and Thesis for LLM in Muslim Family Laws



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SUBMITION OF THESIS FOR VIVA-VOCE EXAM

It is certified that Ms. *Sofia Malik*, student of LLM Muslim Family Laws, Registration No. 02-FSL/LLM-MFL/F09, International Islamic University Islamabad has completed her thesis titled as "**Financial Empowerment of Women in Islamic Law and International Law**" under my supervision.

During the research work, she remained in touch with me and worked with diligence. She carried out her research work under my instructions and supervision. I forwarded this thesis for its submission and evaluation for the awarding of LLM-MFL degree to her from International Islamic University Islamabad.

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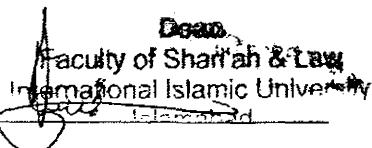
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DECLARATION

INTERNATIONAL ISLAMIC UNIVERSITY, ISLAMABAD **STATEMENT OF UNDERSTANDING**

I, Sofia Malik bearing the university registration number 02-FSL/LLM/MFL/F09, declare in the name of Allah that my thesis entitled,

“The Financial Empowerment of Women in Islamic and International Law”

Submitted to the Department of Shari’ah, Faculty of Shari’ah and Law, is a genuine work of mine originally conceived and written down by me under the supervision of Professor Dr. Muhammad Zia ul Haq, by Allah’s will and approbation.

I do, hereby, understand the consequences that may follow, if the above declaration be found contradicted and/or violated, both in this world and in the Hereafter.

Sofia Malik
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(Signature: _____)

This thesis is dedicated to women struggling for their empowerment following their role models.

The Empowered Woman

A poem by Sonny Carroll

The Empowered Woman, she moves through the world
with a sense of confidence and grace.

Her once reckless spirit now tempered by wisdom.
Quietly, yet firmly, she speaks her truth without doubt or hesitation
and the life she leads is of her own creation.

She now understands what it means to live and let live.
How much to ask for herself and how much to give.

She has a strong, yet generous heart
and the inner beauty she emanates truly sets her apart.

Like the mythical Phoenix,
she has risen from the ashes and soared to a new plane of existence,
unfettered by the things that once that posed such resistance.

Her senses now heightened, she sees everything so clearly.
She hears the wind rustling through the trees;
beckoning her to live the dreams she holds so dearly.

She feels the softness of her hands
and muses at the strength that they possess.

Her needs and desires she has learned to express.
She has tasted the bitter and savored the sweet fruits of life,
overcome adversity and pushed past heartache and strife.

And the one thing she never understood,
she now knows to be true.
it all begins and ends with you.

TABLE OF CONTENTS

Serial No.	Titles	Page No.
	Title page	i
	Certificate	
	Declaration/ Statement of Understanding	ii
	Dedication	iii
	Table of Contents	iv
	Acknowledgments	vii
	Abstract	1
	Introduction	3
CHAPTER 1	HISTORICAL EVOLUTION OF THE DOCTRINE OF FINANCIAL EMPOWERMENT OF WOMEN	13
1.	Conceptual Evolution of Doctrine of Financial Empowerment of Women	13
1.1	Literal Definition Of Empowerment	13
1.2	Terminological Definition of Empowerment of Women	15
1.3	Financial Empowerment of Women	17
2.	Historical Evolution Of The Doctrine Of Financial Empowerment Of Women In Islam	19
2.1	Women's Rights and Status In Civilizations Preceded Islamic Civilization: A Brief Description	19
2.2	Women's Status In Islamic Civilization: A Brief Description	21
3.	Historical Evolution Of The Doctrine Of Financial Empowerment Of Women In International Human Rights Law	28
3.1	International Human Rights Instruments	31
3.2	International Conferences On Women's Rights	37
CHAPTER 2	NATURE AND SCOPE OF FINANCIAL EMPOWERMENT OF WOMEN IN ISLAMIC LAW	42
1.	Women's Rights And Status In Civilizations Preceded Islam: A Detailed Description	42
1.1	Women's Rights In Ancient Greece	42
1.2	Women 's Rights In Ancient Roman Society	44

1.3	Women's Rights In Egyptian Civilization	46
1.4	Women's Rights In Pre- Islamic Arabia	48
2.	Women's Rights In Islam, Protected Or Subjugated	50
3.	Financial Status Of Women In Islamic Law: A Detailed Description	51
3.1	Women's Right To Own/Possess Personal Property	53
3.2	Right Of Muslim Women To Work	55
3.3	Women's Right To Inherit	58
3.4	Women's Right To Get Marital Gift / Dower	65
3.5	Women's Right To Get Maintenance During Marriage	68
3.6	Women's Right To Get Maintenance after Divorce	70
3.7	No Financial Obligation Of Women In Islam	72
3.8	Financial Liability And Liberty Of Muslim Women	72
CHAPTER 3	NATURE AND SCOPE OF FINANCIAL EMPOWERMENT OF WOMEN IN INTERNATIONAL LAW	76
1.	History Of Women Empowerment In The United Nations Organization (UNO)	79
2.	European Union And Women's Rights	82
3.	Women's Financial Empowerment In International Human Rights Instruments	83
3.1	Women's Right To Own Property	86
3.2	Women's Right To Get Employment	89
3.3	Women's Right To Receive Social Security	91
3.4	Women's Right To Get Financial Credit	91
3.5	Right to Strengthen Women's Economic Capacity and Commercial Networks	92
3.6	Elimination Of Discriminatory Practices Against Women On Work Place	93
4.	Rights Of Women Migrant Workers	93
5.	Women's Right To Participate In Decision Making Process	95
CHAPTER 4	THE DOCTRINE OF FINANCIAL EMPOWERMENT OF WOMEN IN ISLAMIC AND INTERNATIONAL LAW: A COMPARATIVE STUDY	97
1.	The Philosophical Foundations Of Islamic And	97

	International Law : A Comparison	
2.	The Position Of Women In Islam, Christianity and Judaism	98
3.	The Financial Rights of Women In Islam, Christianity and Judaism	100
3.1	Women's Rights To Inherit	106
3.2	Women's Right To work	108
3.3	Women's Right To Get Dower	109
3.4	Women's Right To Get Maintenance	110
3.5	Financial Rights Of Women After Divorce	110
3.6	Women's Right To Own Property	111
4.	The Financial Empowerment of Women In Islamic law and International Law: A Comparison	112
4.1	The General Compatibility Between Islamic Law And International Law	114
4.2	Pakistan, An Example of Fusion of Islamic as well as International Standards of Women Empowerment	116
4.3	Implementation Of Articles Of CEDAW in Pakistan Related To Women's Financial And Economic Rights	121
	CONCLUSION AND RECOMMENDATIONS	128
	Conclusion	128
	Recommendations	132
	BIBLIOGRAPHY	138

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A generous moral and academic support provided by my honest and kind-hearted supervisor **Dr. Muhammad Zia ul Haq** is been acknowledged with sincere appreciation. He has cooperated and guided me throughout my research work. I have a very good and memorable time with him as my supervisor. I have learned a lot from him as a person as well as a supervisor. I pray May Allah Bless him with success and happiness in all fields of his life.

Also very special thanks to my friends and ones who have prayed a lot for the completion of my research work and supported me morally and emotionally throughout the research work.

May Allah give all of them the best reward for their efforts and support in this World and in the World Hereafter. *Aameen.*

ABSTRACT

The topic of this research work is "**The Financial Empowerment of Women in Islamic and International Law**". This thesis contains an academic research supported by historical and textual evidence about a very important issue i.e. financial right of women in Islam and their implication in Muslim countries along with International Human Rights standards on compatible levels. It is a topic of the hour and need of the time that requires extensive deliberation on part of eminent Muslim scholars and jurists so the outer World can see the true glory of Islam that regards rights of people as rights of *Allah* and any violation of the sanctity of these rights is as violation against Islam itself. Moreover, it aims to reveal that Islamic injunctions regarding women's rights are as practicable in modern times as they were in golden times of Islamic state.

Today, a widely circulated common myth is that Islam regards woman equal to half of the man. In consequence, the assumption is that Islamic law denies "equality" to women and discriminates in issues of inheritance, legal witnessing, divorce, family laws etc. In fact, lack of understanding about Islamic legal philosophy and effort to superimpose the western notion of "Quantitative" equality upon Muslim societies are basis of this misperception. In response to these misgivings, the "traditionalist" as well as "modernists" scholars of Islam exhibit either apologies or serious distortions.

The following thesis is an effort to develop the understanding about the "Qualitative" approach of Islamic legal philosophy regarding gender equality. It focuses on financial rights of women described in fundamental sources of Islamic law and in International human rights instruments. Then it compares the philosophical as well as practical

differences between Islamic law and International law regarding women's financial rights. Finally, it analyzes the implication of Islamic laws in a Muslim country like Pakistan along with International Human Rights standards and the outcome produced.

The discussion in the thesis lays stress on basic three facts:- The first is to prove the superiority of Islamic principles and teachings over all other ideologies and principles especially in spheres of women's rights, as far as theory is concerned. The second is to prove the superiority of Islamic civilization that helped establish a real welfare state where all citizens enjoy basic human rights on equal basis. This is the adorable part of Islam in practical field. The third is to prove the falsehood of wrong perception that the human rights in general and women's rights in particular materialized for the first time in a special international charter namely the "International Declaration of Human Rights" issued by the United Nations Organization (UNO) in 1948. It is therefore, important to spotlight those historical facts related to Muslim history of human rights that affected the whole world at large and that happened centuries before any conceptualization of UNO itself.

INTRODUCTION

i. SIGNIFICANCE AND IMPORTANCE OF THE SUBJECT:

The history of humanity is evident that in various social systems, women faced a number of limitations as to management of their own financial affairs, acquisition of wealth and ownership of land, access to loans and credits as well as inheritance. The traditional, cultural and religious patterns of societies perpetuated and reinforced the subordination of women in the social, economic and political spheres. Therefore, these limitations continue to exist in their various legal and practical forms until date. Today, women who constitute about more than half of the population of the world are still receiving in some parts of the World a treatment that is humiliating and intolerable as their status is no more than a commodity on sale in a flash market.¹

Women have been and are being oppressed everywhere in different forms and under different circumstances. This is contrary to the will of *Allah* as Islam negates subjugation of any sex. The characteristics of a *Qur'anic* society are that both men and women are equal in status and worth as human beings. The *Qur'anic* texts and the Muslim history projected very complex but interesting relationship between women and Islam. According to the Holy *Qur'an*, women are equal to men before *Allah* who created both of them from like nature:-

¹ Hasein Mehrpour, "A Brief Review of Women's Economic Rights in the Iranian Legal System," *Journal of Women's Studies and Research in Iran and Muslim Countries* 2:7 (Fall-Winter 1995/96)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِّنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

Allah says (interpretation of the meaning):- “O’ mankind, reverence your guardian Lord who created you from a single person and created his mate of like nature, and from them twain scattered (like seeds) countless men and women; reverence *Allah*, through whom you demand your mutual (rights), and (reverence) the wombs (That bore you): for *Allah* ever watches over you.”²

This verse of the Holy *Quran* clearly indicates that men and women are of equal status as humans and no one is subordinate to the other. However, to make this status of women materialize in today’s world, the awareness of the self- worth on the part of the women is a pre- requisite. Because no one will accept them as their equals until the women realize their abilities and prove them to their better halves. Moreover, she needs to receive her rights that she deserves and to attain opportunities in all stages and occupations, especially financial matters, to prove her worth.

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

Allah says (interpretation of the meaning): “...And women have rights similar to those against them according to what is equitable...”³

² AL- QURAN 4:1.

³ AL- QURAN 2:228.

In addition, this awareness and empowerment can only be attained when the women as well as men will be well aware of the rights especially financial rights of women given by the divine law of Islam. Moreover, the grant of due economic and financial rights to women will empower them in real sense as well as develop the human society in general. The same fact is described as under: - "As women are generally the poorest of the poor ... eliminating social, cultural, political and economic discrimination against women is a prerequisite of eradicating poverty ... in the context of sustainable development."⁴

ii. RESEARCH METHODOLOGY:

To achieve the above-mentioned goals exclusively, the following research methodology is used in this thesis. In the first chapter, the thesis begins in a descriptive way of defining the fundamental terminologies and a brief narration of the evolution of the doctrine of financial empowerment of women in Islamic as well as Western world. After the detailed description of women's financial rights, as given in Islamic and International law in next two chapters, the forth chapter is dedicated for the comparison of both laws on the same. The comparison involves not only philosophical differences between Islamic and International law but also the implication of financial legal rights of women in a Muslim country like Pakistan, where the fusion of both laws really affected the social frameworks. The articles and injunctions been compared to analyze the legal theory, while status of women in different religious philosophies is compared as to get a clear picture of the applicability of both laws and its effects in the same social fabric.

⁴ International Conference on Population and Development (ICPD) Programme of Action, 1994.

Moreover, the application of following tools proves helpful for completing this research work.

- It is an academic research, theoretical and descriptive in nature so literature review is the key component of research process.
- Primary sources for both Islamic and International laws are consulted to get the first hand knowledge.
- Historical events from Prophetic era and those of companions of the Prophet *Muhammad* (Peace Be Upon Him) are evidence to support the arguments while discussing women's rights in Islamic law.
- Principles of Islamic Jurisprudence (*Usul-al-fiqh*) are the foundations in this research especially during the derivation of the opinions of the jurists.
- The opinions of religious scholars, legal experts and advocates are helpful to collect different suggestion on compatibility of Islamic and international law.

Moreover, various books, articles from eminent journals, e-books, experts' opinions, audio and video lectures of prominent Islamic scholars, and most importantly the Tafaseer of Holy *Quran* are focus of consultation to spot light different aspects of the topic. These are in more than one language for example English, Urdu, Arabic and Punjabi.

iii. LITERATURE REVIEW:

Review of the related literature will be helpful for those who would be interested to conduct further research on this topic. Few books discuss the topic thoroughly while some other touches it briefly:-

- 1) For explanation of terms mentioned in the Holy *Quran*, “*Tafseer Ahsan ul Kalam*” published by *Dar as Salam* and the “ Translation of Holy *Quran*” by Marmaduke Pikhthall are consulted. Both are the standard translations of the Holy *Quran* and are bilingual version with parallel Arabic and English in a single volume.
- 2) “*Al- Hidaya*” by *Al-Marghainani* . It is a commentary book on Islamic Laws translated by Charles Hamilton with the same title. This book has consisted upon two volumes, dealing with Muslim Family Laws like *nikkah*, *talaq* and financial rights of women on occurrence of marriage contract and after divorce.
- 3) “*Bidayat al- Mujahid-O Nihayat al- Muqtasid*” by Ibn Rushd is an authentic and comprehensive book of Maaliki school of thought dealing with all *Fiqhi* (jusrisprudencial) matters. This book partially discusses the topic of financial rights of women.
- 4) “*Bada'i -al-Sana'i- Fi Tertib -al- Shari'ah*” is available in Urdu translation by Abdul Hafiz. It is a classic book of Islamic Law representing the *Hanafi* School. It discusses financial rights of women in various parts under different headings.
- 5) “*The Empowerment of women in Islam*” written by Dr. Zeenat Shaukat Ali. This book addresses to some of the gender inequalities of the pre- Islamic period dispelled by the

Qur'anic injunctions. Furthermore, after the Prophet (PBUH)'s demise, such disparity has evolved greatly as an artifact of the preferences and actions of patriarchal authorities sustain the ethnicity of the pre-Islamic Arab perspectives. However, modernists believe that Islam cannot support such categorical claims and in fact, equality between men and women originally granted by the *Quran*. Nevertheless, this book discussed the empowerment of women in general as a subheading under the issues of Marriage and Divorce.

- 6) "*Encyclopedia of Women & Islamic Cultures: Family, law, and politics*" By Suad Joseph. Afsaneh Najmabadi. It is a multi-volume reference book published by Brill Academic Publishers. It is reflecting the very latest research on gender studies and the Islamic world. A unique collaboration of over 1000 scholars for students and researchers in the fields of gender studies, Middle Eastern and Islamic studies, as well as scholars of religion, history, politics, anthropology, geography and related disciplines.
- 7) "*Women in Islamic societies: social attitudes and historical perspectives*" edited by Bo Utas (studies on Asian topics, no: 6). A Conference held on "Women in Islam" at Holte on 26-28 Nov 1979. This book is the publication of the papers read in that Conference. The experts from all over the World gathered and analyzed the social and economic life and status of women in Muslim societies. There is still a need to have a further insight into the social structure and political values that create and influence the existing situation of the Muslim women.
- 8) "*The Rights of Women in Islam: an authentic approach*" by Haifaa A. Jawad. It is a historical fact that Islam liberated women by granting full rights and status as citizens.

Still in this modern time, in majority of the Muslim world, cultural and political cultural oppression is fate of women. Opportunities for education and their role in the labour force are restricted. This is a clear contrast with what Islam prescribes. Well, all this is generally discussed in this book. However, there is only a small portion in this book by the name of “Islam and women’s inheritance” that relates only a small part of those wide ranged financial rights given to women by Islam.

- 9) “*Women and Empowerment: Approaches and Strategies*” by Sushama Sahay. Beyond offering an understanding of women-empowerment as a concept, its importance and practical framework for women’s empowerment, this book discusses the approaches and strategies for empowering women. It outlines the effective mechanisms and tools that women are using for their empowerment in different social frameworks. There is still a need to analyze that in the light of Islamic injunctions.
- 10) “*Empowerment of Women*” by C.P.Yadav. The economic independence makes a woman the author of her own decisions according to her pleasure and benefit. This research work emphasizes that despite constitutional provisions of equal rights and opportunities in spheres of politics, education and work etc, the Indian women are not allowed to enjoy these rights and opportunities independently. Although, Indian women are now becoming more and more conscious of their constitutional rights, however, it is the responsibility of Government to take appropriate measurements to ensure the share of public and private enterprises for the improvement of the economic status of women.
- 11) “*Women and Economic Empowerment*” by Dawn Marie Driscoll. It is a special issue of the *New England journal of public policy*. It is a thorough guide to empower women

economically. It emphasizes that policies and programmes for women economic empowerment should focus on educational training and entrepreneurial activities. There is a need to address women's needs in total rather than approaching their problems with fragmented solutions.

12) *"Gender and Property Law in Pakistan, Resources and discourses"* by Rubya Mehdi. This post-doctoral research project is a contribution to a deep understanding of social and economic position of women in Pakistani society. It takes Pakistani women's access to and control of material resources as central to their social position and focuses on these aiming to gain the deepest possible insight into this aspect of Pakistani society. It analyzes the Property Law in Pakistan from its social impact especially on female segment of the society.

13) *"Human Rights and Economic Challenges in Europe: Gender Equality;* 6th European Ministerial Conference on Equality between Women and Men; Stockholm, 8 - 9 June 2006; proceedings.

iv. **STATEMENT OF THE RESEARCH PROBLEM / THESIS STATEMENT:**

The thesis statement of this research focuses on these major questions:-

- i. What is the position of Islam regarding the financial status of woman in society?
- ii. How similar or different was that position from "the spirit of the time," which was dominant when Islam was revealed?
- iii. How would this compare with the "rights" which were finally gained by woman in recent decades under international human rights' instruments?

iv. What is the result of implication of women's rights in accordance with international standards of human rights in a Muslim country?

v. **OBJECTIVES OF RESEARCH**

The underlying objectives of this research are as under:-

- To explain the basis of doctrine of financial empowerment of women in the light of Islamic dispensations
- To describe the limitations imposed by the Muslim jurists upon the financial independence of women.
- To trace the historical evolution of the doctrine of financial empowerment of women in Western World
- To study, compare and analyze the differences between Islamic and prevalent international human rights standards regarding women's rights, both in theory and practice
- To awake all Muslims, both males & females, about the exact spirit of Islamic Injunctions in the field of financial rights of women
- To encourage Muslim women to struggle for the enforcement and materialization of their financial rights given them by Islamic Law

The hypothesis of this research is that:- Islam was the first one to introduce women's rights ever. The financial rights of women given in Islamic law are far more practical and positively effective in society than those given under international human rights standards. On the other hand, the myth prevalent is that Islamic laws sanction gender

discrimination and women's subjugation. In reality, Islamic law contested these; moreover, new interpretations exist to rebut this myth.

However, Muslim societies continue to practice discrimination in the name of Islam, but reality is that Muslim states lag behind in women empowerment due to social and cultural norms that has nothing to do with Islam. It is very important not only to clear the so-called distortions and misunderstandings about Islam regarding women's financial rights but also to uplift the confidence of Muslims regarding their golden heritage. In addition, even today, Islamic law regarding women's rights is applicable and effective more than any human charter.

To pursue this aim, the issues regarding women's financial rights with different dimensions are focus of discussion here, as it is the hottest issue raised repeatedly by the West against Islam.

In the end, recommendations are made so that Muslims can lead their lives in conformity with the *Shari'ah* rulings and can apply international human rights standards without prejudices to Islamic law.

Peace and blessings of *Allah* be upon the last Prophet, his family and his companions and upon all his followers. *Aameen*

CHAPTER NO 1:

HISTORICAL EVOLUTION OF THE DOCTRINE OF FINANCIAL EMPOWERMENT OF WOMEN

1. Conceptual Evolution of Doctrine of Financial Empowerment

Of Women:

1.1 Literal Definition of Empowerment

Empower means “to authorize or enable”⁵ and “give (someone) the authority or power to do something” or “make (someone) stronger and more confident, especially in controlling their life and claiming their rights”.⁶

The Merriam Webster's Dictionary similarly describes the verb ‘to empower’ as “to authorize or delegate or give legal power to someone.”⁷

In Islamic legal terminology, the word (فُوْضٌ) is used to express the meaning of ‘empower’ that is explained as follows:

(فُوْضٌ) فُوْضٌ إِلَيْهِ الْأَمْرُ: صِيرَةٌ إِلَيْهِ وَجْهَةُ الْحَاْكِمِ فِيهِ⁸

It explains: to empower someone means to grant one any task and authorize him exclusively to take any decision in that regard.

⁵ Sara Hawker, ed., *Oxford Dictionary, Thesaurus and Word Power Guide* (New York: Oxford University Press Inc., 2003), 198.

⁶ Ibid.,

⁷ Jay A. Conger, Rabindra N. Kanungo, “The Empowerment Process: Integrating Theory and Practice,” *The Academy of Management Review* 13:3 (July 1988), 473.

⁸ Jamal al-Din Muhammad Bin Mukarram Bin Manzoor, *Lisan al-Arab*, Vol.7(Beirut: Dar al-Fikr, 1990),210.

Empowerment is a noun that means:- “The granting of political, social or economic power to an individual or group” and “The process of supporting another person or persons to discover and claim personal power”.⁹

In this sense empowerment is “A process through which women and men in disadvantage position increase their access to knowledge, resources, decision-making power and raise their awareness of participation in their communities, in order to reach a level of control over their own environment”.¹⁰

It refers to increasing the spiritual, political, social or economic strength of individuals and communities. It is the process of transferring decision-making power from influential sectors to less privileged communities and individuals. According to Mayoux¹¹, empowerment is “a process of change in power relations that is both multidimensional and interlinked”.¹²

In Islamic law, the word “**تفويض**” is used in meaning of “empowerment” that is explained as follows:

تفويض شخص أمره إلى آخر، وإقامته مقامه في التصرف¹³

والتفويض هو التسليم وهو ترك المتنازعه والمضائقه¹⁴

⁹ Adrian Wilkinson, *Empowerment: theory and practice*, Vol. 27(West Yorkshire.: MCB UP Ltd, 1998), 40 – 56.

¹⁰ Gender Reform Action Plan, *Women Empowerment*, (New York, 2011),56.

¹¹ Linda Mayoux is global consultant for Oxfam Novib's Women's Economic Empowerment Mainstreaming and Networking (WEMAN) programme.

¹² Anjali Kaur, *Women's Economic Empowerment: Meeting the Needs of Impoverished Women*, UNFPA Workshop Report (2000), 7.

¹³ *Mu'jim Lughat al-Fuqaha*, vol.1(Lebanon, Beirut: Dar un Nafais, 1988),509.

¹⁴ *Talibah al- Talibah*, Vol.2 (Beirut: Mauqa-al-Islam, 1984), 236.

The above-mentioned Arabic texts define the empowerment as a process through which a person grants another the power to make choices relevant to one's situation and make him/her stand in his shoe acting with confidence. Moreover, it is the acceptance of the granted powers without any objection or conflict.¹⁵

1.2 Terminological Definition of Empowerment of Women

It is expedient to define women's empowerment with regard to its five essential components i.e.:

- i. Sense of self-worth and self esteem
- ii. Right to have choices and make decision among these
- iii. Access to opportunities and resources
- iv. Power to control their lives within and outside home
- v. Ability to influence the social change in order to develop more just and effective social and economic order

The presence of above-mentioned components is evident that the process of women's empowerment blooms.¹⁶

The **Interplay of empowerment and rights** is as such that women's rights promote a position of economic, social and legal equality of women to men and the result of giving women such rights and position is their empowerment.¹⁷

Islamic law has the concept of empowerment but with a different perspective. The bottom-line of the doctrine of empowerment in Islamic law is the granting

¹⁵ Ibid., 84.

¹⁶ United Nations Population Information Network (POPIN) UN Population Division, *Guidelines on Women's Empowerment for the UN resident coordinator system* (New York: UNFPA, 2000), 5.

¹⁷ John Simpson and Edmund Weiner, eds., *The Oxford English Dictionary* (London: Oxford University Press), 1993.

of political, social and economic power or rights to an individual or group. However, its developed form is the concept of 'ownership.' This is explained as follows:-

The right is called "Haq" in Islamic law and its plural is "Huquq" meaning rights.

Terminologically, *Haq* is defined as:

تصرف في الحق هو ما يقرره الشرع لشخص من اختصاص من يزهله لممارسة سلطة معينة او

الشيء¹⁸

It means that 'right' is the one determined by the Islamic law, exclusively to the jurisdiction of a person, to exercise the particular authority over a thing (owned).

The right to exercise exclusive authority over a thing is the 'right of ownership' and the owner is fully empowered to use, sell, gift, dispose off, destroy, etc that thing (owned). In this sense, when absolute ownership is granted to a person, male or female, all rights related to that thing (owned) are granted to him/her. And he/she is empowered to do whatever he/she wishes to do with that property. Ownership is termed as "الملكية" in Islamic law and is defined as:

الملكية هي ملك الشيء أي انسان يكون مالكا له. و الملك هي حيازة الانسان للمال أو للشيء و الا نفراد

بـ.

يقول ابن همام : هي القدرة على التصرف ابتدأ الا لمانع.

¹⁸ Muhammad Abu- Zahrah, *Al-Milkiyah wa Nazariyat Al- 'Aqd Fil Shari'ah* (Egypt, Cairo: Dar-al-Fikr, 1988), 3.

عند المالكية: القدرة على التصرف معناه أن تمكن الإنسان شرعاً بنفسه أو بنيابة عنه من الانتفاع بالعين و من أخذ العوض او تمكنه من الانتفاع خاصة.

تعريف أبي زهرة: الملك هي الاختصاص بالأشياء الحاجز للغير عنها شرعاً الذي تكون به القدرة على التصرف في الاشياء ابتداء الا لمابعد يتعلق بأهلية الشخص¹⁹.

The ownership of a thing means that the divine law specifically determined that thing/property for the jurisdiction of a certain owner. It is the original jurisdiction of that owner on certain things/property etc without any restrictions. The owner may take any kind of benefit out of the thing owned and even delegate that to someone else willingly. Ownership is a relation between person (right-holder) and the thing/property (owned). When such relationship exists without any legal restrictions or social, cultural and political prejudices, then it means the right-holder is fully empowered to exercise his genuine right ordained by the divine law. This is empowerment in its true sense under Islamic law.

1.3 Financial Empowerment of Women

The word 'financial' means "monetary, fiscal, pecuniary, and economic"²⁰. Financial empowerment refers to "the grant of personal money power or financial independence to an individual".²¹

To complete the process of women's empowerment successfully and to redress unequal power relations, the gender concerns should be integrated into every area of life for

¹⁹ Muhammad Abu- Zahrah, *Al-Milkiyah wa Nazariyat Al- 'Aqd Fil Shari'ah* (Egypt, Cairo: Dar-al-Fikr, 1988), 3.

²⁰ Hawker, ed., *Oxford Dictionary, Thesaurus and Word Power Guide*, 230.

²¹ *What is financial empowerment*, http://wiki.answers.com/Q/What_is_financial_empowerment (Sep. 23, 2011).

example economic, financial, political and social spheres. Thus, the financial empowerment of women refers to increasing control of women over finance and economic resources.²²

Islamic injunctions have encouraged Muslim men and women to earn and whoever will work hard he/she will get more, regardless of their gender.

لِلرِّجَالِ نَصِيبٌ مِّمَّا أَكْتَسَبُواٰ وَلِلْأَنْسَاءِ نَصِيبٌ مِّمَّا أَكْتَسَبْنَ²³

Allah (سبحانه و تعالى) says (interpretation of the meaning): "For men there is reward for what they have earned, (and likewise) for women there is reward for what they have earned..." (*AL-QUR'AN* 4:32)

إِنَّ الْمُصْدِقِينَ وَالْمُصْدَقَاتِ وَأَفْرَضُوا اللَّهُ فِرْضًا حَسَنًا يُضَاعِفُ لَهُمْ وَلَهُنْ أَجْرٌ كَرِيمٌ²⁴

Allah (سبحانه و تعالى) says (interpretation of the meaning): "For those who give in Charity, men and women, and loan to Allah a Beautiful Loan, it shall be increased manifold (to their credit), and they shall have (besides) a liberal reward." (*AL-QUR'AN* 57:18)

The above-mentioned verse is the vital proof of Islamic open mindedness about financial independence and empowerment of women, as earning is a prerequisite for the act of charity. Moreover, where both Muslim men and women are been encouraged to give charity out of their earnings for which they are promised to get greater reward, there they are been granted the right to earn on equal basis. That is the milestone of financial empowerment of women under Islam.²⁵

²² Anjali Kaur, *Women's Economic Empowerment: Meeting the Needs of Impoverished Women*, UNFPA Workshop Report (2000), 7.

²³ Surah An-Nisa: 32

²⁴ Surah Al- Hadeed: 18

²⁵ *Khwateen Kay Liye Smaji Insaaf, Islami Tanazar Main, Taa'alimi wa Tarbiyati Nasaab*, (International Islamic University Islamabad: Shari'ah Faculty, 2011), 160.

2. Historical Evolution of the Doctrine of Financial Empowerment of Women in Islam

The efforts to struggle against the oppression and subjugation of women are a historical phenomenon. Islam almost 1500 years ago raised its voice against it addressing the issue of women's rights on priority basis and gave them the legal and social status that they actually deserved. It accorded all the fundamental rights to women that not only gave them the courage to live honorably in the society but also granted them superior status than men in respect of giving birth, rearing and training an entire new generation. To evaluate the contribution of Islam regarding the up-gradation of status of women primarily in Arab society and then in the entire world of that time, it may be beneficial to review briefly the treatment received by women in civilizations and religions preceded Islam. It will clearly show the efforts by Islam towards the restoration of dignity and rights of women.

2.1 Women's Rights and Status in Civilizations Preceded Islamic Civilization: A Brief Description

In the ancient Greek city Athens, the cradle of ancient civilization, women were considered as 'minors' under the guardianship of their father, brother, or husband. This guardianship continues throughout their lives. They were under obligation to submit to the whims and whishes of their guardians in every matter of life including marriage.²⁶

²⁶ Dr. Jamal Badawi, "The Status of Women in Islam", *Quarterly Journal: Al-Ittihad* 8:2 (Sept 1971): 67.

Legally speaking, a woman in the **Roman** civilization was a ‘dependent’ person, lacking legal capacity who cannot stand as a witness, surety or tutor etc. she could not adopt or be adopted as well as could not make will or contract. Even a married woman was considered as “the purchased property of her husband” who had all powers over her body as well as property. Similarly, according to the **English** common law, at the time of marriage the husband possessed all the real property of wife. All the rights related to that property went in hands of the husband who could do whatever he wanted with that property during their marriage-life. Later on, the English courts forbid a husband from transferring that real property without the wife’s consent, but he still had the right to manage that property and receive its proceeds. The **Mosaic** law declared a wife as “betrothed”: means the girl who was purchased by payment of money.²⁷

Women in Scandinavian civilization remained under perpetual tutelage. At the end of 17th century, it was enacted in the Code of Christian V that in case of marriage of a woman without the consent of her tutor, the tutor might have all usufruct of her goods as well as the administration of her property in his hands during her life.²⁸

In **Christianity**, the legal obligations made the wife actual bondservant of her husband. The Church not only affirmed the inferior status of woman but also deprived her of legal rights as she was represented as the door of hell and mother of all human ills.²⁹

Under the **pre- Islamic tribal laws of Arabia**, women had no legal status as a rule. Female infanticide, unlimited polygamy, patrilineal marriages, women enslavement etc.

²⁷ Dr. Zakir Naik, *Women's rights in Islam, Protected or Subjugated*, International Islamic Conference 2009, http://www.youtube.com/watch?v=1_VPwY-ttlk (June 23, 2011)

²⁸ Badawi, “The Status of Women in Islam”, 68.

²⁹ John Stuart Mill, “The Subjection of Women”, *Quarterly Journal: Al-Ittihad* 8:2 (Sept 1971): 107.

were common examples of encroachments on women's rights. Although, the code of rights for women varied from tribe to tribe but women had little or no property or succession rights because they were considered as unwise and incapable of handling the property. Their husbands and other male family members used to inherit them as a possession or commodity included in estate.³⁰

Such darkness engulfed the women's life until the seventh century, and then the divine revelation came with a universal message to humanity. Islam improves the status of women by introducing rights of inheritance, property ownership, education, divorce etc for them. There is no text, old or new, legal or religious, that deal with women from all aspects of humanity as this divine decree of Islam in the Holy *Qur'an* does.³¹

2.2 Women's Status In Islamic Civilization: A Brief Description

The teachings of Islam are based on the *Qur'anic* injunctions (*Allah's* revelation) and *Hadith* (elaborations by Holy Prophet *Muhammad* (صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ)). The *Qur'anic* message to humanity regarding status of women is as follows:-

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ يَا أَيُّهَا النَّاسُ انْثُوا رَبِّكُمُ الَّذِي خَلَقَكُمْ مِّنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ

مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَانْثُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَّفِيقًا³²

Allah (سبحانه و تعالى) says (interpretation of the meaning): "O mankind! Reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women; reverence Allah,

³⁰ Hatoon Al-Fassi, *Women in Pre-Islamic Arabia: Nabataea*, British Archaeological Reports International Series, (British Archaeological Reports, 2007), 129.

³¹ Badawi, "The Status of Women in Islam", 68.

³² Surah An-Nisa:1

through whom you demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever watches over you.” (*AL-QUR’AN* 4:1)

هُوَ الَّذِي خَلَقَكُمْ مِّنْ نَّسْرٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيُسْكِنَ إِلَيْهَا³³

Allah says (interpretation of the meaning): “It is He Who created you from a single person, and made his mate of like nature, in order that he might dwell with her (in love).” (*AL-QUR’AN* 7:189)

فَاطِرُ السَّمَاوَاتِ وَالْأَرْضِ³⁴ جَعَلَ لَكُمْ مِّنْ أَنفُسِكُمْ أَزْوَاجًا

Allah says (interpretation of the meaning): “(He is) the Creator of the heavens and the earth: He has made for you pairs from among yourselves...” (*AL-QUR’AN* 42:11)

وَاللَّهُ جَعَلَ لَكُمْ مِّنْ أَنفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِّنْ أَزْوَاجِكُمْ بَنِينَ وَحَدَّةً وَرَزَقَكُمْ مِّنَ الطَّيَّابَاتِ³⁵ *Allah* says (interpretation of the meaning): “And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best...” (*AL-QUR’AN* 16:72)

There is no text other than this divine decree that gave such a noble conception of woman describing all aspects of her humanity with such dignity, brevity and originality.

The Prophet of Islam, *Muhammad* (صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ) presented a historical Human Rights Charter on the eve of *Hija-tul-widah* (the final pilgrimage) on the Ninth Day of

³³ Surah Al-A’Araaf: 189

³⁴ Surah Al-Shura: 11

³⁵ Surah An-Nahl: 72

Dhul Hijjah 10th A.H. in the 'Uranah valley of Mount Arafat' (in Makkah). He instructed his followers to treat women reverentially in following words:-

*“...O’ People, it is true that you have certain rights with regard to your women, but they also have rights over you. Remember that you have taken them as your wives only under Allah’s trust and with His permission. If they abide by your right then to them belongs the right to be fed and clothed in kindness. Do treat your women well and be kind to them for they are your partner and committed helpers. And it is your right that they do not make friends with any one of whom you do not approve, as well as never to be unchaste...”*³⁶

This holy sermon was the summary of those Islamic injunctions that were revealed in Holy *Qur'an* in favour of women. So the women were declared as human beings and respectable citizens of society as men were.

Allah (سبحانه و تعالى) describes gender equality and women empowerment in different *Qur'anic* passages pertaining to at least four aspects of human life, existence and interaction i.e. spiritual, social, economic and political. The first of these are contained in verses related to ‘religious obligations’. It is the spiritual aspect of gender equality that is a vital evidence of the fact that women are treated on equal basis with men in *Allah*’s sight in terms of religious rights and duties. For example:

كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ³⁷

Allah (سبحانه و تعالى) says (interpretation of the meaning): “Every soul will be (held) in pledge for its deeds.” (*AL-QUR'AN* 74:38)

³⁶ Abul A'la Mawdudi, *Human rights In Islam*, (UK, Leicester: The Islamic foundation, 1980), 25.

³⁷ Surah Al-Mudasir: 38

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيقُ عَمَلَ عَالِمٍ مَنْ كُمْ مَنْ ذَكَرَ أَوْ أُنْثَى بَعْضُكُمْ مَنْ بَعْضٌ³⁸

Allah (سبحانه و تعالى) says (interpretation of the meaning): "And their Lord hath accepted of them, and answered them: "Never will I suffer to be lost the work of any of you, be the male or female: You are members, one of another..." (*AL-QUR'AN* 3:195)

وَمَنْ يَعْمَلْ مِنَ الصَّالِحَاتِ مِنْ ذَكَرٍ أَوْ أُنْثَى وَهُوَ مُؤْمِنٌ فَأُولَئِكَ يَنْخُلُونَ الْجَنَّةَ وَلَا يُظْلَمُونَ تَقْيِيرًا³⁹

Allah (سبحانه و تعالى) says (interpretation of the meaning): "If any do deeds of righteousness,- be they male or female - and have faith, they will enter Heaven, and not the least injustice will be done to them." (*AL-QUR'AN* 4:124)

In terms of religious rights and duties, woman is completely equated with man and even has certain advantages over man. For example, during her menstrual periods, she is exempted from daily prayers and fasting. The same exemption is granted to her for forty days after childbirth. She is also exempted from fasting during her pregnancy and while nursing her baby if it may harm her health or baby's. Moreover, she only has to make up for the obligatory fasting of Ramadan not the prayers that she missed for any of the above-mentioned reasons. In addition, attendance at the Friday congregational prayers is not mandatory for women as it is for men. So in this sense, Islamic injunctions are not only treating women on basis of equality as creatures of *Allah* but also very considerate of the physiological and psychological demands of their natural female functions.⁴⁰

Secondly, the **Social aspect** of women's status is covered by the Islamic injunctions comprehensively. As female infanticide got social acceptance in pre-Islamic Arabia so

³⁸ Surah Aal-e-Imraan: 195

³⁹ Surah an-Nisaa: 124

⁴⁰ Badawi, "The Status of women in Islam", 68.

the Holy *Qur'an* not only forbade that practice in clear words but declared that a serious crime as murder. For example:

وإذا المَوْءُودَةُ سُنِّتْ ، بِأَيِّ ذَنْبٍ قُتِّلَتْ⁴¹

Allah (سبحانه و تعالى) says (interpretation of the meaning): "When the female (infant), buried alive, is questioned - For what crime she was killed..." (*AL-QUR'AN* 81:8-9)

After securing the right of life for a girl, Islam recommended a kind and just treatment for her throughout her life. A woman is designated the equal status in bond of marriage which meant for emotional well-being and spiritual harmony. That is why marriage relationship should be based on love and mercy between husband and wife. For example:-

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مُؤَدَّةً وَرَحْمَةً إِنَّ فِي

ذَلِكَ لِآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ⁴²

Allah (سبحانه و تعالى) says (interpretation of the meaning): "And among His Signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect." (*AL-QUR'AN* 30:21)

A third evidence in the *Qur'an* for the equality of men and women is its specification of economic rights for every individual of the society on equal basis. The **economic aspect** includes the right of independent ownership. Unlike the situation in the West, where until

⁴¹ Surah At-Takweer: 8-9

⁴² Surah Ar-Room: 21

the 19th century it was impossible for a married woman to hold property on her own, to contract with other persons, or to dispose of her property without the consent of her husband. The *Qur'an* proclaims the independent right of every woman on her money, real estate and property. An adult, major and sane woman is free to buy and sell, to contract and earn, to hold and manage her own money and property without any need of permission of anyone. Moreover, she is not at all obliged to spend any of her money on her family, if she wants to, that is her own choice otherwise no one can compel her to do that. In addition to these rights, the *Qur'an* grants woman a share in the inheritance of the family. For example:-

للرجال نصيبٌ ممّا ترثِك الوالدان والأقربون وللنساء نصيبٌ ممّا ترثِك الوالدان والأقربون ممّا قلّ منه
أو كثُرَ نصيبياً مفروضاً⁴³

Allah (سبحانه و تعالى) says (interpretation of the meaning): "There is a share for men and a share for women from what is left by parents and those nearest related, whether the property is smaller or large, a legal share." (AL-QURAN 4:7)

Allah (سبحانه و تعالى) mentioned the share of men and women in inheritance because pre-Islamic Arabs were not in the habit of giving any inheritance to women and children. All the property belonged to the male members of the family.⁴⁴

Moreover, Allah warns against depriving her of that inheritance.

⁴³ Surah An- Nisaa: 7

⁴⁴ Mokrane Guezzou, *Tafsir Ibn 'Abbas*, trans. (Jordan: Royal Aal al-Bayt Institute for Islamic Thought, 2012), 55.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَمَا تَرِثُونَهُنَّ وَلَا تَعْصِلُوهُنَّ لَتَذَهَّبُوا بِنَعْصُنَ مَا آتَيْتُمُوهُنَّ⁴⁵

Allah (سبحانه و تعالى) says (interpretation of the meaning): “O’ you who believe, you are forbidden to inherit women against their will and you should not treat them with harshness that you may take away part of the Mahr you have given them...” (*AL-QURAN* 4:19)

This verse was revealed in the context of incident of *Kabshah Bint Ma'an al-Ansariyyah* and *Muhsin Ibn Abi Qays al-Ansari*. In pre-Islamic Arabia, women were considered part of the property. The men used to inherit the wives of their fathers along with their properties. It was a cultural tradition that the eldest son along with estate inherited the wife/wives of a deceased father. If the woman happened to be rich and beautiful, the eldest son would marry her without any dowry. If, however, she was not rich, young or beautiful, he would not marry her but instead leave her untouched until she ransomed herself with her own money. *Allah* (سبحانه و تعالى) forbade such practice by the revelation of above-mentioned verse.⁴⁶

Islam decreed the right of independent ownership to women. Women were deprived of this right before Islam. A woman, married or single, as far as she is adult, major and sane, has full rights to her money, real estate or other properties under Islamic Law. No matter whether she acquires that property before marriage or after that, her rights will remain the same.⁴⁷

⁴⁵ Surah An-Nisaa: 19

⁴⁶ Guezzou, *Tafsir Ibn 'Abbas*, 81.

⁴⁷ Dr. Jamal A. Badawi. *The status of Women in Islam*. Second Ed. (Islamabad, Pakistan: Da'wah Academy, 1999), 21.

It is clear that the Holy *Qur'an* not only recommends but also insistent upon the equality of women and men as an essential characteristic of a *Qur'anic* society. The status of woman in Islam is something unique, novel, and has no similarity in any other religion or social system. The Holy *Qur'an* teaches us that women and men are all creatures of Allah, existing on a level of equal worth and value, although their equal importance does not substantiate a claim for their equivalence or perfect identity because the basis of Islamic legal philosophy is on "qualitative" equality not "quantitative" as in the west. Therefore, the study of rights of women in Islam deals with the beliefs and attitudes about the roles and responsibilities of women within the religion of Islam. Because if there is some difference in their rights its due to difference in their roles and responsibilities.

3. Evolution of the Doctrine of Financial Empowerment in International Human Rights Law.

In the Western world, the idea of gender equality has gained momentum in recent times than Islam. Many national and international social and political movements were started to promote the idea that men and women should have equal rights in society. Especially, for the last century, women's political and financial empowerment has been a defining feature of a civic and democratic society.

In the early 19th century, millions of educated and well-aware women agitated for the right to vote and participation in the process of political decision-making and legislation. Few decades later the daughters and granddaughters of those right-fighters flocked to factories and industries to help and support the economy of their countries. The next

generation of these female workers struggled to secure their legal rights. They fueled the economic growth with their hard work and demanded for equal socio-political rights.⁴⁸

In the 21st century, women are not only engaged in work places as labor force but also leading multinational corporations and holding prestigious positions in governments of their countries. However, these are exceptions to the general existing situation. Even after a long period of struggle and impressive progress, overall opportunities for women lag behind those of men in different spheres of life. Moreover, they are paid less than men for equal work. For example, women earn 25% less than their male co-workers do. The 1995 UN Human Development Report states, "An estimated \$16 trillion in global output is currently 'invisible,' of which \$11 trillion is estimated to be produced by women."⁴⁹

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This is the millennium of opportunities and all the political and legal standards have undergone drastic change. Countries cannot be considered truly democratic or prosperous if half of their population is been denied equality and prevented from reaching its full potential. Still, in many societies, women have fewer opportunities of education and employment than men do. Moreover, in many under developing countries, women are facing social and economic restrictions, they have been denied credit, they cannot vote, own property, administer their financial affairs, venture outside home without a male family member. According to new international standards, women's participation in business, entrepreneurship, legislation, policymaking, strategy building and organization of civil society is essential for the development of a prosperous, healthy, egalitarian,

⁴⁸ Almaz Negash, "Economic Empowerment of Women", *Santa Clara University, Markkula Centre for Applied Ethics*, (December 2006).

⁴⁹ Almaz Negash, "Economic Empowerment of Women", *Santa Clara University, Markkula Centre for Applied Ethics*, (December 2006).

developing society as well as a democratic country. As the economy is the backbone of a state-infrastructure, so the enforcement of economic rights and women's financial empowerment is the key to uplift the status of women in a society. It benefits not only the individual, the family, but also the community and the country as a whole. For the same reason, women's rights were included in International Human Rights Law, so it can get the recognition as an issue of universal concern. International Law is a body of regulations and practices accepted by different nations as a code of conduct among themselves, with their citizens and with the citizens of other states. International community develops International law and those who make up international system agree upon it but not every nation-state is a member or has a part in the process.⁵⁰

International institutions are platforms of discussions, drafting, approval and implementation of instruments of International Law. The United Nations Organization (UNO) is the most organized of all international institutions that have influence over world community. International Human Rights Law is a product of post-World War II era, when United Nations recognized the importance of human rights protection. International Human Rights Law consists of International documents relevant to the protection of human rights in general. These documents are called "International Human Rights Instruments".⁵¹

⁵⁰ Sherry Holetzky, *What is International Law*, <http://www.wisegeek.com/what-is-international-law.htm> (Oct. 4, 2011).

⁵¹ David Weissbrodt, Connie de la Vega, *International Human Rights Law: An Introduction* (Philadelphia, Pennsylvania: University of Pennsylvania Press, 2007), 5.

3.1 International Human Rights Instruments

International Human Rights Instruments have two general classifications:

- (1) Declarations adopted by international bodies such as the United Nations General Assembly, having non-binding status, and
- (2) Conventions and Treaties, legally binding instruments concluded under international law.⁵²

With respect to women's rights, there are three important instruments of International human rights Law i.e. The Charter of United Nations Organization, The International Bill Of Rights, Treaties and Conventions.⁵³

i. The Charter of United Nations And Women's Rights

Almost 160 signatories committed to the advancement of humanity by signing the Charter of United Nations Organization (UNO) on 26 June 1945 in San Francisco. Equal rights for women were inscribed in that founding document of UNO and reaffirmed in its preamble as:- “*... faith in fundamental human rights, in the dignity of the human person, in the equal rights of men and women and of Nations large and small.*” It is recognized as the first International document that proclaimed equality between men and women. In

⁵² P.R. Ghandhi, *Blackstone's Statutes International Human Rights Documents* (UK. Oxford University Press, 2004), 185.

⁵³ UN Women, *Resources, UN Treaties and Women Rights*, <http://www.unifem.org.au/Content%20Pages/Resources/un-treaties-womens-rights> (Oct. 5, 2011).

addition, the **Articles 2 and 16** of UNO Charter states that men and women are entitled to equal rights.⁵⁴

A Sub- Commission, under the Commission on Human Rights, dedicated to the status of women was established after few days of the signing of the UNO Charter in 1946. It was for the first time in history that the women's problems were been discussed on international forum. This sub-commission became a full-fledged 'Commission on the Status of Women' (CSW) on 21 June 1946. The mandate of this Commission was to prepare recommendations and reports to the Economic and Social Council on promoting women's rights in political, economic, civil, social and educational fields and to make recommendations "on urgent problems requiring immediate attention in the field of women's rights."⁵⁵

After a short while, the Section on the Status of Women of the United Nations Secretariat was established in the Human Rights' Division of the United Nations. Afterwards, it became the Division for the Advancement of Women in 1978. One of the very first task of the Commission was to contribute to the drafting of the international Bill of Rights. It had revised the articles and inserted gender-sensitive language in that. They argued against the references to "men" as a synonym for humanity. Their arguments were heard and accepted. It was a groundbreaking achievement of that time.⁵⁶

⁵⁴ United Nations, Global Issues, *Women*, <http://www.un.org/en/globalissues/women/> (Oct. 4, 2011)

⁵⁵ ECOSOC Resolution establishing the Commission on the Status of Women, E/RES/2/11, 21 June 1946.

⁵⁶ Devaki Jain, *Women, Development and the UN : A Sixty-year Quest for Equality and Justice* (Bloomington: Indiana Press University, 2005), 19-20.

ii. The International Bill of Rights

The following Human Rights Instruments are included in International Bill of Rights:-

1. Universal Declaration of Human Rights (1948): It stipulates that human rights applied equally to all human beings without any discrimination of race, sex, colour, language and any other status.⁵⁷
2. International Covenant on Economic, Social and Cultural Rights (1966)
3. International Covenant on Civil and Political Rights (1966)
4. Optional Protocol to the International Covenant on Civil and Political Rights
5. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

iii. Treaties

Human rights instruments like Universal Declaration of Human Rights etc. are of non-binding nature. That is why many international and regional treaties are concluded to give the international human rights standards a binding effect. In this regard, the following treaties were materialized and ratified by international community:-

1. The International Convention on the Elimination of All Forms of Racial Discrimination 1969
2. The International Covenant on Civil and Political Rights 1966

⁵⁷ United Nations, *The Universal Declaration of Human Rights*. <http://www.un.org/en/documents/udhr/index.shtml> (Oct. 4, 2011).

3. The International Covenant on Economic, Social and Cultural Rights 1966
4. Convention on the Elimination of All Forms of Discrimination against Women 1979
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
6. Convention on the Rights of the Child 1989
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
8. International Convention for the Protection of All Persons from Enforced Disappearance ⁵⁸

From women's perspective, the development and recognition of these human rights at international level do not address to the most challenging circumstances faced by women. The mainstream human rights bodies have usually ignore the enforcement of human rights norms to women. They promise 'formal equality' to women but the structure of international women's rights law is very fragile and has weaker applicability. Moreover, the instruments and bodies established to draft and monitor them are under-resourced. The inferior position and discriminatory treatment faced by women is due to their powerlessness and international human rights law reinforces the same. Although, the UN Commission on the Status of Women, during the period of 1946-1962, focused on promoting women's rights and equality aiming at changing discriminatory legislation

⁵⁸ UN Women, *Resources. UN Treaties And Women Rights*. United Nations Entity for Gender Equality and the Empowerment of Women, National Committee Australia, <http://www.unifem.org.au/Content%20Pages/Resources/un-treaties-womens-rights> (Oct. 5, 2011).

throughout the world. However, the discrimination against women existed in not only legislations but also in common social practices.⁵⁹

iv. International Conventions on Women's Rights

The notion that 'Women's rights are human rights' is fundamental as well as revolutionary at the same time. Theoretically, women were never excluded from the concept of human rights but practically, they were excluded from general definitions and interpretations of human rights. This made women united at national, regional and international level against the violation of their fundamental rights. In the recent past, many international agreements, declarations and conventions on women's rights are passed as a serious endeavor to empower women. Women started a great movement at the beginning of second half of 20th century for establishment of women's rights and elimination of discrimination against women. This movement had two main aspects i.e. to bring different aspects of women's rights in spotlight and to enact and adopt legal procedures in order to remove inequalities and establish equal rights for women. To achieve this aim, the constitutional safeguards were provided to eliminate all sorts of discrimination against women. Under the UN Commission on Status of Women, the year of 1975 was observed as the Women International Year, later the entire decade (1976-1985) was dedicated to the women cause.⁶⁰

The Decade for women not only recognized the women's movement on international level but also brought their issues on the global agenda. In the beginning of the Decade, it

⁵⁹ *The United Nations and the Advancement of Women, 1945-1996* (New York: United Nations Blue Book Series), 16.

⁶⁰ Global Issues, *Women*, <http://www.un.org/en/globalissues/women/> (Oct. 4, 2011).

was the prevalent belief that development served to advance women. However, until the end of the Decade, a new belief got recognition that development was not possible without women.⁶¹

Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) was concluded in 1979. It is also called 'International Bill of Rights for Women'. It is a treaty to ensure women empowerment as it deals comprehensively with different areas of discrimination against women as well as provide for effective mechanism of various steps to ensure elimination of the same. It was the first international instrument that defined the ways of discrimination against women. **Article 1** of CEDAW defined 'discrimination' as follows:-

"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". Article 13 of the Convention states that men and women have equal economic rights, for example: to get bank loans, mortgages and financial credits. Article 15 states those equal financial rights for men and women that relate to their legal capacity to make contracts defend their economic rights in courts and eventually get financial independence.⁶²

⁶¹ *The United Nations and the Advancement of Women*, 37.

⁶² Division for the Advancement of Women, Department of Economic and Social Affairs. *Convention on Elimination of All Forms of Discrimination Against Women*, <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>. (Oct. 4, 2011).

The thirty articles of the Convention expressed internationally accepted principles on the rights of women in a comprehensive and legally binding form. In 1993, the Declaration on the Elimination of Violence Against Women (DEVAW) was ratified. It provided the guidelines for governments about required steps to prevent violence as well as protect women's rights. In 1975, the General Assembly recommended the creation of the International Research and Training Institute for the Advancement of Women (INSTRAW). In 1984, the General Assembly transformed the Voluntary Fund for the United Nations Decade of the United Nations Development Programme into a permanent autonomous body i.e., the United Nations Development Fund for Women (UNIFEM). In this way, the implementation mechanisms established for the Decade were diffused throughout the UN regional commissions, funds and specialized agencies to strengthen the activities for advancement of women's rights.⁶³

3.2 International Conferences On Women Rights

The **First** international conference for women was held in Mexico in 1975.⁷ The declaration was made to hold such international gatherings for women's rights every five years. The **Second** International Conference was held in Copenhagen in 1980 which resulted in a Program of Action stressed on enforcement of women's rights of inheritance, control and ownership of property etc. The **Third** one held in Nairobi in 1985 to review the achievements of UNO Decade of Women with a mandate to establish concrete measures to overcome the obstacles to achieving the Decade's goals. In this **World Conference to Review and Appraise the Achievements of the UN Decade for Women**, the first World Survey on the Role of Women in Development, with a focus on

⁶³ *The United Nations and the Advancement of Women*, 30.

women's economic roles, was prepared by the Division for the Advancement of Women and served as a background report for the conference. Major achievements were Equality, Development and Peace. It is described as the 'birth of global feminism'.⁶⁴

The **Forth** International Conference for Women was held in Beijing after the period of ten years in 1995. A turning point in the struggle for women's rights was this Beijing Conference. This was the largest global conference on women Fourth World Conference for Women (FWCW). The primary goal of this conference was to indicate all those obstacles to women's progress and empowerment that hinder them from moving ahead in all spheres of public and private, social and economic, political life. All attending countries made the commitment of developing a 'national plan of action' through which the particular situation of women in specific country and policies related to its improvement will be elaborated.⁶⁵

This Fourth world Conference on Women was another milestone on the path of this struggle. Few sections of the report of this conference are specifically related to economic rights of women. For example:-

Paragraph 61: Section B states that in order to attain complete equality between men and women on rights of inheritance, ownership of land and possessions, transactions on credit and access to natural resources etc. the governments made the commitment to make all necessary administrative and legal revisions.

⁶⁴ United Nations Entity for Gender Equality and the Empowerment of Women, *Economic Empowerment*, http://www.unwomen.org/focus-areas/?show=Economic_Empowerment (Oct. 4, 2011).

⁶⁵ Fourth World Conference on Women, Platform For Action, *Human Rights of Women*, <http://www.un.org/womenwatch/daw/beijing/platform/human.htm> (Oct. 4, 2011).

Paragraph 165 of this document indicates the commitment of government to legislate those laws, which ensure the equality of rights between men and women in wages and compensations for similar work.

Moreover, **Paragraph 274: Section D** of this document projects the elimination of injustice in distribution of inheritance between female and male heir. The conference proceeded by an agreement, called Beijing Platform for Action (BPFA). It is considered step farther than the third conference as the Platform For Action proceeded by this Conference, asserted 'Women's Rights as Human Rights'. It was evaluated that gender-equality is the issue of universal importance and a complete fundamental re-structuring of social institutions is needed to empower women effectively.⁶⁶

In 2000, the Twenty-third special session of General assembly of UNO took place in New York. It was called **Beijing +5 Conference** because the main purpose of this was to review progress in the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and the Beijing Declaration and Platform for Action. The agenda was gender-equality, development and peace. A Political Declaration was adopted and a document was issued at the end of this conference called "Further actions and initiatives to implement the Beijing Declaration and Platform for Action".⁶⁷

In 2005, a ten-year review and appraisal of the Beijing Platform was organized in the framework of the 49th session of the Commission on the Status of women. The

⁶⁶ *United Nations Fourth World Conference on Women: hearings before the Subcommittee on International Operations and Human Rights of the Committee on International Relations, House of Representatives, One Hundred Fourth Congress, first session, July 18, 1995 and August 2, 1995, Vol.4, (U.S.G.P.O., 1996), 28.*

⁶⁷ UN WOMEN, *Five-year Review of the implementation of the Beijing Declaration and Platform for Action (Beijing + 5)*, <http://www.un.org/womenwatch/daw/followup/beijing+5.htm> (Oct. 4, 2011).

Declaration adopted by the Commission at its 49th session recognized that the Beijing Declaration and the Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are mutually reinforcing in achieving gender equality and empowerment of women.⁶⁸

Recently, **CIDA-UN Women Conference on Women's Economic Empowerment** was held on Tuesday 4 October 2011. The UN Women Executive Director, Michelle Bachelet delivered the opening speech at that Conference. She said. "Empowering women economically is an essential part of realizing rights. The Beijing Platform for Action commits governments to "pursue and implement sound and stable macroeconomic and sectoral policies that are designed and monitored with the full and equal participation of women, encourage broad-based sustained economic growth, address the structural causes of poverty and are geared towards eradicating poverty and reducing gender-based inequality." Empowering women economically also makes good economic sense. The World Bank and others have shown that increasing women's access to quality education, good jobs, land and other resources contributes to inclusive growth, sustainable development, and long-term prosperity."⁶⁹

Concluding remarks are that on this path the women right-fighters travelled a long way. Their struggle started at national and regional level, reached international stage, and got recognition on global agenda. They have fought for each aspect of their rights including social, political, legal and economic rights. They put all their efforts in expanding the recognition of women's rights, documenting the reality of women's lives throughout the

⁶⁸ *Short History of the Commission on the Status of Women*, CSW Decision 48/101, 18.

⁶⁹ Michelle Bachelet, *Remarks on Women's Economic Empowerment*,

<http://www.unwomen.org/2011/10/executive-director-michelle-bachelet-remarks-on-womens-economic-empowerment> (Oct. 5, 2011).

world, shaping global policies on gender equality and empowerment of women and ensuring that the work of the UNO in all areas incorporates a gender perspective. Yet in spite of all these painful struggles and legal assurances, women have not yet fully acquired what Islam has established by a divine decree for the Muslim women many centuries ago.

CHAPTER NO 2:

NATURE AND SCOPE OF FINANCIAL EMPOWERMENT OF WOMEN IN ISLAMIC LAW

1. Women's Rights And Status In Civilizations Preceded Islam: A Detailed Description

It is a well-known fact that Islam gave women their due rights almost 1,500 years ago. However, historically speaking, the civilizations preceded Islam were not so polite towards women as such. Even today, the Western talk of women's liberalization is nothing but a disguised form of exploitation of body, deprivation of honour and degradation of soul of women.⁷⁰

1.1 Women's Rights in Ancient Greece

In the Greek history, a religious myth prevailed that a women *Pandora* was the cause of all evils and misfortunes in the society as she was the one who happened to open the box in which the god had closed all ills and evils. When she opened that box, all misfortunes spread in the world. So according to the Greek myth, right from the creation of the world until date, women are the sole cause of all bad happenings and catastrophes. *Pandora* was undoubtedly a representation for all women in that myth which affected the overall

⁷⁰Dr. Zakir Naik, *Women's rights in Islam, Protected or Subjugated*. International Islamic Conference 2009, http://www.youtube.com/watch?v=l_VPwY-nlk (June 23, 2011)

behavior of Greek men towards women. This stereotype has prevailed through the ages until date.⁷¹

However, practically, women were treated differently in different parts of ancient Greece. For example, Athens and Sparta were two larger and important cities of ancient Greece and the practice regarding the rights of women was different in both these cities. To begin with, in Athens women had inferior social position. In fact, they were considered as "inferior and vulnerable", supposed to be protected by man i.e. *kyrios* means 'male guardian'. After birth, father was the instant guardian. If father died, then a male relative would step in his shoe. After marriage, husband became *Kyrios*. The property inherited by women automatically went under control of their *Kyrios* as part of the household. Eventually, Athenian women enjoyed no financial rights. If a father had a daughter, either he had to adopt a man as his son-in-law or the property passed down to his daughter who would become an '*epikleros*', which means that she was joined with the property. In such case, she had to marry the nearest relative who possessed her along with her property. In case of divorce, the dowry-property would be returned to her *Kyrios*.⁷²

The democratic reforms of the sixth century BC made it very important to be the citizen of Athens. Because only a citizen could own land, property etc. All men were made citizen of democratic Athens while all women were excluded. In the result of that exclusion, women had no right to own land: which was axis of power in the ancient Greece. In this way, the life of women became worse than before.⁷³

⁷¹ Eva Cantarella, *Pandora's Daughters* (Baltimore: John Hopkins University Press, 1987), 115.

⁷² David M. Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh: Edinburgh University Press, 1979), 48-88.

⁷³ Roger Just, *Women in Athenian Law and Life* (London: Rutledge, 1989), 13.

In lower classes, free women used to work outside the home like at marketplaces, to provide financial help in their household. They usually worked in production of wool and clothing. However, women could not hold professional jobs, not only because of social taboos and restrictions but also for the lack of required educational qualification, as they never got any chance to get education.⁷⁴

On the other hand, in society of Sparta, women were leading a life of influence and respect. They were enjoying few rights and had a dominant place in the household as most often, the men were away at war. Although they were not allowed to vote or hold any office but they could own property and business as well as inherit land and wealth. Apparently, such difference in status of women of both cities was based on their distinct cultures. Greeks were developing many important social aspects like art, philosophy, science, history, literature, architecture, sports etc, along with the building blocks of democracy. However, the social equality was extinct which influenced many subsequent generations.⁷⁵

1.2 Women's Rights in Ancient Roman Society

Roman society was divided into different social classes based on their economic position. The upper class was called 'aristocracy'. The historical evidences about the status of women were written and produced by men of aristocracy who usually wrote about the women of upper classes who did not comprise majority of women in Roman society. Although women of aristocratic class usually got chance to get education however,

⁷⁴ Verena Zinserling, *Women in Greece and Rome* (New York: Abner Schram, 1972), 24.

⁷⁵ Carter Molly, *The Life of Women In Ancient Greece*, <http://www.helium.com/items/486457-the-life-of-women-in-ancient-greece> (October 13, 2011)

Roman women, whether belonged to upper or lower class, had one and same primary role i.e. child bearer. Ultimately, women were instruments of pleasure and reproduction. That was the reason the men of upper class usually wanted their wives to be perpetually pregnant.⁷⁶

Legally speaking, women had very little financial rights. Marriages were often without *manus* (dower), meaning that the father kept hold of the property and wealth of her daughter. She did not get any of the possessions from her father. In case of marriage with *manus*, the husband got hold of the property of his wife. In any case, Roman women did not have any power to do anything with their personal possession, property, money etc. without permission of their father, husband or guardian. If they want to spend any money of their own, the only permitted way was to spend on their son's education and political career. Women had to be obedient and loyal to their families physically, emotionally and financially. Roman women of lower classes could work to earn for their families but not the women of upper classes. Women in Roman Republic were citizen but did not have a separate identity. They carried the middle name of their father after feminizing it. In this way, they were restricted to make any contract, in their personal capacity, regarding their property or inheritance.⁷⁷

⁷⁶ Jo-Ann Shelton, *As the Romans Did* (New York: Oxford University Press, 1988), 37.

⁷⁷ Mary R. Lefkowitz and Maureen B. Fant, *Women's Life in Greece and Rome* (Baltimore: John Hopkins University Press, 1992), 23.

1.3 Women's Rights in Egyptian Civilization

The Egyptians had relatively enlightened attitudes towards women. Such attitude was based on their belief that their universe is a complete duality of male and female. They worshiped a female-deity named 'Maat' who was symbol of cosmic harmony and balance as well as order to all things in the universe. Even the pharaoh must govern in accordance with the rules made by that deity.⁷⁸

Although, there were certain differences between social and public status of men and women based on social traditions and culture but legally speaking the status of women was almost identical to men. In contrast to the other ancient societies and cultures, the Egyptian women were entitled to legal rights equal to men. They were enjoying their personal identity and had the legal capacity to acquire, own and dispose of their personal property and possessions. For example, Egyptians were well aware of the concept of 'private property' and 'joint property acquired by married couple during their marriage'. According to the social tradition, husband could dispose of the joint property without wife's permission but law required that if he did so, he should compensate the wife with something equally valuable. Women could enter into contract in their own names, on same terms as men could 'and they themselves were held accountable for economic transactions they made. Women were working usually at home or helping their husbands in their work outside home. Although they had full right to acquire their personal wealth through personal means but still they needed assurance from their husbands to support them and their children. That was the reason, the 'marriage contracts' were designed to

⁷⁸ Dr. Joann Fletcher, *From Warrior Women to Female Pharaohs: Careers for Women in Ancient Egypt* (New York: Hodder & Stoughton Press, 1996), 33.

legally bind the men to provide for their wife's material future. Those contracts were meant for economic purposes only, which included the annual responsibility of the husband to feed and clothe the wife and their children and the right of their children to inherit his wealth. The husband directly with the wife made such contract. It also included the details of wealth she brought with her in dowry and the bridal gift that he would give her. He also had to declare, in case of divorce, that he would pay amount equivalent to valuables mentioned in the contract. If he failed to pay her, she was entitled to all the arrears. On completion of the payment, all obligations were considered fulfilled and she would return the contract to him.⁷⁹

Contrary to the practice prevalent in those times, the Egyptian women enjoyed a great deal of financial independence. It is proved by ancient surviving accounts and contract-documents that women workers were getting the same amount as pay for undertaking the same job as men did. They were also attending markets to take part in trade while their men busy in weaving at home. Moreover, the state-treasury was owned and controlled by royal women. Women from masses were also enjoying the right to own, sell and buy property as well as to make wills about their inheritance. The relative freedom and legal financial equality with men that Egyptian women enjoyed in ancient Egypt may have yet to achieve by their sisters in the modern world.⁸⁰

⁷⁹ Janet H. Johnson, *Women's Legal Rights in Ancient Egypt* (Chicago: University of Chicago Press, 2000), 231.

⁸⁰ Fletcher, 34.

1.4 Women's Rights in Pre- Islamic Arabia

The social structure of Arabia was tribal in nature. The Arab tribes were having diverse customs, norms, values and lifestyles so the status of women also varied accordingly. Such tribal structure had great impact on women's rights. In some tribes, women were equal to men having right to choose husband, give proposal for marriage, pronounce divorce etc. They hold high influential positions and had inspirations for poets and warriors. Besides this, in other Arab tribes, women were suppressed as it was the generally accepted rule of Arab tribal society that 'strong dominates the weak'. Therefore, women of those tribes had inferior status and were deprived of their basic human rights.⁸¹

In Arab civilization, before the Holy *Quran* was revealed, female infanticide was very common practice. The Holy *Quran* described that situation in the following words:

وَإِذَا بُشِّرَ أَحَدُهُمْ بِالْأُنْثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًا وَهُوَ كَظِيمٌ
يَتَوَارَىٰ مِنَ الْقَوْمَ مِنْ سُوءِ مَا بُشِّرَ بِهِ أَيْمَنِكُهُ عَلَىٰ هُونٍ أَمْ يَدْسُسُ فِي التُّرَابِ
أَلَا سَاءَ مَا يَحْكُمُونَ⁸²

Allah (سبحانه و تعالى) says (interpretation of the meaning): "When news is brought to one of them, of (the birth of a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has

⁸¹ R.A. Nicholson, *A Literary History of The Arabs*, (Cambridge: Cambridge University Press, reprinted 1966), 88.

⁸² Surah An- Nahl: 58-59

received! Shall he keep this (child) despite the contempt (which he feels for it) or shall he bury it in the dust? Oh, evil is indeed whatever they decide." (*Al-QURAN* 16:58-59) ⁸³

So the female infants were often deprived of 'right to live'. It was said proverbially, "The dispatch of daughters is a kindness" and "The burial of daughters is a noble deed." In such barbaric conditions, no one could imagine the hardships faced by a girl throughout her life.⁸⁴

Although the cruel practice of female-infanticide was also prevalent in different ancient cultures other than Arabs for example Greek, Chinese, Japanese, Brazilian, French, African and even English culture.⁸⁵ However, particularly in Arabia, there was also economic reason behind that besides matter of prestige and grace. They practice female infanticide out of fear of poverty. As the Arabs had to face frequent famines caused by lack of rain and girls were thought to be less productive economically than men so they considered daughters as useless mouths to feed. The Holy *Quran* condemned Arabs for killing their female children out of fear of poverty in the following words:

وَلَا تَقْتُلُوْا اُولَادَكُمْ خَشْيَةً إِمْلَاقٍ تَخْرُجُ فَتَرْزُقُهُمْ وَإِيَّاكُمْ إِنْ قَاتَلُهُمْ كَانَ خَطْبًا كَبِيرًا⁸⁶

Allah (سبحانه و تعالى) says (interpretation of the meaning): " Hence, do not kill your children for fear of poverty: it is we who shall provide sustenance for them as well as for you. Verily, killing them is a great sin." (*AL-QURAN* 17:31) ⁸⁷

⁸³ Muslim Women's League. *Women in Pre-Islamic Arabia*. <http://www.mwlusa.org/topics/history/herstory.html> (October 16, 2011)

⁸⁴ Nicholson, 90.

⁸⁵ Glen Hausfater, et al. ed. *Infanticide* (New York: Aldine Publishing Company, 1984), 439.

⁸⁶ Surah Al-Asra: 31

⁸⁷ Muslim Women's League. *Women in Pre-Islamic Arabia*. <http://www.mwlusa.org/topics/history/herstory.html> (October 17, 2011)

2. Women's Rights In Islam, Protected Or Subjugated

According to Islamic theology, *Allah* (سبحانه و تعالى) created human as a unit, axis of this universe. As the exclusive unity belongs to *Allah* (سبحانه و تعالى) and no one else except He can bear the extreme loneliness attached with it so the unit of human was splitted into man (*Adam*) and woman (*Eve*). Man and woman both are complementary to one another in the sense that they stemmed from one unit and are made for each other to exercise their strength in mitigating the other's weaknesses. Certainly, there are differences in their rights and roles depending upon their distinct physical and psychological makeup but originally they are equal. That is why the majority of injunctions in the Holy *Quran* generally address humans without referring to their gender. Only few verses are addressing humans with a particular gender perspective and those are the ones that are related to their right and duties with respect to their particular social status like husband, wife, parents, children etc. In this way, Islam gives a wider look of humanity where gender becomes a secondary issue.⁸⁸

The verses of Holy *Qur'an* and the *Hadith* of the Holy Last Prophet *Muhammad* (صلی اللہ علیہ وآلہ وسلم) mentioned women in a respectful manner and indicated their graceful status in the following words:- “The World and all things in it are precious, and the most precious thing in the world is a virtuous woman”. Islam uplifted the legal and social status of women by giving their due rights. In the Days of *Jahiliyah* (ignorance) when Arabs used to practice female-infanticide due to fear of poverty and disgrace, the Holy Last Prophet *Muhammad* (صلی اللہ علیہ وآلہ وسلم) declared:- “Whoever looks after two

⁸⁸ Mujtaba Haider Shirazi. “The Empowerment of Humanity Instead of Gender Empowerment”, Shirazi & Associates Casual Meeting (Islamabad. F-8 Markaz) April 13, 2012.

girls till they reach maturity, he and I will enter Paradise together like these two (fingers).⁸⁹

So it is proved that the women were upgraded and respected under Islam and given such high status which was never even imagined by them in civilizations preceded Islam. The rights given to women in Islam can be divided into six general categories as follows:-
(1)The Spiritual Rights (2)The Social Rights (3) The Educational Rights (4) The Legal Rights (5) The Political Rights (6) The Financial Rights⁹⁰

All the above rights given to women by Islam are very important but our utmost concern is the financial rights of women. The financial rights of Muslim women come under different branches of Islamic law. For example, right to dower (marital gift), maintenance and inheritance are under Muslim family laws, right to property, gifts, trusts, sale and hire are under property law, while right to work and earn income are under economic law as well as public law.⁹¹

3. Financial Status of Women In Islamic Law: A Detailed Description

The general assumptions regarding Muslim women are that they lack financial rights, which are limited under the Islamic legal system. Moreover, they are frustrated in the pursuit of their financial rights through agency due to the oppressive family and social structures. However, after the analysis of the status of women with regard to financial

⁸⁹ Abdul Ghaffar Hasan, *The Rights and Duties of Women in Islam*, ed. 3rd (Darussalam, March 2006), 8-9.

⁹⁰ Dr. Zakir Naik. *Women's rights in Islam. Protected or Subjugated*. International Islamic Conference 2009 <http://www.youtube.com/watch?v=pvi-g88d5XI> (June 23, 2011)

⁹¹ Siraj Sait, Hilary Lim, *Human Rights in Islam: Law, Property and Access to Land* (London: Zed, 2006), 11.

rights under Islamic law and the pre- Islamic historical background to women's economic and financial rights, a very different picture emerges. Even at early stages of development of Islamic society, Muslim women not only held their personal property and exercised full financial rights over that but also contributed a lot in building the Islamic social, economic and legal infrastructure. For example, *Hazrat Khadija* (the first convert to Islam), *Hazrat Sumayya* (the first Muslim martyr), *Hazrat Umm Sa'id* (the first to grant refuge to the holy Prophet *Muhammad* (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) at *Madinah* when he fled from persecution at *Makkah*), *Hazrat Hafsa* (the custodian of the first copy of the *Qur'an*), *Hazrat Rafidah Aslamiyya* (the manager of the first hospital), *Hazrat Umm Waraqa* (one of the *Imams* appointed to lead the prayers of both men and women) and *Hazrat Samra' bint Nuhayak al-Asadiya* (a superintendent at the market at *Madinah*, were all those women who enjoyed full liberty to perform their duties and became role-models for the next generations. (Allah bless them with His forgiveness (رضي الله تعالى عنهم)).⁹²

The lives of the Holy Prophet *Muhammad* (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ)'s wives are a vital example in this regard who continued their economic activities independently after marriage. For example, the prophet's first wife *Hazrat Khadija* was one of the most important merchants of the time. The Prophet's other wife *Hazrat Ayisha* was one of his most important advisors. All the key legal authorities on Islamic law support women's right to own and possess personal property, right to work, inherit, get marital gift/Dower,

⁹² Sait, Lim . 12.

get maintenance during marriage and after divorce. Moreover, there is not at all any financial obligation of Muslim women.⁹³

3.1 Women's Right to Own/Possess Personal Property

Although, the concept of 'personal property' was prevalent in almost all the ancient civilizations preceded Islam, but it was enforced only in favour of men. As the women were not considered as legally capacitated, so they were deprived of many rights including right to personal property. On the other hand, Islamic law recognized women as fully capacitated citizens of Islamic society having all legal rights equal to men. Under Islamic law, men as well as women enjoy the right to have personal property. Islamic law is a code of life comprised of basic rules and principles related to all spheres of life. The bottom-line of the concept of 'ownership and possession' in Islamic law is that everything in this universe and in the Heavens belongs to *Allah* (سبحانه و تعالى) as He is the Creator of all. He created mankind and made them His trustees on the Earth. Out of His mercy, He entrusted all wealth and valuables on this Earth to humankind and made these serviceable for them to make their lives easy and comfortable. However, they are not left without any restriction. Rather humans are made accountable for the willful misuse of these earthly resources. This is well explained in the Holy *Quran* in the following verses:-

اللَّهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ ۖ وَإِنْ تُبْدُوا مَا فِي أَنفُسِكُمْ أَوْ تُخْفُوهُ يُحَاسِّبُكُمْ بِهِ اللَّهُ أَعْلَمُ ۖ فَلَا يَعْلَمُونَ
يَشَاءُ وَيَعْدِبُ مَنْ يَشَاءُ ۖ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ⁹⁴

⁹³ Zieba Shorish-Shamley. *Women's Position, Role, and Rights In Islam* , (Alyamoni unpublished Dissertation, University of Illinois at Urbana-Champaign, 1985), 48-50

Allah (سبحانه و تعالى) says (interpretation of the meaning): “To Allah belong all that is in the Heavens and on Earth. Whether you show what is in your minds or conceal it. Allah calls you to account for it. He forgives whom He pleased, and punishes whom He pleased, for *Allah* has power over all things”. (*AL-QURAN* 2:284)

وَسَخَّرَ لَكُمْ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا مَئِنْهُ إِنْ فِي ذَلِكَ لَذِكْرٌ لِّلْيَاتِ لِقَوْمٍ يَتَفَكَّرُونَ⁹⁵

Allah (سبحانه و تعالى) says (interpretation of the meaning): “And He has subjected to you, as from Him, all that is in the Heavens and on Earth: Behold, in that are signs indeed for those who reflect”. (*AL-QURAN* 45:13)

In the above-mentioned verses of the Holy Quran, *Allah* (سبحانه و تعالى) addressed both genders i.e. male and female as His trustees being equally entitled to utilize the wealth of the Earth. Therefore, the right to own /possess property and use it as trustee belongs to both men and women on equal basis without any discrimination. Moreover, Islamic law recognizes the independent legal personality of woman and gives her the right to acquire, hold, use, gift, mortgage and dispose of her property in her personal capacity. She enjoys this right before and after her marriage with no change in her independent, legal, economic identity. The following verses are clear indication of it:-

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الوَالِدَانِ وَالْأَقْرَبُونَ

مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا⁹⁶

⁹⁴ Surah Al-Baqarah: 284

⁹⁵ Surah Al-Jathiya: 13

⁹⁶ Surah An-Nisa: 7

Allah (سبحانه و تعالى) says (interpretation of the meaning): "From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, a determinate share". (*AL-QURAN* 4:7)

لِلرِّجَالِ نَصِيبٌ مِّمَّا اكْتَسَبُوا وَلِلْأَنْسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ⁹⁷

Allah (سبحانه و تعالى) says (interpretation of the meaning): "To men is allotted what they earn, and to women what they earn". (*AL-QURAN* 4:32)

Even a husband cannot regard the personal property of his wife as his own unless she transfers that lawfully to him. In this regard, the guidance of the Holy *Quran* is as follows:-

وَأَنْوَاعُ الْأَنْسَاءِ صَدَقَاتُهُنَّ بِحَلَةٍ فَإِنْ طِينَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هُنَيْنًا مَّرِينًا⁹⁸

Allah (سبحانه و تعالى) says (interpretation of the meaning): "And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer". (*AL-QURAN* 4:4)⁹⁹

3.2 Right of Muslim Women To Work

In an Islamic society, the essential role of a woman is of 'homemaker' i.e. a mother and wife. It is a great deal of responsibility to bring-up an upright, complex-free and carefully reared generation to be the stakeholders of the future of a nation. No one other than a mother can perform this noble and vital role. That is why, although, Islamic law

⁹⁷ Surah An-Nisa: 32

⁹⁸ Surah An-Nisa: 4

⁹⁹ Siraj Sait, Hilary Lim, *Islam, Land and Property Research Series*, 'Paper 5: Muslim Women and Property', (New York: UN-HABITAT, 2005), 10.

recognizes the right of Muslim women to work and get employment but married women must first seek the consent of husband in this regard. Islamic law realizes fully the needs of time so it permits to introduce a special clause in the marriage contract indicating the mutual agreement of both parties on wife's right to work after marriage. In such case, she does not need any further permission from her husband. Muslim women are not only allowed to work but it is also recommended for them in time of financial need. For example, the Holy *Quran* narrated about two shepherd girls in the following way:-

وَلَمَّا وَرَدَ مَاءَ مَدْيَنَ وَجَدَ عَلَيْهِ أُمَّةً مِّنَ النَّاسِ يَسْقُونَ وَوَجَدَ مِنْ ذُو نِعْمَةٍ امْرَأَيْنِ شَدُودَانَ قَالَ مَا خَطْبُكُمَا

قالَتَا لَا نَسْقِي حَتَّىٰ يُصْنِدَرَ اثْرَاعَهُ وَأَبُونَا شِيخٌ كَبِيرٌ¹⁰⁰

Allah (سبحانه و تعالى) says (interpretation of the meaning): "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." (*AL-QURAN* 28:23)

The scholars of Islamic law have discussed different details of this right of women in depth. They suggested certain conditions that should be followed by Muslim women while practicing their right to work. Otherwise, they can be restrained from work. For example, Muslim woman should acquire the type of employment that suits her physical and psychological makeup. Moreover, she should adopt that profession in which she can serve the needs of society at her best as well as where her honor and dignity is secure. Her professional duties must not conflict with her duties towards her family. The

¹⁰⁰ *Al-Qasas*: 32

environment on work place should be the one where she does not have to come into physical contact with male workers. In addition, she should maintain her modesty and Islamic dress code etc.¹⁰¹

The recommended professions are nursing, teaching, medicine (especially Gynecology), social and charitable work etc. however, and the Muslim jurists have disagreed on the point that whether a Muslim women should hold the position of a judge in a court. *Shafai*'s are of the opinion that woman should not hold judicial position. *Hanafi*'s allow muslim women to be a judge in civil cases only but she is prohibited to judge the criminal cases. All this is to prevent her from indulging in law & order complexities from criminal perspective. All these scholarly opinions are based on the interpretations of the following *Hadith* of the Holy Prophet *Muhammad* (صلی اللہ علیہ وآلہ وسلم): "Never will succeed such a nation as makes a woman their Ruler/King" (Sahih Bukhari 88:219). Nevertheless, the contemporary Muslim scholars do interpret it differently according to its historical context. This *Hadith* has 22 *Sahih* (authentic) narrations that should be analyzed collectively. First of all the *Hadith* talks about kingship not judiciary as the translation of the word used is 'ruler or king'. Secondly, it is in the context of a special situation that should not be generalized. The situation was that when the Persian Empire expanded and became a combination of several state-governments, the state governors had severe disputes among themselves. So *Anushiravan (Khosrau I)*, the king of Persian Empire, issued a ruling to kill all the male children of Sasan. So they killed all males and no male left except the king and his crown prince. Later on, his son died and he was left with no

¹⁰¹ Zieba Shorish-Shamley, *Women's Position, Role, and Rights In Islam*, (Alyamoni unpublished Dissertation, University of Illinois at Urbana-Champaign, 1985), 48-50

crown prince. After some time, the King also died. They could not find any male in the Kingdom of Persia to rule them. Therefore, they made the daughter of the dead king their ruler. When the Holy Prophet *Muhammad* (صلی اللہ علیہ وآلہ وسلم) heard this news, he commented on that in these words:- “Never will succeed such a nation as makes a woman their ruler” (because they were left with no men-power or army). Therefore, it has proved that the judiciary is as much open to Muslim women as any other lawful profession.¹⁰²

The logic behind not insisting so much on the working of women outside home is that the Muslim women are not obliged with any financial responsibility. This is the obligation of men under Islamic law to support financially their children as well as wife. However, in case of financial crisis, she can work out of her choice but even then; no one can compel her to do so. It should be out of her absolute free will.¹⁰³

3.3 Women's Right To Inherit

One of the most important differences between Islam and other faiths is the attitude towards granting female heirs a share in the property of a deceased relative. Islam abolished all unjust pre-Islamic customs and gave all the female relatives their shares in inheritance. *Allah* (سبحانه و تَعَالَى) has determined the shares for all relatives in the wealth and estate of the deceased in respect of their relation with the deceased. The Holy Quran clearly states-

¹⁰² Dr. Tareq Al-Swaidan. *Can the Muslim women be a judge or President under Islamic Law.* <http://www.youtube.com/watch?v=erHjabL960E> (October 23, 2011)

¹⁰³ Dr. Zakir Naik. *Women's rights In Islam. Modernizing or outdated?* <http://www.ilovezakirnaik.com/womenrights/index.htm> (October 23, 2011)

لرجال نصيبٌ ممّا ترثَكَ الوالدان والأقربون وللنساء نصيبٌ ممّا ترثَكَ الوالدان والأقربون ممّا قُلَّ منه
أو كثُرَ نصيبياً مفروضاً¹⁰⁴

Allah (سبحانه و تعالى) says (interpretation of the meaning): "From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large, a determinate share". (*AL-QURAN* 4:7)

Unlike to the pre-Islamic Arab customs, Islam gave women their due share in the inheritance of their families. The context of the revelation of the above mentioned *Qur'anic* verse was that the brother of *Hassan Bin Thabit*, the famous poet, died leaving behind a wife and several daughters. As he had no son, so his paternal cousins divided all his property among them and gave nothing to his widow and daughters. The widow complained to the Holy Prophet *Muhammad* (صلی الله علیہ و آله و سلم) about this and he (صلی الله علیہ و آله و سلم) asked the paternal cousins of her husband. They accepted that they did not give anything to the widow and daughters because women were considered incapable of carrying arms or taking care of themselves and the property in pre-Islamic Arabia. They were thought to be weak and needed men to protect them. Therefore, men were considered most deserving to inherit the property as they provided protection to women and their property. However, the Holy Prophet *Muhammad* (صلی الله علیہ و آله و سلم) disapproved this practice and conveyed the command of *Allah* (سبحانه و تعالى) about the due share of inheritance for women, as revealed in the above-mentioned verse. Thus, a woman, who was considered as part of property to be inherited by men in pre-Islamic Arab civilization, Islam upgraded her and made her a legal heir who enjoys full right to

¹⁰⁴ Surah An-Nisaa: 7

inherit. The *Qur'anic* injunctions not only declared the command of *Allah* (سبحانه و تعالى) to give the female heirs their due share in inheritance but also guided about the distribution of wealth and estate of the dead relative. For example:-

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدُكُمُ الْمَوْتَ إِنْ تَرَكَ خَيْرًا وَوَصِيَّةً لِلَّوَالِدَيْنَ وَالْأَقْرَبَيْنَ بِالْمَعْرُوفِ حَقًّا عَلَى

الْمُتَقِّنِ¹⁰⁵

Allah says (interpretation of the meaning):- "It is prescribed, when death approaches any of you, if he leave any goods that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the Allah-fearing". (*AL-QURAN* 2:180)

وَالَّذِينَ يَتَوَفَّونَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا إِلَى الْحَوْلِ غَيْرَ إِخْرَاجٍ فَإِنْ خَرَجْنَ فَلَا

جُنَاحٌ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي أَنفُسِهِنَّ مِنْ مَعْرُوفٍ وَاللَّهُ عَزِيزٌ حَكِيمٌ¹⁰⁶

Allah says (interpretation of the meaning): "Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence; but if they leave (The residence), there is no blame on you for what they do with themselves, provided it is reasonable. And *Allah* is exalted in Power, Wise". (*AL-QURAN* 2:240)

لِلرِّجَالِ تَصِيبُ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلْأَنْسَاءِ تَصِيبُ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قُلَّ مِنْهُ
أَوْ كَثُرَ تَصِيبُ مَقْرُوضًا إِذَا حَضَرَ الْقِسْمَةَ أُولُو الْفُرْقَانِ وَالْبَيْتَمَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مَنْهُ وَقُولُوا لَهُمْ

¹⁰⁵ Surah Al-Baqarah: 180

¹⁰⁶ Surah Al-Baqarah: 240

قُولَا مَعْرُوفاً وَلِيَخْشَى الَّذِينَ لَوْ تَرَكُوا مِنْ خَلْفِهِمْ دُرْرِيَّةً ضِيَاعًا حَافُوا عَلَيْهِمْ فَلَيَنْقُوا اللَّهُ وَلَيَقُولُوا فَوْلَا

سَدِيرًا¹⁰⁷

Allah (سبحانه و تعالى) says (interpretation of the meaning): "From what is left by parents and those nearest related there is a share for men and a share for women, whether the property, be small or large, a determinate share. However, if at the time of division other relatives, or orphans or poor, are present, feed them out of the (property), and speak to them words of kindness and justice. Let those (disposing of an estate) have the same fear in their minds as they would have for their own if they had left a helpless family behind: Let them fear *Allah*, and speak words of appropriate (comfort)". (*AL-QURAN* 4:7-9)

يُوصِيكُمُ اللَّهُ فِي أُولَادِكُمْ بِالذِّكْرِ مِثْلُ حَظِّ النِّسَاءِ إِنْ كُنَّ نِسَاءً فَوْقَ اثْتَنَيْنِ فَلَهُنَّ ثُلَاثًا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النَّصْفُ وَلِلْأُبُوَيْنِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ إِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرَثَهُ أَبُوَاهُ فَلِأَمْمَةِ الْأَلْثَلَثِ إِنْ كَانَ لَهُ إِخْرَوْهُ فَلِأَمْمَةِ السُّدُسِ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أُوْذِنٌ بِأَبْوَكُمْ وَأَبْنَاؤُكُمْ لَا تَنْدِرُونَ إِلَيْهِمْ أَقْرَبُ الْكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلَيْمًا حَكِيمًا¹⁰⁸

Allah (سبحانه و تعالى) says (interpretation of the meaning): "Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases 's) after the payment of legacies and debts. You know not whether your parents or your

¹⁰⁷ Surah An-Nisaa: 7-9

¹⁰⁸ Surah An-Nisaa: 11

children are nearest to you in benefit. These are settled portions ordained by *Allah*; and *Allah* is all-knowing, the wise". (*AL-QURAN* 4:11)

وَلَكُمْ نِصْفٌ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدًا فَإِنْ كَانَ لَبْنًا وَلَدًا فَلَكُمُ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصَيَنَّ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدًا فَإِنْ كَانَ لَكُمْ وَلَدًا فَلَهُنَّ الثُّلُثُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ تُوصَنَّ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كُلَّ الْأَرْضِ أَوْ امْرَأَةٌ أَوْ أخْرَى أَوْ أُخْرَى فَلِكُلِّ أَحَدٍ مِنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرًا مِنْ ذَلِكَ فَهُمْ شُرَكَاءٌ فِي الْثُلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَيَنَّ بِهَا أَوْ دَيْنٍ

غَيْرَ مُضَارٌ وَصِيَّةٌ مِنَ اللَّهِ وَاللَّهُ عَلَيْمٌ حَلِيمٌ¹⁰⁹

Allah says (interpretation of the meaning): "In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by *Allah*; and *Allah* is All-knowing, Most Forbearing". (*AL-QURAN* 4:12)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرُثُوا النِّسَاءَ كُرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذَهَّبُوا بِيَعْصِيَ مَا أَنْتُمُ هُنَّ إِلَّا أَنْ يَأْتُنَّ بِفَاحِشَةٍ مُبِينَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوْهُ شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا¹¹⁰

¹⁰⁹ Surah An-Nisaa: 12

¹¹⁰ Surah An-Nisaa: 19

Allah says (interpretation of the meaning): "O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness. that ye may Take away part of the dower ye have given them,-except where they have been guilty of open lewdness: on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good". (*AL-QURAN* 4:19)

وَلِكُلٍّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدَانَ وَالْأَقْرَبُونَ وَالَّذِينَ عَدَدْتَ أَيْمَانَكُمْ فَإِنَّهُمْ نَصِيبُهُمْ إِنَّ اللَّهَ كَانَ

عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا¹¹¹

Allah says (interpretation of the meaning): "To (benefit) every one. We have appointed shares and heirs to property left by parents and relatives. To those, also, to whom your right hand was pledged, give their due portion. For truly Allah is witness to all things". (*AL-QURAN* 4:33)

يَسْتَفْتُونَكُمْ قُلِ اللَّهُ يُقْرِئُكُمْ فِي الْكَلَالَةِ إِنَّ امْرُؤًا هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَمْ أَخْتُنْ فَلَهَا نِصْفٌ مَا تَرَكَ وَهُوَ يَرْثِي إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَيْنِ فَلَهُمَا النِّصْفُ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنَّ تَضَلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ¹¹²

Allah says (interpretation of the meaning): "They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who left no child, Her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between

¹¹¹ Surah An-Nisaa: 33

¹¹² Surah An-Nisaa: 176

them): if there are brothers and sisters. (they share), the male having twice the share of the female. Thus doth Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things". (*AL-QURAN* 4:176)

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَنِيكُمْ إِذَا حَضَرَ أَحَدُكُمُ الْمَوْتَ حِينَ الْوَصِيَّةِ إِنَّهُنَّ ذُوَّا عَدْلٍ مِّنْكُمْ أَوْ أَخْرَانَ
مِّنْ غَيْرِكُمْ إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الْأَرْضِ فَأَصَابَتُكُمْ مُّصِيبَةُ الْمَوْتِ تَحْبِسُونَهُمَا مِّنْ بَعْدِ الصَّلَاةِ فَيُقْبَلُ مَا
بِاللَّهِ إِنْ أَرْتُبْتُمْ لَا تُشَرِّي بِهِ ثُمَّا وَلَوْ كَانَ ذَا فُرْبَىٰ وَلَا تَكُنُمْ شَهَادَةَ اللَّهِ إِنَّا إِذَا لَمْنَ الظَّمِينَ¹¹³

Allah (سبحانه و تعالى) says (interpretation of the meaning): " O ye who believe! When death approaches any of you, (take) witnesses among yourselves when making bequests,- two just men of your own (brotherhood) or others from outside if ye are journeying through the earth, and the chance of death befalls you (thus). If ye doubt (their truth), detain them both after prayer, and let them both swear by Allah: "We wish not in this for any worldly gain, even though the (beneficiary) be our near relation: we shall hide not the evidence before Allah: if we do, then behold! The sin is upon us!" (*AL-QURAN* 5:106)

According to Islamic law, a male heir receives twice than the share of female heir. The case of father and mother is exceptional where both get equal share i.e. 1/6 in case when the deceased has children. The so-called upholders of equality between men and women find this quite objectionable that the share of male heir is double than female heir of the same status and relation with the deceased. At first glance, it seems very unjust towards women but it is very generous in their favour as it is based on a principle of *Shari'ah* i.e. "Benefits in accordance with the scale of responsibility". In detail, a woman gets half than man but whatever she gets is exclusively for her and she has no obligation to spend

¹¹³ Surah Al-Maaida: 106

it on anyone even her family cannot interfere with her wealth or income. In addition, she will get Dower (marital gift) at her marriage and will get maintenance from her husband throughout her married life. On the contrary, a man gets double than woman but he is obliged to pay Dower (marital gift) to his wife at the time of his marriage, support financially his family including his wife, children, parents and unmarried sisters (if any). Therefore, it is clear that Islam not only treated women fairly but very generously and she gets less because she has less responsibility.¹¹⁴

3.4 Women's Right to get Marital Gift / Dower

Dower or marital gift (*Mahr*) is an old tradition existed in ancient cultures preceded Islam. The concept of dower was developed by mankind after passing through different historical stages. At the first stage, when human civilization was living in tribes, man could not marry with woman of his own tribe. So he used to go into other tribes to search a wife. When he found one and she agreed to marry him, they lived there and the children belonged to the mother exclusively. It was a period of "matriarchy". During this stage, women ruled over men. At the second stage, when warfare was very common among tribes, man of one tribe had to kidnap woman of other tribe to get married. Now the power passed into hands of men. During the third stage, when peace was prevalent among tribes, man of one tribe used to work for the father of woman of other tribe to win her hand. After marriage, he used to bring her to his tribe and the children belong to father. It was the period of "Patriarchy". At the fourth stage, when money became common, a man, instead of doing work, used to pay money to the father of woman with

¹¹⁴ Abdul Ghaffar Hasan, *The rights and Duties of Women in Islam*, (Beirut: Darussalam, 2003), 25.

whom he wanted to marry and wife was considered as purchased-servant of her husband.

The money paid to win the hand of a woman was called 'dower'. ¹¹⁵

When Islam came, it declared another financial right of women i.e. the dower money / marital gift must be paid to the woman not to her father or any other member of her family. It is her right exclusively. Moreover, after receiving marital gift, she did not become slave of her husband, rather retained her economic independence. This can be considered the fifth stage of historical development of the concept of dower. It has become a tool to protect woman's self-respect, which demands that she should not submit herself freely. In addition, it is a reminder for man of the fact that woman is not something that can be purchased. Rather, dower is a sign of good will from man towards woman on accepting his proposal. ¹¹⁶

Allah (سبحانه و تعالى) ordered Muslims to give their wives a marital gift (*Mahr*) at the time of their marriage. This is ordained in the Holy *Qur'an* as follows:-

وَأَنُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طَيِّنَ لَكُمْ عَنْ شَيْءٍ مُّنْهُ نَفْسًا فَكُلُوهُ هُنْيَا مَرْبِيٰ ¹¹⁷

Allah (سبحانه و تعالى) says (interpretation of the meaning): "And give the women (on marriage) their dower as a free gift: but if they, of their own good pleasure, remit any part of it to you, Take it and enjoy it with right good cheer". (*AL-QURAN* 4:4)

¹¹⁵ Hilary Lim, Anne Bottomley, eds., *Feminist Perspectives On Land Law* (USA, New York: Routledge-Cavendish, 2007), 252.

¹¹⁶ Hilary Lim, Anne Bottomley, eds., *Feminist Perspectives On Land Law* (USA, New York: Routledge-Cavendish, 2007), 252.

¹¹⁷ Surah An-Nisaa: 4

The following major points can be derived from the above mentioned *Qur'anic* verse. First dower is a symbol of sincerity of faith. Secondly, it should be paid to the bride. Thirdly, it is nothing but a gift or present from groom to his wife as a sign of good will. It is not a price at all. That is why husband cannot take the marital gift (*Mahr*) back after consummating the marriage.

وَكَيْفَ تَخْدُونَهُ وَقَدْ أَفْضَى بِغَضْنُكُمْ إِلَى بَعْضٍ وَأَخْدَنَ مِنْكُمْ مَيْنَافَا غَلِيلٌ¹¹⁸

Allah (سبحانه و تعالى) says (interpretation of the meaning): "And how could you take it when you have gone in unto each other, and they have taken from you a solemn covenant?" (*AL-QURAN* 4:21)

الطلاقُ مَرَّتَانٌ فِيمَاكُمْ يَمْعَرُوفٌ أَوْ تَسْرِيْحٌ بِإِحْسَانٍ وَلَا يَحْلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئاً¹¹⁹

Allah (سبحانه و تعالى) says (interpretation of the meaning): "Divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives)..." (*AL-QURAN* 2:229)

This marital gift (*Mahr*) is one of the compulsory requirements to solemnize a Muslim marriage. In Islamic law, neither minimum nor maximum value of the marital gift is fixed. It should be of any reasonable value according to the financial position of the groom. It can be in form of money or any other valuable. Under Islamic Law dower is of two types according to its time of payment i.e. prompt dower (معجل) and deferred dower (مُؤجل).

¹¹⁸ Surah An-Nisaa: 21

¹¹⁹ Surah al-Baqarah: 229

(موجل). The prompt dower is paid at the time of marriage, while the deferred dower is paid at any time after marriage either on demand by wife or at the time of divorce. Whether the payment of dower is prompt or deferred, it should be determined at the time of marriage and must be mentioned in the marriage-contract. In this sense, the concept of dower is a detriment for the husband to prevent him from misuse of his right to divorce his wife because if the dower is an arrear, he has to pay that at time of divorce. It is also prevention against the practice of polygamy, as the man has to pay dower to each of his wives. As the dower is the compulsory requirement for a valid marriage in Islam, so a marriage-contract in which dower is not mentioned or where one marriage is considered as dower of the other marriage, is a void contract under Islamic law.¹²⁰

3.5 Women's Right To Get Maintenance During Marriage

The Islamic injunction regarding maintenance for women comes in the following verse:-

الرجال قوامون على النساء بما فضل الله بعضاً لهم على بعضاً و بما أنفقوا من أموالهم¹²¹

Allah says (interpretation of the meaning): "Men are the bread-winner of women (by right of) what Allah has given one over the other and because of what they spend to support them from their wealth". (AL-QURAN 4:34)

Under Islamic law, there are three bases of claim to the right of maintenance. The first one is 'ownership'. For example, when man owns some living creature, he is fully responsible to maintain that. The second base is 'natural rights'. For example,

¹²⁰ Sekh Rahim Mondal, *Rural Muslim Women, Role and Status*, (New Delhi, India: Northern Book Centre, 2005), 27-28.

¹²¹ Surah an-Nisaa: 34

economically independent son or father is under obligation to maintain financially his dependant parents and minor children respectively, due to their natural relation with him. Such kind of obligation is conditional on need. The third base to claim the right of maintenance is 'contract'. For example, a husband is obliged to maintain his wife under their marriage-contract. Such kind of obligation is not conditional on need. Whether a wife is rich or poor or has her personal property etc., she has to be maintained by her husband in any case. In addition, the right of wife to get maintenance is judicially enforceable. Maintenance includes food, shelter (accommodation), clothing, personal needs etc.¹²²

The torchbearers of financial independence of women consider the 'maintenance' as a hurdle on the way of financial empowerment of women. They say that if women remain financially dependent on men then they cannot be empowered nor men will let them. They consider only one situation when woman need maintenance and that is during the period of pregnancy because a woman cannot work along with child bearing. Therefore, they suggest that the government should give a subsidy to pregnant woman so that she would not be dependent upon her husband as well as be free from economic burden during pregnancy. If this will take place, there will be two vital consequences, firstly the government will replace the biological father and secondly, the maternity will become a profitable profession that will decrease motherly feelings. However, the subsidy is not a solution in itself; it has to be supplemented with a compulsory provision of re-employment of the mothers after their children reach a certain age. Consequently, the

¹²² Sekh Rahim Mondal, *Rural Muslim Women, Role and Status*, (New Delhi, India: Northern Book Centre, 2005), 28-29.

children will remain without caring father and loving mother. This will disturb the social unit of family and eventually cause the downfall of humanity.¹²³

3.6 Women's Right To Get Maintenance After Divorce

Islamic law recognized the financial rights of women during continuation of marriage contract as well as after its dissolution. According to Islamic law, there are two common ways of dissolution of marriage i.e. death or divorce. A simple reading of Verses 240 and 241 of *Surah al- Baqarah* show that the *Qur'an* has made provision for women who suffer either widowhood or divorce. Verse 240 lays down the provisions for widows (a year's maintenance and residence), and then mentions women who leave the matrimonial residence on their own. After this comes the provision for women who have not left on their own, that is, those who have been divorced.¹²⁴

After pronouncing the word 'divorce' (طلاق) once or twice, husband can take wife back (رجوع) during her waiting- period (عدة) i.e. three months in general cases, while the waiting- period of a pregnant divorcee ends with the birth of child. During the waiting- period after pronunciation of divorce for second time, the spouses cannot be reunited unless and until they commit a new marriage contract with each other. Such divorce is called 'revocable divorce' (طلاق رجعي). In case of third pronunciation of divorce, their marriage is dissolved for good. Such divorce is the final one and called 'irrevocable

¹²³ Bertrand Russell, *Marriage and Morals*, (New York, USA: W.W. Norton & Company, Inc., 1970), 303-304.

¹²⁴ Dr. Faustina Pereira, *Post Divorce Maintenance for Muslim Women and the Islamist Discourse*, <http://www.wluml.org/node/334> (January 23, 2012)

divorce' (طلاق رجعي). The woman who received a 'revocable divorce' is entitled to maintenance during her waiting- period.¹²⁵

وللمطلقات مئاع بالمعروف حفأ على المتقين¹²⁶

Allah says (سبحانه و تعالى) (interpretation of the meaning):- "For divorced women Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous". (AL-QURAN 2:241)

If the husband pronounced 'revocable divorce' (طلاق رجعي) before consummating the marriage, then the maintenance is obligatory on husband, especially when the *Mahr* was unspecified at the time of marriage as stated in the following verse:-

لَا جُناحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُهُنَّ أَوْ تَقْرُضُوهُنَّ فَرِيْضَةٌ وَمَنْعُوهُنَّ عَلَى الْمُوْسَعِ قَدْرَةٌ

وَعَلَى الْمُقْتَرِ قَدْرَةٌ مَئَاعًا بالمعروف حفأ على المحسنين¹²⁷

Allah says (سبحانه و تعالى) (interpretation of meaning): "There is no blame on you if you divorce women before consummation or the fixation of their dower: but bestow on them (A suitable gift), the wealthy according to his means. and the poor according to his means, A gift of a reasonable amount is due from those who wish to do the right thing". (AL-QURAN 2: 236)

This also shows that the amount of maintenance would be according to the financial position and means of the husband. In case the divorce occurred after consummation of

¹²⁵ Dr. Faustina Pereira, *Post Divorce Maintenance for Muslim Women and the Islamist Discourse*, <http://www.wluml.org/node/334> (January 23, 2012)

¹²⁶ Surah al-Baqarah: 241

¹²⁷ Surah Al-Baqarah: 236

marriage, then maintenance is not obligatory on husband according to the majority of Scholars of Islamic Law, rather it is recommended (مستحب). While *Shaykh al-Islam* Ibn Taymiyah (رحمه الله عليه) was of the view that it is obligatory right of all divorced women, whether the marriage is consummated or not, because the word **النافذات** is used in *Al-Quran* chapter 2, verse 241 that has a general meaning of 'divorced women'.¹²⁸

3.7 No Financial Obligation Of Women In Islam

It can be concluded from the above discussion and arguments that in a Muslim family, men are responsible for lodging, boarding, clothing and other financial needs of women. Women have no such responsibility at all. It is the exclusive duty of their father and brother before marriage and of their husband and son after that to support them financially. No matter a wife is more rich than her husband and has a stronger position than his, she is exempted from any financial obligation of herself, household or children.

In Islam, women have been given more financial security, as compared to the men.¹²⁹

3.8 Financial Liability And Liberty Of Muslim Women

Apparently, Muslim women do not have any financial liability of herself or her family rather they are guaranteed support at all stages of their lives. Men are fully responsible to support financially their mother(s), unmarried sister(s), wife, daughter(s) and other female members of their immediate family in all circumstances. Does this limit the financial liberty of women under Islamic Law? It is a general understanding that who

¹²⁸ Pereira, *Post Divorce Maintenance for Muslim Women and the Islamist Discourse*.
<http://www.wluml.org/node/334>

¹²⁹ Dr. Zakir Naik, *Women's Rights in Islam - Modernizing or Outdated?*
<http://www.ilovezakirnaik.com/womenrights/index.htm> (May 31, 2012)

spends has right to control.¹³⁰ The answer depends upon the interpretation of the meaning of the following verse:-

الرَّجُلُ قَوْاْمُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ
فَإِنَّمَا تَحْفَظُ اللَّهُ وَاللَّاتِي تَحَافَّنُ لَشُوْزَهُنَّ فَعَظُوْهُنَّ وَاهْجَرُوْهُنَّ فِي الْمَضَاجِعِ
وَاضْرِبُوْهُنَّ فَإِنْ أَطْعَنْتُمُهُنَّ فَلَا تَبْغُوْهُنَّ سَيِّلًا إِنَّ اللَّهَ كَانَ عَلَيْهَا كَبِيرًا¹³⁰

Allah (سُبْحَانَهُ وَ تَعَالَى) says (interpretation of meaning): "Men are the maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds. (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, Great (above you all)". (*AL-QURAN 4:34*).

The word قَوْاْمُونَ is a noun (plural) comes from root word " قَوَامَة " that means 'to maintain and take care of ' and 'to correct or set aright'. In this respect, the meaning of قَوْاْمُونَ (plural) or قَوَام " (singular) is "the person who undertakes to protect and maintain a property or the master/head of a group of people who administers their affairs, looks after their interests, caters for their needs and corrects their wrong acts."¹³¹

¹³⁰ Surah an-Nisaa: 34

¹³¹ Dr. Muhammad Sa'd Muhammad Al-Mugrini, *Matrimonial Guardianship (Qawaamah): Reasons, Rules and Requirements*, [http://forums.islamicawakening.com/f16/matrimonial-guardianship-qawamah-reasons-rules-and-requirements-8172/\(15-11-2011\)](http://forums.islamicawakening.com/f16/matrimonial-guardianship-qawamah-reasons-rules-and-requirements-8172/(15-11-2011))

However, if we take the meaning of the word قوامون as 'maintainers', so first of all it should be clear that it is not used here as a general term and it cannot be applied on every men and women in universe. It is indicating the roles of 'husband and wife' in a family because the whole verse is talking about spouses and their marital relations.¹³²

Secondly, according to the above mentioned verse, the husband has given an upper hand over wife in the family because he spends on her and supports her financially. Moreover, such is not his authority rather a duty/responsibility.¹³³

Modern scholars of Islamic law also present another different and feminist interpretation. For example, a feminist theologian Riffat Hassan has presented another interpretation of the word قوامون in the above- mentioned verse according to which the word is an economic term that means 'breadwinner'.

She emphasized that as the primary responsibility of wife is childbearing so this becomes obligatory on her husband to support her financially especially during the period of childbearing. Such interpretation of the word changes the whole meaning of the verse especially with respect to the emphasis on the role of man as the breadwinner for woman during the period of childbearing. It means that only during this period man will be the sole breadwinner, otherwise in normal times, woman may also earn and take her own financial responsibility. It is an interpretation from pure feminist perspective.¹³⁴

¹³² M. Abdel Haleem. *Understanding The Qur'an*. (London: I.B. Tauris & Co Ltd. 2005), 47.

¹³³ Muhammad bin Jareer At-Tabari. 'Jami' al-Bayan fi Ta'weel al-Qur'an', edited by Dr. Abdullah at-Turki. (Beirut: Dar Hajar, 2004). 687.

¹³⁴ Asghar Ali Engineer, *Rights of women in Islam*. (Riyadh: Darussalam, 2000). 73.

It is a wide spread misunderstanding that through this verse *Allah* (سبحانه و تعالى) has made all men superior over all women in the universe. According to the above-mentioned verse, husbands are 'guardians and maintainers' of their wives and because of this reason they have an upper hand in family only not in whole universe. Otherwise, as human beings, women are equal to men and have full financial rights to work, earn money and take care of their property in any circumstances. The duty of men to spend on their wives does not limit any economic liberty of wife or any other woman.

Concluding remarks are that the status and position of women in Islam as described in the Holy *Qur'an and Hadith* differs vastly from practice prevalent in Muslim societies. The reason is that the position of women in the Muslim societies is not determined by the Islamic ideologies. Rather it is determined and constructed by the pre-Islamic patriarchal ideologies combined with lack of education and ignorance from spirit of Islamic injunctions. These socio-historical causes affected gravely the position of women and led to their suppression and violation of their social, economic and political rights. In spite of the fact that Islam, women have been given more financial security as compared to the men, they are living a life worse than anything is.¹³⁵

¹³⁵ Zieba Shorish-Shamley, *Women's Position, Role, and Rights In Islam*, (Alyamoni unpublished Dissertation, University of Illinois at Urbana-Champaign, 1985), 48-50

CHAPTER NO 3

NATURE AND SCOPE OF FINANCIAL EMPOWERMENT OF WOMEN IN INTERNATIONAL LAW

There are three closely inter-related dimensions of the concept of 'empowerment' i.e. agency, resources and achievements. Agency is the ability and power of people to make choices and act on these even in case of other's opposition. Resources are medium of use of power as the agency is exercised through the mobilization of resources. In result of this, people are capable of living the lives they want to live. The extent to which they succeed in living the 'life of their choice' is the extent of their achievements. That is how these three dimensions are closely inter-related. Their implication in the process of 'empowerment of women' can be explained in a way that ; when women have sense of self-worth and capacity to action, only then they can have power to actively exercise choices of their own. Moreover, they can also challenge the power-relations prejudice to their participation in decision-making process.¹³⁶

The way resources are distributed depends on the priorities and claims of decision-making authorities as well as choices of those who have influential positions in such process. That is why, for the effective mobilization of the economic resources in favour of women, along with having power to act, they must also get some influential position among decision-making authorities. As a result, they live their life how they want to live

¹³⁶ Naila Kabeer, *Gender Equality: Poverty Eradication and the Millennium Development Goals: Maximizing Synergies and Minimizing Trade-offs* (UK: Marlborough, Commonwealth Secretariat, Routledge Publication, autumn 2003), 56.

it and achieve what they want to have. As the achievements are the consequences of exercise of free choices, so these are treated as evidence of progress in women's empowerment. For example, when women have access to paid work, their agency improves within family because it not only provides them with an independent source of income and eventually change their 'fall-back position' into an influential and stronger one among others but also places them among those members of family who have a say in decision-making process. As a result, women can make choices of their own but also participate in making of decisions having effects on others' lives. This contributes to women's sense of independence. That is how the inter-play between the above-mentioned three dimensions of empowerment and the financial empowerment of women been depicted.¹³⁷

In recent times, the projection of gender-equality and protection of women's rights are considered very important parameters of civic society in a democratic country, whether developed or still heading towards development. The developing societies on the road of progress and prosperity have the agenda to bestow the fruits of their economic growth upon the marginalized sectors of their population including women. The well being and protection of the rights of these marginalized sectors not only ensures a balanced development but also help these societies to sustain their economic growth and achievements. Where these societies ignore this important element and their economic growth has not any significant impact on the living standard of mass of their population, they cannot sustain the pace in economic growth and have to face a downfall eventually.

¹³⁷ Naila Kabeer, *Gender Equality, Poverty Eradication and the Millennium Development Goals: Maximizing Synergies and Minimizing Trade-offs* (UK: Marlborough, Commonwealth Secretariat, Routledge Publication, autumn 2003), 56.

That is the reason that the recent United Nations Organization's reforms and instrumental documents include the protection of human rights especially women's rights as a central social indicator of development. The states that ratify the human rights treaties become bound to respect the rights of other states and their citizens and the rights of their own citizens as well.¹³⁸

In International Law, Human Rights Instruments have two general classifications that are as follow :- (1) Declarations that are non-binding instruments and place only moral commitments and responsibilities on international community and (2) Conventions and Treaties that have legally binding effect among ratifying countries. During World War II (1939-1945), human rights were abused terribly. To avoid this brutality in future, the UN Human Rights Commission drafted a human rights instrument named as 'Universal Declaration of Human Rights'. UN General Assembly adopted this declaration in 1948. It declared that all human beings have equal inalienable rights. After that, many other human rights instruments and convention were adopted in favour of human rights especially the rights of vulnerable segment of human family, such as women. With respect to women's rights, there are three important instruments of International Human Rights Law i.e. The Charter of United Nations Organization. The International Bill Of Rights and the Convention on the Elimination of All forms of Discriminations Against Women (CEDAW). The Charter of United Nations was signed on 26 June 1945 in San Francisco and came into force on 24 October 1945. It is not only a kind of 'birth-certificate' of UNO but also claimed to be the first International document that proclaimed equality between men and women. The article 2 and 16 of UNO Charter state

¹³⁸ Oona A. Hathaway, "Why Do Countries Commit to Human Rights Treaties?" *The Journal of Conflict Resolution* 51: 4 (Aug. 2007): 591.

that men and women are entitled to equal rights. While International Bill of Human Rights includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). All the articles in these instruments have equal application on rights of men and women.¹³⁹

1. History Of Women Empowerment In The United Nations Organization (UNO)

Theoretically speaking, besides this principle of 'non-discrimination on the basis of gender' there are many other important UN provisions in favour of women's rights. For example, the "Commission on The Status of Women" (UNCSW) was established by the UN Economic and Social Council in 1946. It was a global policy-making body dedicated to gender equality and advancement of women. The very first remarkable achievement of this Commission was the gender-neutral language of 'The Universal Declaration of Human Rights' adopted by the General Assembly on 10 December 1948. The Declaration not only declared that everyone is entitled to all rights without any discrimination but also has provision stating financial rights of women such as 'equal pay for equal work'. Moreover, the 'Covenant on Economic, Social and Cultural Rights' provides that all workers should be given fair wages and equal remuneration for work of equal value without any discrimination. Especially female workers should enjoy the same working conditions as guaranteed to male workers. From 1973, the UN bodies examined women's issues under the economic and social development agenda because the main

¹³⁹ Malcolm D. Evans, ed., *International Law Documents* (Vancouver, BC: Black Stone Press limited). 1991.

unit responsible for women's issues in the UN Secretariat was transferred in 1973 from (then) Division of Human Rights to the Centre for Social Development and Humanitarian Affairs in the Department of Economic and Social Affairs. From then onwards, the 'human rights element' of women's rights is marginalized.¹⁴⁰

The General Assembly of UNO declared 1975 as the International Women's Year. This year, the First World Conference on Women was organized in Mexico. Subsequently, the UN General Assembly declared the years 1976-1985 as the 'UN Decade for Women'. In 1979, the General Assembly made another great move and adopted the "Convention on The Elimination of All forms of Discrimination against Women" (CEDAW). Later on, it was signified as an 'International Bill of Rights for Women'. It defined discrimination against women, designed agenda and plan for national action for elimination of such discrimination, described influential factors in this regard and for the first time in history of human rights recognized the reproductive rights of women. In 1980, a Second world Conference on Women was held in Copenhagen that ensured women's rights like ownership and control of property, inheritance and child custody etc. As 1985 was the last year of 'UN Decade for Women', so the Third world Conference was held in Nairobi to review the achievements of UN during that decade regarding Equality, Development and Peace in favor of women. Although the goals set in The 'First World Conference for Women' were not fully achieved but a groundbreaking declaration was made i.e. 'all issues to be as women's issues'. In 1995, The Fourth World Conference on Women was held in Beijing that reaffirmed women's rights as human rights. The primary objective on the agenda was to remove all obstacles to women's progress and empowerment from

¹⁴⁰ Peters, Wolper, 37-43.

all aspects and in all spheres of life. All the member countries made a firm commitment to a National Plan of Action (NPA) regarding policies for improving women's rights and empowerment regarding inheritance of wealth, ownership of land and other possessions, transactions based on credit, and access to natural resources. In 2000, Beijing +5 was held in New York. It was a kind of meeting to review the advancements regarding goals set forth in previous World Conferences on Women. In the Millennium Summit 2000, gender issues were given high profile importance.¹⁴¹

In 2009, UN Department of Economic and Social Affairs, Division for the Advancement of Women conducted a World Survey on the Role of Women in Development. This survey indicated that an appropriate gender-sensitive response to the world economic crisis would not only minimize its negative impacts but also facilitate both achievement of gender equality and empowerment of women along with a long-term prosperity. Moreover, "Women's equal access to and control over economic and financial resources is critical for the achievement of gender equality and empowerment of women and for equitable and sustainable economic growth and development". "Development rationales for enhancing women's access to economic and financial resources include women's role as "safety net of last resort" in economic downturns".¹⁴²

In 2011, a new UN Entity for Gender Equality and the Empowerment of Women (UN Women) became operational. Its creation was a result of the merger of four of the following UN agencies and offices i.e. the UN Development Fund for Women

¹⁴¹ Economic and Social Commission for Asia and the Pacific, *Using CEDAW at the grass roots: Convention on the Elimination of All Forms of Discrimination against Women in the Pacific*, ST/ESCAP/2095 (New York: United Nations Publication, 2000), 5.

¹⁴² Department of Economic and Social Affairs, Division for the Advancement of Women, *2009 World Survey on the Role of Women in Development: Women's Control over Economic Resources and Access to Financial Resources including Microfinance*, ST/ESA/326. (New York: United Nations Publication, 2009), 23.

(UNIFEM), the Division for the Advancement of Women (DAW), the Office of the Special Advisor on Gender Issues, and the UN International Research and Training Institute for the Advancement of Women (UN-INSTRAW). In this way, a single body was emerged to achieve gender equality and women's empowerment.¹⁴³

In January 2011, the United Nations Organization's division for women named 'UN Women' presented a 100-day action plan. Its primary objective was to make the World realize the importance of financial freedom of women in the process of their empowerment. It emphasized that in difficulties of life, usually women are in more vulnerable situation than men because they are totally or partially dependant on male members of their family. For example, after divorce, the standard of living of woman can drop significantly, as she was dependant on her husband for her financial needs. It is recommended that if woman is independent financially then the sudden burden of her financial needs can be eliminated in difficult times in her life.¹⁴⁴

2. European Union And Women's Rights

On the 2010 International Women's Day, a communication was made from the European Commission that is called "A Women's Charter". In this charter, European Union (Former Commission) admits that 'equality between men and women' is not only a fundamental right but also one of the fundamental founding values of European Union (EU). In this charter, the equal economic independence is ensured as an integral part of Europe 2020 strategy. The EU admitted that European women workers are facing more difficulties than men are in term of earning, resources for employment, accessing finance

¹⁴³ Using CEDAW at the grass roots, 6.

¹⁴⁴ Workforce of Women. *UN Women's new action plan highlights: financial freedom for women.* <http://workforceofwomen.org/2011/01/27/un-womens-new-action-plan-highlights-financial-freedom-for-women/> (4-12-2011)

after retirement etc that resulted in 'in-work poverty'. It reaffirms that the promotion and protection of women's rights is not only the need of time but also an essential for developing sustainable and democratic societies.¹⁴⁵

Although the relationship between gender equality and economic growth cannot be proved empirically but a survey conducted in 2006 by International Monetary Fund showed that the pace of economic development and reduction of poverty increase with improvement in education, employment opportunities, health care facilities and access to credit for women.¹⁴⁶

3. Women's Financial Empowerment In International Human Rights Instruments

According to the United Nations Population Fund (UNPF), there are five major components of women's empowerment i.e.

1. Sense of self-worth
2. Right to have and determine choices
3. Access to opportunities and resources
4. Power to control their own lives
5. Ability to influence the direction of social change

¹⁴⁵ European Commission, *Communication From The Commission . A Strengthened Commitment to Equality between Women and Men: A Women's Charter , Declaration by the European Commission on the occasion of the 2010 International Women's Day: in commemoration of the 15th anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30th anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women* . (Brussels, 2010). 3.

¹⁴⁶ United Nations Development Programme. *Innovative Approaches to Promoting Women's Economic Empowerment, Paper for the Partnership event on September 25, 2008: MDG 3 – gender equality and empowerment of women –A prerequisite for achieving all MDGs by 2015*. ISBN: 978-92-1-126228-5 (New York: UNDP, 2008), 14.

When these five components are applied to economic and financial sphere in terms of expanding economic opportunities for women, strengthening protection for their legal rights and ensuring their participation in economic decision-making then the process is called financial and economic empowerment of women.¹⁴⁷

The social status of woman is determined by different factors like education, working capacity, type of employment, earnings, savings, assets etc. When such factors show women at lower level in society then they are excluded from decision-making process and do not get any representation in process of decisions and policymaking which determine the extent of their rights. Such situation automatically affects women's social lives and economic positions. This 'cause and effect' relationship shapes the social and legal scenario of miseries of women. This can be avoided by development of a protection system of women's financial rights as well as a systematic documentation of violations of women's economic rights. As an observation was presented in The Fourth World Conference on Women showing the reasons behind women's poverty that were absence of economic opportunities, autonomy and resources.¹⁴⁸

United Nations Millennium Summit was held in September 2000 in New York. World leaders that aimed to achieve Millennium Development Goals (MDG) adopted 'United Nations Millennium Declaration' in this summit. These goals were eight time-bound targets agreed upon by almost all countries in the World, for example eradicating poverty, achieving universal primary education, promoting gender equality and empowering women, reducing child mortality, improving maternal health, combating HIV and AIDS and other diseases, ensuring environmental sustainability, and providing

¹⁴⁷ *Innovative Approaches*, 9.

¹⁴⁸ Helen Jones, Kas Wachala, *Watching over the Rights of Women* 5:1 (Social Policy and Society, 2005), 127-136.

financing for development. The year 2015 was declared as deadline for it. The UN Millennium Campaign was started in 2002 that inspired nations and governments to make serious efforts towards Millennium Development Goals (MDG). It presented many examples from different parts of world of those people whose lives were improved in result of progress made by their countries towards achievement of MDGs.¹⁴⁹

The third of the Millennium Development Goals (MDGs) is 'Gender equality and Women's empowerment'. It is not only an instrument for achieving other MDGs but an end in itself.¹⁵⁰

The United Nations Secretary General commissioned the Millennium Project in 2002. This Project was aimed to discuss and develop an action plan applicable to achieve the MDGs. Ten thematic Task Forces were created for Project's analytical work. The Task Force on Education and Gender Equality identified seven strategic priorities. These priorities cover many dimensions of women's empowerment. These strategies are as follows:-

1. Strengthen opportunities for post-primary education for girls while simultaneously meeting commitments to universal primary education
2. Guarantee sexual and reproductive health and rights
3. Invest in infrastructure to reduce women and girls' time burdens
4. Guarantee women and girls' property and inheritance rights
5. Eliminate gender inequality in employment by decreasing women's reliance on informal employment, closing gender gaps in earnings and reducing occupational segregation

¹⁴⁹ UN, We Can End Poverty 2015, *Millennium Development Goals*. Retrieved on 11-12-2011. From <http://www.un.org/millenniumgoals/bkgd.shtml>

¹⁵⁰ Kabeer, 67.

6. Increase women's share of seats in national parliaments and local government bodies;

and

7. Combat violence against girls and women¹⁵¹

Four of these seven strategic priorities i.e. 3rd, 4th, 5th and 6th, are directly related to women's economic empowerment.¹⁵²

According to Buvinic¹⁵³, the empowerment of women can be materialized effectively by increasing their productivity in home and market production and through income that they generate from work. In this regard, International Labour Organization (ILO) proposed many reforms. For example, women's access to land, property and other assets, training of female workers for productive employment, providing financial resources and credit, and empowering women through their greater organization.¹⁵⁴

The right of women to own property is an essential part of the first and third MDG i.e. eradication of poverty and promotion of gender-equality.¹⁵⁵

3.1 Women's Right To Own Property

The empowerment of a woman reflects in her right to act on her own behalf and make decisions of her life. Financial and economic empowerment requires not only effective access and control of economically productive resources such as land, property and finance but also the power of their distribution. Such kind of financial empowerment of

¹⁵¹ *Innovative Approaches*, 3.

¹⁵² Ibid..10.

¹⁵³ Mayra Buvinic, an internationally recognized expert on "Gender and Social development", is a senior fellow with both the UN Foundation and Vital Voices. She has a PhD in Social Psychology from the University of Wisconsin-Madison. During 2005-2011, she was Director for Gender and Development at the World Bank.

¹⁵⁴ United Nations Population Fund, *Women's Economic Empowerment: Meeting the Needs of Impoverished Women: Workshop Report* (UNFPA, 2007), p 8.

¹⁵⁵ UN WOMEN, *Gender Equality Now: Accelerating the Achievement of the Millennium Development Goals* (UN WOMEN, 2008), 12.

women can only be achieved through combined endeavors in all spheres of life such as law, politics, domestic environment, institutional mechanisms, economic resources, social norms etc. because following are the key hurdles in way of women's economic and financial empowerment:-

- Absence of concrete legal protection for women's economic rights
- Discrimination against and unacceptability of women at work place
- Less access to training opportunities and technological advancement
- Non-supporting social attitudes and reactions
- Extra burden of responsibilities on women in domestic and local spheres
- Lack of access to and control over land, assets and other financial resources ¹⁵⁶

Women's right to own personal property is restricted by social norms and traditions all over the World. In some parts of the world, such rights of women are even denied by formal legislations. In some countries, although women comprise three-quarters or more of work force in agriculture but the number of female landowners is in single digit. All this resulted in most vulnerable financial situations of women, for example social insecurity, economic dependency and unavailability of enough assets to recourse in financial crisis. This has increased the importance of economic and financial empowerment of women to protect their other human rights. Women's property and land rights are included in seven strategic priorities of the UNO's Millennium Project to achieve the third MDG. Women's empowerment is an ultimate result of achieving these goals. ¹⁵⁷

¹⁵⁶ Ibid., 13.

¹⁵⁷ Ibid., 20.

United Nations Development Fund For Women (UNIFEM) has a core strategy to reduce feminized poverty. For this purpose, it advocates women's property rights at every level. It not only focuses on ensuring the inclusion of equal property rights of women in legal provisions but its effective enforcement as well. UNIFEM has successfully carried out different projects in Central Asian countries like Kyrgyzstan and Tajikistan where 80 percent of rural population is living in poverty. Working closely with national partners of these countries, UNIFEM focused on privatization policies and land reforms especially reforms to protect and advance women's land rights. In addition, it has played great role in making women aware of their rights and entitlements towards land and property. In this regard, the media campaigns and local seminars, radio and TV broadcasts, hotlines providing information, interactive talk shows and posters on public places are sponsored that effectively spread the awareness among women and local authorities about women's land rights and legal provisions related to land use, management, rent and inheritance etc. Kyrgyzstan is the first state among 'Commonwealth of Independent States' that introduced private land ownership. Moreover, series of proposals made to amend the Land Code in terms of providing more protection to women's property rights in divorce cases. In Tajikistan, such legal amendments are already done.¹⁵⁸

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) works as the international legal framework on women's rights. It requires that the state parties "shall ensure women the right to . . . equal treatment in land and agrarian reform as well as in land resettlement schemes..." CEDAW also provides that both spouses must enjoy "the same rights . . . in respect of the ownership, acquisition,

¹⁵⁸ UN WOMEN, *women's Land And Property Rights*,
http://www.unifem.org/gender_issues/women_poverty_economics/land_property_rights.php(18-12-2011).

management, administration, enjoyment and disposition of property" in marriage. Moreover, to promote women's rights on large scale, women's equal rights to inherit, purchase and dispose of property etc. are also guaranteed in the following:- **Article 16 (1) (h) of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)** states that the States-Parties should ensure equality of women and men in marriage institution. In this regard, same rights should be granted to both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. They both have the equal right to dispose their property free of charge or for a valuable consideration.¹⁵⁹

3.2 Women's Right To Get Employment

Although there is little systematic attention in international law to economic rights of working women, but specific provisions related to the conditions and rights of working women are included in the 'Convention on the Elimination of All Forms of Discrimination against Women' (CEDAW) and the 'Beijing Platform for Action: The Fourth World Conference on Women'. Besides these two, most of the international human rights instruments including 'The International Covenant on Economic, Cultural, and Social Rights' (ICESCR) contain general provisions related to human rights, without any specific reference to women.¹⁶⁰

Article 11 of the Convention on Elimination of All Forms of Discriminations Against Women (CEDAW) made the member states bound to take all possible measures to eliminate discrimination against women in the field of employment as the right to work is

¹⁵⁹ Elisabeth Wickeri, Anil Kalhan, *Land Rights Issues in International Human Rights Law* (Institute of Human Rights and Business, 2006) . 4.

¹⁶⁰ Valentine M. Moghadam, *Globalization, States, and Social Rights: Negotiating Women's Economic Citizenship in the Maghreb* (USA: Indiana, June 2007), 6.

inalienable right of all human beings. It guided in detail that same criteria for selection should be applied to male and female applicants for employment and equal remuneration for equal work should be given to them without any discrimination of sex. Moreover, women must be given right to join the profession and employment of their choice. This article gave a full length description about the rights of women related to working conditions, promotion, job security, vocational training, evaluation of the quality of work, social security in case of retirement or unemployment etc. ¹⁶¹

Article 23 (1) of the Universal Declaration Of Human Rights (UDHR) designated the right to work and free choice of employment, favorable conditions of work and social security in case of unemployment to every human being. Moreover, **Article 23(2) of the UDHR** declared that all 'equal pay for equal work' without any discrimination should be applied. **Article 23(3) of the UDHR** declared that all the workers deserve remuneration appropriate to fulfill his/her needs as well as to support his/her family. It should be supplemented with social security in case of need. Moreover, **Article 22 of UDHR** states that as a member of society, all citizens are entitled to social security.

Article 1 of International Covenant on Economic, Social and Cultural Rights states that everyone is entitled to right of self-determination according to which he/she is free to make political, economic, social and cultural choices. In this respect, he/she can freely dispose of natural wealth. No one can deprive them of their means of substance.

Article 14 (2) (e) of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) states that States-Parties should ensure for the women in rural areas the right to organize self-help groups and cooperatives. This will encourage

¹⁶¹ *Using CEDAW at the Grass Roots*. 72.

them to have equal access to different economic opportunities, for example, employment or self-employment.

3.3 Women's Right to Receive Social Security

Article 25 (1) of the Universal Declaration Of Human Rights states that everyone is entitled to the adequate standard of living as well as necessary social services and security in case of unemployment, sickness, disability, old age etc.

As the Article 2 of the Declaration, states that all the rights stated in the Declaration will apply to everyone without any discrimination of sex, colour, race, religion, language etc.. so women are also entitled to the right to receive social security in case of need or circumstances beyond control.

Article 10(2) International Covenant On Economic, Social And Cultural Rights states that pregnant working women should be given special protection during a reasonable period before and after childbirth. Moreover, they should be given paid leave or leave with adequate social security benefits during pregnancy.

Article 14 (2) (c) of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) states that States-Parties should ensure the elimination of discrimination against women in rural areas in order to make them equal beneficent of rural development. In this regard, women must be given the right to benefit directly from social security programmes.

3.4 Women's Right To Get Financial Credit

Article 13 of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) states that States-Parties are bound to eliminate discrimination against women in economic and social life and ensure gender equality. In this regard, the

right to family benefits, bank loans, mortgages and other financial credit should be granted to women.

Article 14 of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) states that States-Parties should consider the problematic situations of rural women as well as recognize their significant role in economic survival of their families. The work done by rural women in the non-monetized sectors of the economy shall also be appreciated.

Article 14 (2) (g) of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) states that States-Parties should ensure for the women in rural areas the right to have access to agricultural credit and loans.¹⁶²

Governments are made obliged to mobilize the banking sector to increase lending and refinancing packages especially for women entrepreneurs and producers. This can be done through introducing different incentives and development of intermediaries.¹⁶³

3.5 Right to Strengthen Women's Economic Capacity and Commercial Networks

To advocate for the promotion of women's enterprises and businesses as well as equal access of women to productive resources, governments are made obliged to support all non-governmental organizations, cooperatives and self-help groups of women. Moreover, economic activities of indigenous women should be supported. Their traditional knowledge can be used to improve their situation. In addition, joint ventures and technical as well as commercial links among women entrepreneurs should be established

¹⁶² Rita Maran, ed., *The Human Rights Of Women; A Reference Guide To Official United Nations Documents*, (USA: Amnesty International Special Initiatives Fund, March), 1998.

¹⁶³ *Beijing Declaration and Platform for Action; Fourth world Conference on Women* (China: Beijing ,15 September 1995), 67.

in order to support community-based initiatives at national, regional and international levels.¹⁶⁴

3.6 Elimination of Discriminatory Practices Against Women on Work Place

Article 11 (2) (a) of the Convention on Elimination of All Forms of Discrimination Against Women states that States-Parties should ensure the effective right of women to work. In this regard, they must ensure the elimination of discrimination against women on grounds of marriage or maternity. They should prohibit dismissal from employment on grounds of marital status, pregnancy or maternity leave.¹⁶⁵

In order to increase women's participation in development of economy, governments are made obliged to take all necessary actions to eliminate discriminatory practices by employers. In this regard, women's pregnancy or breast-feeding should not be made the reason of denial or dismissal from employment. Moreover, legislation should be enacted against discrimination based on sex in the labour market.¹⁶⁶

4. Empowering Women Migrant Workers

Due to globalization as well as rising poverty and unemployment in different parts of the world, the trend of migration of labor has increased. While migration opens new opportunities to migrant workers, it may also put the women migrant workers in more vulnerable situation especially those in low-end jobs. Because they are subjected to discrimination, gender-based exploitation, abuse, unfair labor practices and unhealthy

¹⁶⁴ *Beijing Declaration*, 69-70.

¹⁶⁵ Maran, ed., *The Human Rights Of Women*.

¹⁶⁶ *Beijing Declaration*, 65.

working conditions at work place etc. Therefore, instead of getting more means for their economic empowerment through wider participation in labour-receiving countries, their basic human rights and security are usually at stake. In this regard, the overseas employment service providers are major stakeholders as they are the ones who are legally responsible for the placement or employment of women workers in a foreign country. The United Nations Development Fund for Women (UNIFEM), (now UN Women) arranged discussions and deliberations among national associations of overseas employment service providers of State-Parties to protect the rights of women migrant workers. Because of these efforts, 'The Covenant of Ethnic Conduct and Good Practices of Overseas Employment Services Providers' was adopted on 14-15 November 2005. In this Covenant, recruitment-agencies of States-Parties agreed to protect rights of women migrant workers from financial exploitation, physical and sexual abuse etc. Under this Covenant, they commit to initiate social security and insurance programmes for the benefit of migrant workers especially women. They agreed to organize information campaigns for migrant workers as well as employers. Moreover, they made a commitment to establish resource and welfare centers in labour-receiving countries.¹⁶⁷

Article 21(1) of The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) states that the 'Committee on CEDAW' shall report annually to the General Assembly of UNO about its activities. This report may include the suggestions and recommendations based on information received from reports of States-Parties. The Committee on CEDAW decided in its thirty-second session, held in January 2005, to issue a general recommendation related to some categories of women

¹⁶⁷ United Nations Development Fund for Women, *Covenant of Ethnic Conduct and Good practices of Overseas Employment service Providers*, (Bangkok: Thailand, UNIFEM, 15 November 2005)

migrant workers. The Committee affirmed that no discrimination should be exercised against women including migrant women workers. Their human rights must be enforced by States-Parties. The protection should be provided to those women migrant workers who may be at risk of abuse and discrimination. This general recommendation elaborated all those circumstances that put the women migrant workers in a vulnerable situation and concluded that the gender-based discrimination is vital cause behind violations of the human rights of women migrant workers.¹⁶⁸

5. Women's Right To Participate In Decision-Making Process

To promote women's economic rights and independence as well as increase control over economic resources, governments are made obliged to device effective mechanisms to make the women participate in formulation of financial, monetary, commercial and other economic policies. As these economic structures and policies has a direct impact on access to and distribution of economic resources so women must be given full and equal access to policy and decision-making bodies as ministries of finance and trade, national economic commissions, economic research institutes etc. Such participation of women should be encouraged at national as well as international level.¹⁶⁹

Moreover, women's participation should be made possible in advisory boards and other forums of central banks and national development banks etc. So that women entrepreneurs from all sectors may contribute in formulation and review of financial and

¹⁶⁸ CEDAW Knowledge Resource. *Full Text of General Recommendations: General Recommendation No. 26, (The Committee on the Elimination of Discrimination against Women, 2008)*

¹⁶⁹ *Beijing Declaration*, 65.

economic policies and programmes developed by economic ministries and banking institutions.¹⁷⁰

Concluding remarks are that On the deep analysis of the struggle for recognition of "women's rights as human rights" along with the development of UNO, the reality is as clear as daylight that the issues related to women's rights were marginalized on UNO human rights agenda until the World Conference on Human Rights in Vienna in 1993. Such neglect was at the conceptual level as well as at the operational level. At the conceptual level, they failed to describe women's rights as part of international human rights law. While at operational level, they failed to reserve a considerable place for women's rights in the mainstream human rights agenda. Such neglect caused considerable delay in the global process of financial empowerment of women.¹⁷¹

¹⁷⁰ *Beijing Declaration*, 67.

¹⁷¹ Julie Peters, Andrea Wolper, *Women's rights, Human Rights: International feminist perspective* (Routledge Publication, 1995), 236.

CHAPTER NO 4

THE DOCTRINE OF FINANCIAL EMPOWERMENT OF WOMEN IN ISLAMIC AND INTERNATIONAL LAW: A COMPARATIVE STUDY

In the nineteenth century, many officials, diplomats and writers from Muslim countries played great role in spreading widely the European ideas of constitutionalism and public liberties. They included the Egyptian scholar Sheikh Rifa'ah Ṭahtawi (1801-1871), the Persian diplomat Mirza Malkom Khan (1833-1908) and the literary figure in Ottoman realm named Namik Kemal (1840-1888). Muslim intellectuals and states-men began to adopt these principles of European constitutionalism and gave way to their common acceptance. Later on, in twentieth century, the question of compatibility of international human rights principles with Islamic doctrine of *haqq al-'abd* (right of individual) and *haqq Allah* (Right of God/ Public right) was raised.¹⁷²

Women's rights were one of the areas where the clash between Islamic principles and international human-rights norms was most acute. In the late nineteenth and early twentieth century, the conservatives presented the view that European concept of full equality or "quantitative equality" for women is a violation of Islamic norms. On the other hand, the feminists like the Egyptian Huda Sha'rawi (1882-1947) propounded the notion that interpretations of Islamic sources with patriarchal perspectives led to the subordinate position of women. Meanwhile, the liberal writers like the Egyptian Qasim

¹⁷² John L. Esposito, *Oxford Encyclopedia of the Modern Islamic World*, Vol. 2 (New York: Oxford University Press, 1995), 143.

Amin (1865-1908) had put forward the idea that the reason behind the prevailing problems like despotism, moral degeneration and degraded status of women in Middle Eastern countries was not Islamic norms rather these were the outcome of social customs having corrupting influences on human attitudes. Although, he did not advocate the full equality for women but he demanded the enhancement of women's rights in different spheres of life. In the wake of the Turkish War of independence, Kamal Ataturk presented unequivocal support for full equality for women. He proclaimed that women had the right to be equal. Subsequently, he enforced many modern reforms in favour of women but without reconciling those with Islamic precepts.¹⁷³

1. The Philosophical Foundations of Islamic and International Law: A Comparison

In non-Islamic especially Western societies, generally the law has evolved gradually from usual social practices been carried out over centuries. That is why the developments and amendments made in law are result of changing social customs and practices over passage of time. While in an Islamic legal tradition, the Holy *Quran* and *Sunnah* have been given the highest and supreme status that supersedes all social attitudes prevalent in society. Islamic law (*Shari'ah*) is derived primarily from the Holy *Quran* and *Sunnah* (words and deeds of Holy Prophet *Muhammad* (صلی الله علیہ و آله و سلم)). Secondary sources of Islamic law are Independent Juristic reasoning (اجتہاد), Analogical deduction (قیام) applied by Muslim scholars and Consensus of the Muslim community (اجماع). Islamic law (شريعة) guides all aspects of Muslim life including religious obligations, daily routines,

¹⁷³ Ibid., 145.

family life, individual and collective rights and obligations, financial matters and dealings, social life etc.¹⁷⁴

The gender discrimination practiced in a Muslim society is not confined to man-made law alone but it penetrates through social customs that are been treated more sacred than Islamic teachings and have no sanction in Islamic law (*Shari'ah*). Thus, injustice done to women is deeply rooted in social behaviors that cannot be inculcated by enforcement of Divine-law alone. That is why Islam gives priority to the development of a sense of responsibility and accountability in true believers. After achieving this goal, it emphasizes on the use of legal framework, only to enforce justice and gender equity effectively.¹⁷⁵

That is why, educating the individual (*Tahdhib al-fard*) gets priority through which *Shari'ah* seeks to make every individual a trustworthy agent and carrier of the values of the *Shari'ah*. In this way, Islamic law realizes many social objectives.¹⁷⁶

It is obvious that the philosophical basis of Islamic Law is religious in nature, while the philosophical basis of International Law is customary and conventional. Somehow, the most part of customs and social norms is an outcome of the religious practices or beliefs prevalent in society. Therefore, to understand the philosophical bases of International Law, the religious philosophy in international culture has to be understood first. Judaism and Christianity are two major International religions that contributed greatly in shaping

¹⁷⁴ Toni Johnson, Lauren Vriens, *Islam: Governing Under Sharia*, Council on Foreign Relations, <http://www.cfr.org/religion/islam-governing-under-sharia/p8034> (4-1-2012).

¹⁷⁵ Anis Ahmed, *Women and Social Justice: an Islamic Paradigm*, Second Edition (Islamabad: Institute of Policy Studies, 1996), 40.

¹⁷⁶ Wahbah al-Zuhayli, *Nazariyyat al-darurah al-Shariyyah*, 4th Ed. (Beirut: Mu'assasat al-Risalah, 1985), 50.

the philosophical bases of existing international law and human rights standards. Although, the financial rights granted to women in Islam have been discussed in detail in the second chapter. However, in the following discussion, those will be mentioned briefly for the purpose of comparison with women's financial rights in Islam, Judaism and Christianity. The emphasis and concern would be only with the position of women in the three religions as it appears in their original sources not as practiced by their millions of followers in the world today. Therefore, most of the evidence cited comes from the Holy *Quran*, the *Hadith* of Prophet *Muhammad* (ﷺ), the Bible, the Talmud¹⁷⁷, and the sayings of some of the most influential Church Fathers whose views have contributed immeasurably to defining and shaping Christianity.¹⁷⁸

2. The Position Of Women In Islam, Christianity and Judaism

An agreement is found in the three religions on the basic fact about the creation of woman and man that God creates both. The Judaeo-Christian conception of the creation of first man Adam and first woman Eve is narrated in detail in Genesis¹⁷⁹ 2:4-3:24. However, disagreement is found in the narration of the event when God prohibited both of them from eating the fruits of the forbidden tree. According to the Judaeo-Christian tradition, the serpent seduced Eve to eat from it and Eve, in turn, seduced Adam to eat with her. When God rebuked Adam for what he did, he put all the blame on Eve. "The woman you put here with me, she gave me some fruit from the tree and I ate it." Consequently, God said to Eve:- "I will greatly increase your pains in childbearing: with

¹⁷⁷ A central text of mainstream Judaism; considered second to the Torah. It contains the opinions of thousands of Rabbis on a variety of subjects. It is basis of all rabbinic law.

¹⁷⁸ Sharif Abdul Azeem, *Al- Maraa Fil Islam wal Maraa Fil Aqeeda Al- Yahudiyah wal-Maseehiyah Bain al- Asturah wal Haqeeqah* (Saudi Arabia: Jameyat Tableeq Al-Islam, 2008), 34.

¹⁷⁹ The Book of Genesis is the first book of the Hebrew Bible and the Christian Old Testament.

pain you will give birth to children. Your desire will be for your husband and he will rule over you." To Adam He said:- "Because you listened to your wife and ate from the tree Cursed is the ground because of you; through painful toil you will eat of it all the days of your life..." On the other hand. the Islamic conception of the above-mentioned event is found in several places in the Holy *Quran*, for example:-

وَبِإِذْنِ آدَمْ اسْكَنْنَاكُمْ بِزَوْجِكُمُ الْجَنَّةَ فَكُلَا مِنْ حِلْيَتْ شَيْئَمَا وَلَا تَقْرَبَا هَذِهِ الشَّجَرَةَ فَنَكْوَنَا مِنَ الظَّالِمِينَ
 فَوَسْوَسَ لَهُمَا الشَّيْطَانُ لِيَنْبُدِي لَهُمَا مَا وُرِيَ عَنْهُمَا مِنْ سَوْأَتِهِمَا وَقَالَ مَا نَهَاكُمَا رَبُّكُمَا عَنْ هَذِهِ
 الشَّجَرَةِ إِلَّا أَنْ شَكَوْنَا مُلْكِيْنَ أَوْ شَكَوْنَا مِنَ الْخَالِدِينَ وَقَالَ سَمِّهِمَا إِنِّي لَكُمَا لَمِنَ النَّاصِحِينَ فَدَلَّاهُمَا بِغَرُورِ
 فَلَمَّا ذَاقَا الشَّجَرَةَ بَدَّتْ لَهُمَا سَوْأَتِهِمَا وَطَفَقَا يَخْصِفَانِ عَلَيْهِمَا مِنْ وَرَقِ الْجَنَّةِ وَنَادَاهُمَا رَبُّهُمَا أَلَمْ أَنْهَكُمَا
 عَنْ تِلْكُمَا الشَّجَرَةِ وَأَفْلَأْكُمَا إِنَّ الشَّيْطَانَ لَكُمَا عَدُوٌّ مُّبِينٌ قَالَا رَبَّنَا ظَلَمْنَا أَنفُسَنَا وَإِنْ لَمْ تَغْفِرْ لَنَا
 وَتَرْحَمْنَا لَنَكُونَنَا مِنَ الْخَاسِرِينَ¹⁸⁰

Allah says (interpretation of the meaning): "O Adam dwell with your wife in the Garden and enjoy as you wish but approach not this tree or you run into harm and transgression. Then Satan whispered to both of them in order to reveal to them their shame that was hidden from them and he said: 'Your Lord only forbade you this tree lest you become angels or such beings as live forever.' And he swore to them both that he was their sincere adviser. Therefore, by deceit he brought them to their fall: when they tasted the tree their shame became manifest to them and they began to sew together the leaves of the Garden over their bodies. And their Lord called unto them: 'Did I not forbid you that tree and tell you that Satan was your avowed enemy?' They said: 'Our Lord we have

¹⁸⁰ Surah Al- Aa'raaf: 19-23

wronged our own souls and if You forgive us not and bestow not upon us Your Mercy, we shall certainly be lost ". (AL- *QURAN* 7:19-23)

A careful look into the two narrations of the story of the above- mentioned event reveals some essential differences. The Holy *Quran*, contrary to the Bible, places equal responsibility on both Adam and Eve for their mistake. Nowhere in the Holy *Quran* can one find even the slightest hint that Eve tempted Adam to eat from the tree or even that she had eaten before him. Moreover, Eve is not to be blamed for the pains of childbearing. *Allah* (سبحانه و تعالى) according to the Holy *Quran* punishes no one for another's faults. Both Adam and Eve committed a sin and then asked God for His forgiveness and He forgave them both. On the other hand, the image of Eve in the Judaeo-Christian tradition, based on the narration of the above-mentioned event, is very different even worse. The image of Eve as temptress in the Bible has resulted in an extremely negative impact on the status of women throughout the Judaeo-Christian tradition. All women were believed to have inherited from their mother, the Biblical Eve, both her guilt and her guile. Consequently, they were and are considered all untrustworthy, morally inferior, and wicked. Menstruation, pregnancy, and childbearing were considered the just punishment for the eternal guilt of the cursed female sex.¹⁸¹ Jewish *Rabbis*¹⁸² mentioned nine curses inflicted on women as a result of the Fall from Paradise:- "To the woman He gave nine curses and death: the burden of the blood of menstruation and the blood of virginity; the burden of pregnancy; the burden of childbirth; the burden of bringing up the children; her head is covered as one in

¹⁸¹ Sharif Abdul Azeem, *Al- Maraa Fil Islam wal Maraa Fil Aqeeda Al- Yahudiyah wal-Maseehiyah Bain al- Asturah wal Haqqeeqah* (Saudi Arabia: Jameyat Tableeg Al-Islam, 2008), 34.

¹⁸² A Jewish scholar or teacher especially the one teaches Jewish Law.

mourning; she pierces her ear like a permanent slave or slave girl who serves her master: she is not to be believed as a witness: and after everything--death."¹⁸³

To the present day, orthodox Jewish¹⁸⁴ men in their daily morning prayer recite the following:- "Blessed be God: King of the universe that You has not made me a woman."

The women, on the other hand, recite every morning the following:- " "Thank God for making me according to Your will."¹⁸⁵

Another prayer found in many Jewish prayer books: "Praised be God that he has not created me a gentile (non-Jew). Praised be God that he has not created me a woman. Praised be God that he has not created me an ignoramus (ignorant)."¹⁸⁶

In fact, the difference between the Biblical and the *Qur'anic* attitude towards the female sex starts with the birth of a female. For example, the Bible states that the period of the mother's ritual impurity is twice as long if a girl is born than if a boy is (Lev. 12:2-5).¹⁸⁷

The Catholic Bible states explicitly that:- "The birth of a daughter is a loss" (Ecclesiasticus 22:3).¹⁸⁸ In contrast to this shocking statement, boys receive special praise:- "A man who educates his son will be the envy of his enemy." (Ecclesiasticus 30:3). Jewish *Rabbis* made it an obligation on Jewish men to produce offspring in order to propagate the race. At the same time, they did not hide their clear preference for male children by saying :- "It is well for those whose children are male but ill for those whose

¹⁸³ Leonard J. Swidler, *Women in Judaism: the Status of Women in Formative Judaism* (Metuchen, N.J: Scarecrow Press, 1976),115.

¹⁸⁴ Orthodox Judaism is a major branch within Judaism that teaches strict adherence to rabbinical interpretation of Jewish Law.

¹⁸⁵ Thera Kendath, "Memories of an Orthodox youth" in Susannah Heschel, ed. *On being a Jewish Feminist* (New York: Schocken Books, 1983), 96-97.

¹⁸⁶ Swidler, 80-81.

¹⁸⁷ The Book of Leviticus is the third book of the Hebrew Bible, and the third of five books of the Torah.

¹⁸⁸ Ecclesiasticus is one of the books, containing moral and practical maxims, included in some Bibles, not in all. It is popularly known as 'the wisdom of Sirach'. It is read in New Testament.

are female". Moreover, "At the birth of a boy, all are joyful...at the birth of a girl all are sorrowful", and "When a boy comes into the world, peace comes into the world... When a girl comes, nothing comes." ¹⁸⁹

The Islamic conception of women is radically different from the Judaeo-Christian one.

For example :-

إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ
وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاسِعِينَ وَالْخَاسِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّائِمِينَ وَالصَّائِمَاتِ
وَالْحَافِظِينَ فُرُوجُهُمْ وَالْحَافِظَاتِ وَالْدَّاكِرِينَ اللَّهَ كَثِيرًا وَالْدَّاكِرَاتِ أَعْدَ اللَّهُ لَهُمْ مَغْفِرَةٌ وَأَجْرًا عَظِيمًا¹⁹⁰

Allah says (interpretation of the meaning): "For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient, for men and women who humble themselves, for men and women who give in charity, for men and women who fast, for men and women who guard their chastity, and for men and women who engage much in Allah's praise-- For them all has Allah prepared forgiveness and great reward" (AL- QURAN 33:35)

It is clear that the *Qur'anic* view of women is no different than that of men. They are God's creatures whose sublime goal on earth is to worship their Lord, do righteous deeds, and avoid evil and they will be assessed accordingly irrespective of their gender. The Holy *Quran* never mentions that the woman is the devil's gateway or that she is a deceiver by nature. According to the Quran, a woman's role on earth is not limited only to childbirth. She is required to do as many good deeds as any other man is required to do.

¹⁸⁹ Swidler, 140.

¹⁹⁰ Surah Al- Ahzab: 33

The *Quran* never says that no upright women have ever existed. To the contrary, the *Quran* has instructed all the believers, women as well as men, to follow the example of those ideal women such as the Virgin Mary and the Pharaoh's wife:-

صَرَبَ اللَّهُ مُتَّلًا لِّلَّذِينَ كَفَرُوا امْرَاتٌ لُّوحٌ وَامْرَاتٌ لُّوْطٌ كَانَتَا تَحْتَ عَنْدِنَيْنِ مِنْ عِبَادِنَا صَالِحَيْنِ
 فَخَانَتَا هُمَّا فَلَمْ يُعْنِيَا عَنْهُمَا مِنَ اللَّهِ شَيْئًا وَقَيْلَ انْخُلُّا النَّارَ مَعَ الدَّاخِلِينَ وَصَرَبَ اللَّهُ مُتَّلًا لِّلَّذِينَ آمَنُوا
 امْرَاتٌ فِرْعَوْنٌ إِذْ قَالَتْ رَبُّ ابْنِ لَيْ عِنْدَكَ بَيْتًا فِي الْجَنَّةِ وَتَجَنَّبَيْ منْ فِرْعَوْنَ وَعَمَلَهُ وَتَجَنَّبَيْ منَ الْقَوْمِ
 الطَّالِمِينَ وَمَرْتَمَ ابْنَتَ عَمْرَانَ الَّتِي أَخْصَتَ فَرِجَّهَا فَنَفَخْنَا فِيهِ مِنْ رُوْحِنَا وَصَدَقَتْ بِكَلِمَاتِ رَبِّهَا وَكَثِيرَهُ
 وَكَانَتْ مِنَ الْقَانِتِينَ¹⁹¹

Allah says (interpretation of the meaning): "And Allah sets forth, as an example to those who believe, the wife of Pharaoh: Behold she said: 'O my lord build for me, in nearness to you, a mansion in the Garden, and save me from Pharaoh and his doings and save me from those who do wrong.' And Mary the daughter of Imran who guarded her chastity and We breathed into her body of Our spirit; and she testified to the truth of the words of her Lord and of His revelations and was one of the devout". (*AL-QURAN* 66:10-12)

Therefore, the position and status of women in three religions is very clear from the above discussion. No doubt, It is more superior and sacrosanct in Islam than in Christianity or Judaism.

¹⁹¹ Surah At-Tahreem: 10-12

3. The Financial Rights of Women In Islam, Christianity and Judaism

3.1 Women's Right To Inherit

There is a great difference among Islam, Christianity and Judaism regarding the right of inheritance of female heir. The Biblical tradition is that female family- members of the deceased have no right to the family estate, as they are part of the estate themselves. While the Mosaic (Jewish) Tradition admitted daughters as legal heirs only in case when no male heir survived in family, however, wife was deprived of any share even then. Widows and orphan daughters are at the mercy of male heirs all the time.¹⁹²

In Judaism, a daughter gets her share from her father's estate that she has to gift her husband as dowry at the time of marriage. At the death of her husband, she can get her dowry-property back but she cannot inherit from her deceased husband's personal property. While In Islamic law, all female heirs get their fair share in the family estate according to the *Qur'anic* rulings. Although, the share of daughter is half of the brother but still it is better than having nothing as in the religious traditions preceded Islam.¹⁹³

Rabbi Epstein¹⁹⁴ has succinctly described the Biblical attitude: "The continuous and unbroken tradition since the Biblical days gives the female members of the household, wife and daughters, no right of succession to the family estate. In the more primitive scheme of succession, the female members of the family were considered part of the

¹⁹² Sharif Abdul Azeem, *Al- Maraah Fil Islam wal Maraah Fil Aqeedah Al- Yahudiyah wal-Maseehiyah Bain al- Asturah wal Haqeeqa* (Saudi Arabia: Jameyat Tableeg Al-Islam, 2008),34.

¹⁹³ Sharif Abdul Azeem, *Al- Maraah Fil Islam wal Maraah Fil Aqeedah Al- Yahudiyah wal-Maseehiyah Bain al- Asturah wal Haqeeqa* (Saudi Arabia: Jameyat Tableeg Al-Islam, 2008),34.

¹⁹⁴ Rabbi Moshe Mordechai Epstein was born in the town of Bakst, in the Vilna district of Lithuania in 1866. He authored "Levush Mordechai" that contains his "Chiddushim" on the entire Talmud. He died in Jerusalem in 1933 and was buried in "Mount of Olives".

estate and as remote from the legal personality of an heir as the slave. Whereas by Mosaic enactment the daughters were admitted to succession in the event of no male issue remained, the wife was not recognized as heir even in such conditions."¹⁹⁵

Rabbi Epstein explained the reason behind considering the female members of the family as part of the family-estate by saying:- "They are owned, before marriage, by the father; after marriage, by the husband."¹⁹⁶

The Biblical rules of inheritance are outlined in Numbers 27:1-11. A wife is given no share in her husband's estate, while he is her first heir, even before her sons. A daughter can inherit only if no male heirs exist. A mother is not an heir at all while the father is. Widows and daughters, in case male children remained, were at the mercy of the male heirs for provision. That is why widows and orphan girls were among the most destitute members of the Jewish society. Christianity has followed the same suit for long time. Both the ecclesiastical and civil laws of Christendom barred daughters from sharing with their brothers in the father's patrimony. Besides, wives were deprived of any inheritance rights. These iniquitous laws survived till late in the last century.¹⁹⁷

Similarly, Among the pagan Arabs before Islam, inheritance rights were confined exclusively to the male relatives. The Holy *Quran* abolished all these unjust customs and gave all the female relatives inheritance shares:-

¹⁹⁵ Louis M. Epstein, *The Jewish Marriage Contract* (New York: Arno Press, 1973), 175.

¹⁹⁶ *Ibid.*, 121.

¹⁹⁷ Matilda J. Gage, *Woman, Church, and State* (New York: Truth Seeker Company, 1893), 143.

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الوَالِدَانُ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الوَالِدَانُ وَالْأَقْرَبُونَ مِمَّا قُلَّ مِنْهُ

أَوْ كَثُرٌ نَصِيبًا مَفْرُوضًا¹⁹⁸

Allah (سبحانه و تعالى) says (interpretation of the meaning): "From what is left by parents and those nearest related there is a share for men and a share for women, whether the property is small or large, a determinate share". (*AL-QURAN 4:7*)

Muslim mothers, wives, daughters, and sisters had received inheritance rights thirteen hundred years before Europe recognized that these rights even existed.¹⁹⁹

3.2 Women's Right To Work

In Judaism, the woman is expected to work after marriage and earn something to give to her husband. The *Mishnah Ketubot* (6:1)²⁰⁰ sates that the earnings of a wife belong to her husband in return of financial support that he provides her. However, if the wife is living separately and husband is not providing her any financial support, then she is not obliged to give her earnings to the husband.²⁰¹

Under Islamic Law, wife is not a co-provider for the family. She may work if she wishes to do but no one can compel her to work. It is the duty of husband to provide everything

¹⁹⁸ Surah An-Nisaa: 7

¹⁹⁹ B. Aisha Lemu, Fatima Heeren, *Woman in Islam* (London: Islamic Foundation, 1978), 23.

²⁰⁰ The first major written redaction of the Jewish oral traditions called the "Oral Torah". It is also the first major work of Rabbinic Judaism. It was redacted 220 C.E. by Rabbi Yehudah haNasi.

²⁰¹ Diana Rabbi Villa, *To Learn and To teach; Premartial Agreements: A Solution For The Agunah Problem Of Our Time* (Jerusalem: The Schechter Institute Of Jewish Studies, The Center For Women In Jewish law, 2007), 23-24

to the family. Wife has no obligation to help him in earnings or to pay him back something in return of financial support from him.²⁰²

3.3 Women's Right To Get Dower

In Judaism, the dowry is the wedding gift presented to the groom from the bride at the time of wedding. Jewish daughters get their share from father's estate and that is used as dowry at occasion of their marriage. From that moment the husband become the owner of the dowry. Although he cannot sell that but the bride losses all control over the dowry right from the time of marriage. She can regain her dowry-property only in case of divorce or her husband's death. Husband also has to present a marriage-gift to his wife but practically he is the sole owner of that gift too. Under Islamic Law, the groom has to present or promise to present a compulsory gift to bride as Dower at the time of marriage. It is a compulsory requirement for a valid marriage contract. The bride has full control over the Dower and neither her husband nor her own family has any right in that. Dower can be in form of money or property or any other valuables. She retains her rights over the Dower even after divorce. She does not have to return any of that except what she wants to give back.²⁰³

²⁰² Sharif Abdul Azeem, *Al- Maraa Fil Islam wal Maraa Fil Aqeeda Al- Yahudiyah wal-Maseehiyah Bain al- Asturah wal Haqeeqa* (Saudi Arabia: Jameyat Tableeg Al-Islam, 2008), 34.

²⁰³ Sally Priesand, *Judaism and the New Woman* (New York: Behrman House, Inc., 1975), 15.

3.4 Women's Right To Get Maintenance

In Judaism, *Maimonides*²⁰⁴ ruled in his Laws of Marriage 12:2, that a man is obliged often things towards his wife. Out these ten, three are in Torah i.e. food, clothing and conjugal rights. Food and clothing indicate her right to get maintenance. So the husband is obliged to maintain his wife during marriage, whether she lives in his house or another house.²⁰⁵

A Muslim husband is obliged to maintain his wife and family from all aspects. Even if the wife is rich and has more wealth than her husband has, he is the one who is responsible for the food, clothing, lodging etc.²⁰⁶

3.5 Financial Rights Of Women After Divorce

In Judaism, at the time of marriage, the husband guarantees to pay his wife a large sum of money in case she wants a divorce in future and he refuses to give her that, even they are living separately. Because she cannot remarry until he divorces her. It is based on the rule that the husband must support his wife and if he does not do that, he must divorce her. In case of delay in divorce, the husband has to support her during the delaying period.

²⁰⁴ He was a prominent medieval Jewish philosopher and one of the most prolific and followed Torah scholars and physicians of the Middle Ages. He was born in Córdoba (Spain) in 1135, and died in Egypt in 1204.

²⁰⁵ Diana Rabbi Villa, *To Learn and To teach; Prenuptial Agreements: A Solution For The Agunah Problem Of Our Time* (Jerusalem: The Schechter Institute Of Jewish Studies, The Center For Women In Jewish law, 2007), 23.

²⁰⁶ Ayatullah Murtaza Mutahheri, *Women and her Rights: Dower and Maintenance*. <http://www.al-islam.org/womanrights/7.htm> , (13-1-2012)

Therefore, he gives divorce as quickly as possible to avoid the heavy debt. He has to support her financially as long as she is legally attached to him.²⁰⁷

A divorced Muslim woman is entitled to reasonable maintenance within the period of *iddat* (waiting period). Her former husband pays it. In addition, not only the divorced woman gets maintenance for *Iddat* period but also her children, born out of that marriage before or after divorce, get separate maintenance for period of two years from the date of birth. She is also entitled to the amount of deferred dower (*Mahr muajal*), if unpaid, promised by her former husband to pay at the occasion of their marriage. All the property and gifts presented to her after marriage by her husband, relatives, in-laws, friends etc. should be handed over to her after divorce.²⁰⁸

3.6 Women's Right To Own Property

Until late nineteenth and early twentieth century, under Canon and Civil laws, a Christian woman was owned by her father before marriage and by her husband after her marriage. That is the reason she also has to change her family name (maiden name) after marriage. In Christianity, the married women do not have any legal personality. She even loses her property rights over the Dowry after marriage. Her acts and contracts have no legal value and can be repudiated by the husband. After marriage, she becomes a property herself that belongs to her husband.²⁰⁹

²⁰⁷ Diana Rabbi Villa, *To Learn and To teach; Prenuptial Agreements: A Solution For The Agunah Problem Of Our Time* (Jerusalem: The Schechter Institute Of Jewish Studies, The Center For Women In Jewish law, 2007), 23.

²⁰⁸ Romit Agarwal, *Maintenance: Under Hindu, Muslim, Christian and Parsi Law*, Legal service India.com, <http://legalserviceindia.com/articles/hmcp.htm> (13-1-2012)

²⁰⁹ Swidler, 142.

In Jewish law, the husband owns his wife as he owns his slave. That is why the wife has no control over her property and earnings. When a husband acquires a woman as his wife, he automatically acquires her property as well. In fact, the property of a Jewish woman is a mean to attract the suitors to marry her.²¹⁰

Women's rights under English law, as were compiled and published in 1632, included:- "That which the husband has is his own. That which the wife has is the husband's." The married women not only lost her property upon marriage but she lost her legal personality as well. No act of her was of legal value and her husband could repudiate any sale or gift made by her as being of no binding legal value. The person with whom she had any contract was held as a criminal for participating in a fraud.²¹¹

While in Islamic Law, the married woman retains her independent legal personality. Her property and earnings are under her full control. She is the sole owner of her dower and has no obligation to spend a penny out of her earnings on her husband or family. She can use, manage, sell, mortgage etc her property independently.²¹²

4. The Financial Empowerment Of Women In Islamic Law And International Law: A Comparison

The modern international foundations of human rights were produced in the aftermath of World War II. Later on, these standards were incorporated in public international law. All the States-Parties who ratify the international conventions and treaties are bound to

²¹⁰ Epstein, 149.

²¹¹ R. Thompson, *Women in Stuart England and America* (London: Routledge & Kegan Paul, 1974), 162.

²¹² Epstein, 149.

incorporate those in their national statutes as well as to enforce those effectively within their jurisdictions. Muslim countries were among the founding members of United Nations Organization and like any other country in the world. Muslim countries are also facing few challenges in ratifying and enforcing the provisions of UN conventions and treaties in their societies. Muslims sometimes charged that the international rights norms and standards had a Western or Judeo-Christian bias that precluded their acceptance in Muslim milieus.²¹³

Although, The Charter of the Organization of the Islamic Conference (OIC), an international organization of Muslim countries founded in 1973, reaffirmed the commitment of its members to the UN Charter and fundamental human rights but subsequently it issued the Cairo Declaration on Human Rights in Islam. That Declaration was diverged significantly from international human rights standards as it asserted, "Fundamental rights and universal freedoms in Islam are an integral part of Islamic Law" and proceeded to insert 'Islamic' qualifications and conditions on rights and freedoms guaranteed under international law. Moreover, it suggested that the approach of Muslims towards civil and political rights was distinguishable from that of the non-Muslims because of their reliance on Islamic law (*Shari'ah*) rules. It is in conflict with international human-rights theory that does not permit religious criteria to override rights. Moreover, there was no clear indication that how this declaration was to be reconciled

²¹³ John L. Esposito. *Oxford Encyclopedia of the Modern Islamic world*, Vol. 2 (New York: Oxford University Press, 1995), 146.

with the obligations undertaken by OIC members in ratifying international human rights covenants.²¹⁴

Islamic law (*Shari'ah*) has great influence on the legal codes as well as social fabrics of the Muslim world. That is why most Muslim countries have declared 'Islam' as state-religion in their constitutions. For example Article 2 of Constitution of Pakistan 1973, Article 2 of Constitution of Afghanistan 2004, and Article 2 of Constitution of Iraq 2005. Governments and individuals throughout the Muslim world continue to take many positions on Islamic legal heritage and international standards of human rights but remain divided on compatibility of the two. ²¹⁵

4.1 The General Compatibility between Islamic Law and International Law

The compatibility between Islamic Law and International Law on the topic of women's human rights is a highly debated issue. In this regard, the scholars of Islam may be generally divided in two main groups:-

1. The Conservatives / Traditionalists:- who believe that Islam is a complete code of life. It has its separate and distinct systems of rights and duties. Hence, they resistibly argued against imposition of any foreign human rights system.

²¹⁴ John L. Esposito, *Oxford Encyclopedia of the Modern Islamic world*, Vol. 2 (New York: Oxford University Press, 1995), 146.

²¹⁵ Tad Stahnke, Robert C. Blitt, *The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries* (Washington, DC: United States Commission On International Religious Freedom, March 2005), 6.

2. Liberalists/ Modernists:- who realize timely the tension between Islamic system of human rights and international standards on the same and they are deliberately attempting to come up with some sort of reconciliation.

The Traditionalists/ Conservatives are further divided into following groups :-

1. Old Traditionalists:- who try to accommodate the apparently discriminatory rules of *Shari'ah* (Islamic Law) into their human rights schemes.
2. New Traditionalists:- who tend to create, through reinterpretation of Islamic tradition, an indigenous Islamic cultural foundation for human rights.

Majority of Muslim states have adopted the conservative interpretation of Islamic law so they have taken the position that international human rights standards are not applicable wholly or partially in their domestic jurisprudence. The two most prominent examples of this category are Iran and Saudi Arabia. Notably, Iranian state has been experimenting, in different periods of history, with both schools of Traditional thought.

Some of other Muslim countries have followed the liberalist approach and ratified the international human rights instruments, including women's rights conventions, with certain reservations and qualifications. Their argument is that such international instruments would be implemented in their domestic jurisdiction to the extent that these would not conflict with their statutory laws /Constitution or the *Shari'ah* (Islamic Law). Pakistan is an ample example of this. There are some exceptional cases among Muslim countries which do not fall in any of the above groups as they have ratified the international instruments of human rights without any reservation. Such as Afghanistan

that have ratified the 'Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979' without any reservation in March 2003.²¹⁶

Naturally, along with the legal codes, the social and cultural norms prevalent in the Muslim states are immensely influenced by Islamic values. Therefore, a Muslim country, whose majority population is following Islamic traditions and who is also bound to incorporate the international conventions regarding women's rights in her national laws, can be a good study in terms of understanding all the theoretical and practical perspectives regarding process of women's financial empowerment. Pakistan, being Islamic state with Muslim majority, is facing some challenges in enforcing international women's rights standards within her boundaries. As the CEDAW is principal treaty dealing with human rights of women, so the following analysis will highlight the extent of effective implementation of CEDAW in Pakistan.

4.2 Pakistan; An Example of Fusion of Islamic as well as International Standards of Women Empowerment

In 1979, UN General Assembly adopted Convention on Elimination of All Forms of Discrimination against Women (CEDAW). It is a universal human rights instrument to advance women's rights in all parts of world. Pakistan has ratified CEDAW in 1996 with a reservation regarding Article 29(1) of CEDAW and incurred legal obligation to incorporate the provisions of CEDAW in order to eliminate all forms of discrimination against women within her jurisdiction. Despite the ratification, grave discrimination against Pakistani women persists in all aspects of their lives. In Pakistani society, social

²¹⁶ Anis Ahmed, *Women and Social Justice: an Islamic Paradigm*, Second Edition (Islamabad: Institute of Policy Studies, 1996), 40.

and cultural norms and traditions not only dominate the legal discourse but also determine its implementation. The following discussion revolves around the interplay of CEDAW, national laws, religious norms and discriminatory customary practice in Pakistan. All these are closely linked with and responsible for the marginalization of Pakistani women.²¹⁷

The Current Situation Of Women's Financial Rights In Pakistan:

Mohammad Ali Jinnah, Founder of Pakistan said: "No nation can ever be worthy of its existence that cannot take its women along with the men." (Speech at Islamia College for Women, March 25, 1940)²¹⁸

The Constitution of Pakistan is characterized by its profound commitment to Islamic principles and its allegiance to a catalog of fundamental rights. It recognizes all guarantees of the UN Universal Declaration of Human Rights. Article 25 of The Constitution of Pakistan provides as under:- " All citizens are equal before law and are entitled to equal protection of law".²¹⁹

It has awarded basic human rights to all citizens of Pakistan on equal basis. It gives inclusive guarantee based on western concept of equality. It prohibits discrimination based on sex alone. It aims to eradicate discrimination against women and encourage

²¹⁷ Shaheen Sardar Ali. *Conceptualising Islamic law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of application of CEDAW in Bangladesh, India and Pakistan* (UNIFEM Regional Office: Delhi, 2006), 215.

²¹⁸ Russell Powell, *Catharine MacKinnon May Not Be Enough: Legal Change and Religion in Catholic and Sunni Jurisprudence* (8 GEO. J. GENDER & L., 2007), 23.

²¹⁹ Mazhar ul-Haq, *The 1973 Constitution of Pakistan* (Lahore: Bookland, 2011), 45.

Dowry articles (given by her parents) snatched by her husband at the time of separation or any other occasion.

Pakistani courts usually have respected the constitutional guarantee of equality and rendered Article 25 an effective tool for protecting women's rights. They have insisted that the Constitution requires neither nominal nor formal equality, but genuine and substantial equality for women, and on some occasions, they have maintained differences on the basis of sex only when they operate favorably to protect women.²²³

However, the Human Development Report 2009 (UNDP 2009) ranks Pakistan 141 out of 182 countries, as a country of poor gender equality. The 2009 'Gender-related Development Index' (GDI) ranks Pakistan 153rd out of 155 countries and the report on Gender Empowerment Measure (GEM) ranks Pakistan 99th out of almost 109 countries.²²⁴

The GDI measures gender inequality by using composite set of indices related to human development while the GEM measures gender inequality in terms of economic and political opportunities and participation. In both parameters, Pakistani women rank poorly. Similarly, according to the 'Economist Intelligence Unit's Women Economic Opportunity Index (WEOI) 2010', in "over all Women's Economic Opportunity rankings table" Pakistan ranks 108th out of 113 countries with 29.9 score.²²⁵

²²³ Ghulam Mustafa Ansari v. Punjab, 2004 SCMR 1903, Government of Balochistan v. Azizullah Memon, PLD 1993 SC 341.

²²⁴ Human development Report 2009, 'Pakistan Rankings and Indices', <http://www.undp.org.pk/7thissue/more/HDR%20launch%20in%20Pakistan.pdf> (6-1-2012)

²²⁵Leila Butt, Leo Abruzzese, William Shallcross, Mike Kenny. *Women's economic opportunity: A new pilot index and global ranking from the Economist Intelligence Unit, Findings and methodology* (London: Economist Intelligence Unit Limited , June 2010) , 7.

There may be more than one reasons behind this low ranking of Pakistan in gender-equality however, one of these is that Pakistani social setup is a patriarchal one. Usually the husband or father is the sole breadwinner of the family. Although, at present many women are also working to support financially their families but their services are less valued. In addition, in majority cases, women are deprived of right to work, own personal property, right to inheritance etc. Such violations of their financial rights are based on discriminatory social and cultural practices. Pakistani women are participating actively in the National economy in formal and informal sectors but are denied of many economic and financial rights for example equal wages, evaluation of work on same basis as of men, poor working conditions etc. When we analyze implementation of CEDAW in such perspective, the scenario becomes clear that although provisions of CEDAW, related to economic and financial rights of women, are compatible with provisions of the Constitution of Pakistan. These are also been incorporated in national policies of Pakistan but there is severe lack of 'proper implementation and enforcement mechanisms' and 'concrete policy measures' to materialize and safeguard those rights of women.²²⁶

²²⁵ National Commission for Justice and Peace, Democratic Commission for Human Development, *Discrimination Lingers on...A Report on The Compliance of CEDAW In Pakistan* (Lahore: Pakistan, February 15, 2007), 8.

4.3 Implementation of Articles of CEDAW In Pakistan Related to Women's Financial And Economic Rights:

The following discussion will highlight, in Pakistani perspective, the extent of the implementation of articles 3, 11, 13 & 16 of CEDAW related to the economic and financial rights of women.

- **Article 3 of CEDAW** obliged the States-Parties to take all necessary measures to empower women in political, social, economic and cultural fields. To implement this, a National Plan of Action 1998 and many 'Annual Women Development Plans' were formulated for social, economic and political empowerment of women. However, the Pakistani Government abandoned all these later on. In 2000, National Policy of Development and Empowerment for women was announced by the Govt. its main objective was to take all necessary measure to ensure the equal participation of women in national development. However, it failed to formulate any mechanisms to achieve these objectives. In 2002, A National Commission on the Status of Women was established. It failed to perform any effective role as it was given only **recommendatory powers**. It also lacks financial resources. Ministry of Women Development was aimed to device policy for protection and promotion of women's rights. However, it focused more on projects than policies.²²⁷

²²⁷ National Commission for Justice and Peace, Democratic Commission for Human Development, *Discrimination Lingers on...A Report on The Compliance of CEDAW In Pakistan* (Lahore: Pakistan, February 15, 2007), 16.

• **Article 11 of CEDAW** states economic rights of women for example right to employment, safe working conditions, maternity leave with payment etc. Article **18 of the Constitution of Pakistan** ordained equal rights and freedom of trade, business, profession and employment to all Pakistani citizens including women. **Article 37 of the Constitution of Pakistan** obliged the state to make sure the humane and just working conditions at work place to every worker without any discrimination based on gender. Besides these constitutional provisions, the Pakistani Govt. committed 25% quota for women in National Plan of Action in 1998. However, the final announcement was made of 5% reservations for women in government jobs. Later on, the province of N.W.F.P. (now *Khaibar Pakhtoon khawah*) reduced that to 2% while Punjab and Baluchistan did not even endorse that. In 2003, the following government discontinued this quota. Moreover, there is lack of adequate protective labour laws for women. In addition, women's low education status is a major cause for their low economic status.²²⁸

The Government of Pakistan also took some positive steps in this regard and signed the International Labour Organization (ILO) Convention 100 for equal remuneration. But up till now, no national legislation is made in this regard. On the provision of the Pakistani Govt., the *Khushali* Bank and the First Women Bank has initiated the credit to women in rural areas. CEDAW advocates support for women's reproductive and productive labour.

²²⁸ National Commission for Justice and Peace, Democratic Commission for Human Development, *Discrimination Lingers on...A Report on The Compliance of CEDAW In Pakistan* (Lahore: Pakistan, February 15, 2007), 38.

But practically, there is no provision added in national law of Pakistan that pertains to the remuneration of women's productive or informal labour.²²⁹

- Article 13 of CEDAW states that all forms of discrimination against women should be eliminated in areas of economic and social life. In addition, the rights of women to family benefits, financial credits for example bank loans, mortgages etc., should be secured. In this regard, the Article 38 of the Pakistani Constitution obliged the state to take all necessary steps for the promotion of social and economic well being of Pakistani citizens. The First Women Bank granted loans to 23,240 deserving women from 1989 until 2003. The National Development Finance Cooperation disbursed 0.1% loans to women. While Industrial Development Bank of Pakistan gave 0.5% loans to women. Women are the lowest borrowers of loans due to their low-income generation capacity, less ownership of productive assets like land, lack of access to labour markets and economic options. In addition, rural women have little knowledge about government sponsored credit schemes and loan facilities, so they remained ignorant and deprived. Although, the Pakistani Govt., launched a program named '*Jafakash Aurat*' in 2005-2006. This program was aimed for the economic empowerment of women. It was launched in N.W.F.P. (now *Pakhtoonkhwa*), Punjab and Baluchistan. However, it failed to produce any positive results as it's

²²⁹ Shaheen Sardar Ali, 261-262.

beneficiaries were mostly the privileged rural households, that were only a fraction of Pakistani rural women.²³⁰

- Article 16(g) & (h) of CEDAW exerts wife's equal right to inheritance, ownership, management, administration, enjoyment and disposal of property on an equitable basis with husband. While in Pakistan, the national inheritance laws based on the personal laws of *Shia's* and *Sunnis* are recognized in national courts. However, the prevalent customary practices are discriminatory in the sense that mostly women heirs are deprived of their share in property and sometimes are forced to marry within family to retain the estate.²³¹

According to Muslim Personal Laws, women do not have equal right to inheritance to that of men. Usually females are entitled to half share of brothers. The proportion given to women heirs depends on the number of heirs among the family especially the male heirs. The social tradition does not consider women as eligible heirs to inherit the property at all.²³²

Concluding remarks of the chapter are that the rights afforded to women in the Islamic tradition emanate from its main sources, i.e., the Holy *Quran*, *Hadith*, *Ijma* (Consensus) and *Qiyas* (Analogy). A consensus as well as analogy stem from an important source of

²³⁰ National Commission for Justice and Peace, Democratic Commission for Human Development, *Discrimination Lingers on...A Report on The Compliance of CEDAW In Pakistan* (Lahore: Pakistan, February 15, 2007), 44-48.

²³¹ Ali, Shaheen Sardar, 261-262.

²³² National Commission for Justice and Peace, Democratic Commission for Human Development, *Discrimination Lingers on...A Report on The Compliance of CEDAW In Pakistan* (Lahore: Pakistan, February 15, 2007), 53.

Shari'ah termed as *Ijtihad*. By practicing *Ijtihad*, a *mujtahid* (Muslim jurist who is qualified to interpret the Islamic law) deduces the *ahkam* (provisions of law) of the *Shari'ah* for issues and problems regarding which there is no specific express text (*nass*), by relying on legal sources and principles and by benefiting from the ideas of other *mujtahidun* (Muslim Jurists). To protect Islamic law from the dangers of innovation and distortion the great scholars of *usul* laid down rigorous conditions to be fulfilled by anyone wishing to claim the right of *Ijtihad* for himself. A jurist must be a master of the Arabic language. He must have proficient knowledge of theology, the revealed texts and the four schools of thought. A jurist must have a comprehensive knowledge of legal theory, *usul al-fiqh*, which governs the interpretative principles of legal language and the method of investigating the texts, the *asbab al-Nuzul* and the *asbab alwarud*, the *naskh* *wal mansukh* etc. He should have thorough knowledge of the *Qur'an* and *Hadith* and in the exegesis (*Tafaseer*). He must know what parts of the law have become subject to consensus (*Ijma'*) as *Ijtihad* was further restricted to exclude those cases that had become the subject of consensus (*Ijma'*). He must be a pious and practicing Muslim. He should first seek the solution of a legal problem in the specific terms of the *Qur'an* and the *Sunnah*, applying the accepted methods of interpretations and construction, including, the doctrine of *Naskh*, *asbab* etc., before considering *Ijtihad*. Most importantly, a *mujtahid* must attain the knowledge of *maqasid* (the objectives of Islamic law). *Shatibi*²³³ accentuated the knowledge of the *maqasid* as a prerequisite of attainment to the rank of a *mujtahid*. These objectives look mainly at the general philosophy and purposes of the textual injunctions of the *Qur'an* and *Sunnah* beyond the specialties of the text. The focus

²³³ Imam Abu Ishaq al-Shatibi was an Andalusian Sunni Islamic legal scholar following the Maliki madhab. He died 1388 (8th Shabaan 790 H) in Granada.

is not so much on the words and sentences of the text as on the goal and purpose that is advocated and upheld.²³⁴ Because of this, it may be said that *Ijtihad* plays the role of an evolutionary and dynamic force in legal studies that provides solutions to contingent issues of life and fulfils the needs of changing times and the requirements of new phenomena of human civilization. Therefore, Islamic fiqh does not suffer with inertia, stagnation and passivity towards the demands of the times, of life and its manifestations; it also advances along with them. It is for this reason that it has been said that *Ijtihad* has been throughout Islamic history the force that has been constantly developing and expanding the boundaries of fiqh with respect to its applications, while maintaining the stability of legislation. Thus, *Ijtihad* is essential for Islamic fiqh, without which it cannot be dynamic, revolutionary and progressive.²³⁵ Historically, however, with the emergence of the four schools of juristic thought, it was declared that 'the doors of *Ijtihad* had closed forever' to put a stop to further elaboration and controversies that were becoming prevalent and that independent juristic reasoning and hence legal development in keeping with the times, was precluded forever. Over the centuries Islamic law developed by drawing upon the above sources and juristic techniques. *Shari'ah* became rigid and less amenable to changing needs of time. *Shari'ah* by its very definition has evolution built into its meaning and cannot be rigid. Once Muslim scholars succeed in overcoming this psychological barrier of not being able to work on reforming the *Shari'ah*, whole new vistas for evolving concepts such as human rights in cross-cultural discourse would open up, as the basic tone and complexion of Islam is reformative, enjoining upon equity and

²³⁴ Mohammad Hashim Kamali, *Maqasid al-Shari'ah: The objectives of Islamic Law* (Pakistan, Islamabad: Islamic Research Institute, International Islamic University, 1999), 15-18.

²³⁵ Muhammad Ibrahim Jannati, "Ijtihad: Its Meaning, Sources, Beginnings and the Practice of Ra'y," *Al-Tawhid Islamic Journal* 5 (February 1999): 67-68.

justice for all. The ethical voice of the Quran is said to be egalitarian and nondiscriminatory. The Quran, therefore, also contains verses validating the creation and reinforcement of hierarchies based on gender and resources. But these verses are very few, not exceeding 6 out of a total of 6,666 that make up the text of the Quran. Yet it is difficult to understand why and how these 6 verses outweigh the remaining 6,660, and the position of women in Islam appears to be determined solely on rules derived from a literal and restrictive reading of these few verses. A number of scholars have challenged the restrictive interpretations of the religious text in Islam. These scholars have attempted to present alternative interpretations to the *Qur'anic* verses that declare the inherent superiority of Muslim men by arguing for a radically different construction to be placed on them. If this is accepted open heartedly then no problem remains in adopting the women's rights in accordance with international human rights standards. Moreover, it will be easy for Muslim countries to implement international human rights treaties along with prevalent religious norms.²³⁶

²³⁶ Shaheen Sardar Ali, *Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan*, (New York: United Nations Publication, 2002), 7.

CONCLUSION AND RECOMMENDATIONS

Conclusion

In true Islamic philosophy, the woman is considered “shrine of sanctity”. The Holy Prophet *Muhammad* (Peace Be upon Him) described her respectful status in following words:- “Paradise lies at the feet of your mother”. This conception is unprecedented and totally in contrast with Christianity where a woman is a source of all evils and brought eternal Hell.²³⁷

The status of Women in Islam is well defined in the following verse of the Holy *Qur'an*.

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Allah Subhana WA Ta'ala says (meaning of the interpretation)... “And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And *Allah* is exalted in Power, Wise.” (*AL-QURAN* 2:228)

The degree granted to men higher than women is not a degree of dominance but it is to compensate the extra financial burden on men's shoulders. In fact, no other religion or law except Islam has given women so many rights including financial and economic rights. In words of Judge Pierre Crabitès ²³⁸: “ ...*Muhammad*, fourteen hundred years

²³⁷ Prof. Muhammad Imran, *Distortions about Islam In The West*, (Karachi: Pakistan, Islamic Research And Publication Bureau, 2007), 166.

²³⁸ Judge Pierre Crabitès was born in the French Quarter of New Orleans, Louisiana, 17 February 1877. He was offered a seat on the Mixed Courts of Egypt in 1911, and he sat on the bench in Cairo for the next twenty-five years, rendering decisions on many important cases, including the case for the sequestration rights to the tomb of the Pharaoh Tutankhamen. His career as a judge on the Mixed Courts coincided with a period of British dominance over Egypt. He published many books and articles, and these works exhibit the environment in which he grew up and his anti-British opinions. These anti-British feelings ultimately

ago, assured to the mothers, wives and daughters of Islam a rank and dignity not yet generally assured to women by the laws of the West.²³⁸ However, to realize this vibrant truth, the West must shed its prejudice towards Islamic teachings and must adopt them in order to eliminate the exploitation of women and to empower them in true sense.²³⁹

There is great balance of rights and duties of men and women in Islamic legal theory. Women and men are equal as human beings. Their rights are equal as well but not identical. In some situations for example, inheritance, the share of female heir may seem less than male heir's but this difference is well-balanced by placing no financial obligations on women's shoulders. However, the application of Islamic legal theory in several Muslim countries, including Pakistan, is discriminatory. Where these states argue that there is a link between man's duty to provide maintenance and his double share in inheritance, they neglect to mention that his failure to maintain his family does not disqualify him from his privileged share of inheritance. This can be compared with the situation where a wife has to be obedient to her husband in return of maintenance he is providing her. That is why, in case of her disobedience (*Nushuz*) she disqualifies for maintenance or backdated maintenance in divorce proceedings. So it is recommended to reconsider the logic behind the legal theory especially when the Holy *Qur'an* and *Sunnah* also invite for thinking and rethinking. The rights granted to women by Islamic law, almost 1500 years ago, were progressive in nature to match the time and context. Even today, their true implementation requires contemporary interpretations to cater the needs of modern times. These human interpretations are not divine in nature. Rather they can be

barred his appointment to the Mixed Courts' Court of Appeals and later hindered his work for the OSS. After serving on the Mixed Courts for twenty-five years, Crabitès took up a post lecturing on law at Louisiana State University.

²³⁹ Prof. Imran, 166.

subject to changes according to needs of time without transgressing the general rules prescribed in basic sources of Islamic law i.e. the Holy *Qur'an* and *Sunnah*. In this sense, these laws can be complied with international human rights standards not conflicting with general norms of *Shari'ah*. Many common grounds can be found between Islamic laws regarding women's rights and International Conventions on the same. The international standards for women's rights can be promoted as intrinsic to the Islamic conjuncions. Moreover, the States-Parties, especially Muslim states having laws influenced by *Shari'ah*, should encourage the incorporation of international human rights standards for women namely CEDAW in their national laws. They should also promote the notions of equality and non-discrimination in their legal and social policies etc. to empower women in all areas including financial matters.²⁴⁰

At the international level, the concept of women's empowerment was recognized from modest beginnings in UNO Charter, Universal Declaration of Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR), and the International Convention on Economic, Social and Cultural Rights (ICESCR). These initiatives got tremendous impetus in decades of seventies, eighties and nineties. Then the Four World Conferences for women's rights expanded the boundaries of women's rights to a point where almost every aspect of women's lives were touched. Then CEDAW proved to be the International bill on women's rights and played a great role in advancing women's rights. For the first time in history, CEDAW discussed the financial and economic rights of women in detail. Its implementation in States-Parties is still not up to the mark due to the weak and ineffective enforcement mechanisms at state level, yet a significant first

²⁴⁰ Jana Rumminger, Jannie Moussa, Zainab Anwar, Musawah: For Equality in the Family, *CEDAW And Muslim Family Laws: In Search of Common Grounds*, (Malaysia, 2011), 36.

move towards women's empowerment has been made. At the level of domestic law, especially in the case of Pakistan, the rigid interpretations of religious laws and customary practices are challenging the process of women empowerment the most. However, in recent years, the Muslim women have stood up against these discriminatory customary practices and rigid interpretations of religious laws. From now on, it is a task of exploration of egalitarian and equitable spirit of Islamic legal theory of women's rights and materializing it in its true sense.²⁴¹

²⁴¹ Ali. Shaheen Sardar, 271-272.

RECOMMENDATIONS

The journey of women to equal rights with men within international human rights system and domestic laws in countries round the world has indeed come a long way. Women are inching their way towards equality, financial empowerment and non-discrimination in a long-term process. Women's human rights, especially financial rights, are incapable of being ignored any more. Few general recommendations are being presented to further improve the situation in favour of women's empowerment.

Initiation of Public debate within Muslim societies regarding 'international human rights system and interpretations of religious laws':-

Islamic law is the dominant validating force in Muslim societies and *Ijtihad* is a very vast field having great potential to explore the gender empowerment spirit of Islam. Although some areas of Islamic law cannot be touched which are absolute and fixed by Islamic law e.g. Compulsory inheritance rules described in the *Qur'anic* verses. However, there are many other doctrines of Islamic law, e.g., relating to participation and access of women to various fields of life, that can be reviewed to cater the needs of contemporary time. These include women's right to work, access land, choose profession, be appointed as judges, claim to financial credit and stand for public office etc. In this regard, various round table discussions, talk shows, seminars etc should be conducted with the aim of knowing the opinions of different stakeholders in society for example, human rights activists, Non Governmental Organizations' representatives working for women's rights, *Ulema* (religious scholars), policy makers, politicians, working-women, women

homemakers etc. This will encourage an open and inclusive atmosphere to express diversity of opinion as well as a broad vision about progressive and contemporary interpretations of religious laws using the technique of *Ijtihad* (juristic reasoning). Moreover, It will provide a chance of full participation of those marginalized segments of society especially women that remained silenced in history.

Reappraisal of Islamic Law of Property and Inheritance Rights:-

Islamic principles related to property and inheritance rights and early practices demonstrate a very different picture from today's practices prevalent in Muslim countries. For instance, Islamic law compensates the reduced share of women in inheritance by granting her right to generate wealth from other means. For example, earnings through work, marital gift (Dower), maintenance, beneficent interests under endowments/ trusts, special supplements such as savings from absence of financial obligations within the family. However, in practice, this system failed, as there is no mechanism to ensure that the women are compensated for her fewer shares in inheritance.

- In fact, there are different players in a woman's life who make choices at different stages of her life according to what suits them. Mostly under the pressure of family and society, women may give up their inheritance right to land for some compensation or without any. In this way, customary norms penetrated in familial and social structures overcome the Islamic principles. At this point, there is a great need of reappraisal of Islamic law of

property and inheritance in its true spirit. Only that can empower Muslim women financially.²⁴²

Proper mechanisms to implement the substantive provisions of CEDAW:-

In recent decades, the human rights recognized under the Universal Declaration of Human Rights 1948 have become the yardstick for the legitimacy of every government. That is why almost all Muslim countries have ratified international human rights treaties including CEDAW. In this way, they are incurring a legal obligation to acknowledge basic human rights for women. However, Muslim States-Parties have offered reservations to certain provisions of CEDAW, relating to gender- rights, on basis of their religious laws. In fact, these countries have adopted conservative and patriarchal interpretations of religion. The differences between international human rights standards and Islamic norms regarding women's rights are reconcilable. In this regard, the laws favorable to women should be enforced and all discriminatory laws should be repealed. The reservations to the Articles of CEDAW should be withdrawn or at least the exact *Shari'ah* injunctions should be indicated with which these are in conflict. Moreover, the religious imperatives should be distinguished from socio-cultural practices and patriarchal policies.²⁴³

²⁴² UN HABITAT (2005) 'Paper 5: Muslim Women And Property', Islam, land and Property: Research series, Nairobi: Kenya, p 15

²⁴³ Ibid, p 16

All barriers to women's mobility and accessibility to economic, social, legal and political resources need to be removed :-

Women must be allowed to participate as equal citizens in all spheres of life. Any legal protection or customary practice in the name of religion to prevent Muslim women from active participation in economic, social, legal and political spheres of life should not be sanctioned. Discriminatory practices should be eliminated especially those which are outside the ambit of religion and universally accepted standards of social justice. The root-cause of discriminatory behavior towards women is their exclusion from decision-making process that affect them a lot at all stages of life. Civil society in Muslim countries can play a great role as they are doing it in form of anti-poverty and microfinance programmes. In such programmes, the great potential of women is recognized by being part of their own solutions and empowerment. In this way, the opportunities for the participation of women are enhanced as well. This has made women quite visible and effective in society because engagement in economic activity not only has positive effect on their social and domestic status but also improve their ability to participate in process of decision-making.²⁴⁴

Women must be educated about their economic and financial rights sanctioned by law:-

Legal literacy to women about their rights is an immediate need of time. Awareness about their economic and financial rights is very first step towards their financial empowerment. Moreover, the lower tiers should be involved in judiciary and law

²⁴⁴ Ibid. p 16

enforcement agencies to depart the legal awareness at grass-root levels. It is critical for effective implementation of domestic and international human rights standards for women. In addition, different advocacy campaigns and awareness-raising programmes at grass-root levels should be organized to tackle the personal biases. In this way, women can debate issues that concern them and can spread greater gender sensitive consciousness.²⁴⁵

Enforcement of gender justice through judicial activism:-

Human rights granted by substantive law can be enforced effectively through courts of law. However, women have very little access to law generating apparatus of state so there is a great need to strengthen the gender-sensitive legal institutions. The access of women to the legal system should be made feasible and easy. It is evident that the superior judiciary has played an active role in resolving the issues relating to gender-justice. The higher judicial platforms have pushed the boundaries of Muslim women's rights. In this regard, the judgments of Superior courts in *Hudood* cases in Pakistan are an ample example of judicial activism for promotion of gender-justice.²⁴⁶

Encouragement of nuanced understanding of culture within more expansive understanding of universal human rights:-

The international human rights standards are important to Muslim women because they guarantee them a voice in defining their cultures. However, the cultures themselves are very important as they determine the extent of implementation of international standards

²⁴⁵ Ibid. p 17

²⁴⁶ Ibid

regarding women's rights. So, both should go hand in hand to complete the process of financial empowerment of women. ²⁴⁷

Priority should be given to women's economic empowerment:-

The core characteristics of women's empowerment have economic dimensions so the priority should be given to women's economic empowerment. In this regard, high-level policies should be made to enable women to access resources such as land and capital. Banks and other financial intermediaries should offer schemes and packages to respond to the needs of their female clients. Institutions should be established to enhance women's technical and legal literacy as well as their managerial and business skills and entrepreneurial capacity. Gender- responsive national policies and programmes should be made to encourage planning, finance, trade and employment of women. ²⁴⁸

²⁴⁷ *Musawah*, 42.

²⁴⁸ UNDP, *Innovative Approaches To Promoting Women's Economic Empowerment* (New York, 2008)107-108

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