

Family Laws and the Qur'an

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Islamic family laws, which cover important matters such as marriage, divorce and inheritance, have had a pivotal place in the Shar'ia. There are more Qur'anic teachings and prescriptions on establishing justice, kindness and compassion in the domain of family relationships than on any other subject.

Dr Abdalati defines family as "a human social group whose members are bound together by the bond of blood ties and/or marital relationship." The Qur'an enacted critical reforms for improving women's position in the family by introducing new laws as well as by reforming customary practices. These reforms are a significant part of the classical Islamic family laws.

To understand the Qur'an's profound impact on women's position in pre-Islamic Arab society, it is important to remember that in this society female infanticide was not an uncommon practice. The Qur'an itself refers to the burying alive of newborn girls in two specific passages, namely Surah *At-Takwir*: 8-19 and Surah 16: *An-Nahl*: 57-59.

In a society in which even the most fundamental of human rights, namely, the right to life, was not guaranteed to women, the Qur'an introduced the idea that men and women were equal in the sight of God. In numerous passages the Qur'an referred to the simultaneous creation of humanity by God. Totally missing from it is any hint of the belief that woman was created from man's rib; that she was responsible for man's expulsion from paradise or that she was created to be his 'helpmate'. These beliefs are derived from Genesis, the opening book of the Bible, and not from the Qur'an.

Women's inferior position in pre-Islamic Arabia was reflected, amongst other things, in the predominant marriage contract which closely resembled a sale through which a woman became her husband's property. Having no say either in the initiation or termination of her marriage, a woman followed her husband to his tribe and bore children who were considered to be of his blood. Since she left her tribe, a woman received no inheritance from her family (particularly if the inheritance consisted of fixed property, such as land). As a wife, she was totally subject to, and dependent upon, her husband and his family. It is against such a background that the Qur'anic prescriptions relating to family law must be seen in order to understand their full import.

The Qur'an sees man and woman as complementary and regards their

union as a source of blessing to both. Marriage is envisaged as a relationship based on love, harmony and companionship. It is regarded as a strong bond but is, nonetheless, a contract and not an irrevocable sacrament. Marriage is to be based on the consent of both parties. A woman's consent, however expressed, is necessary before a marriage contract becomes valid. "It follows," as pointed out by Dr Jamal Badawi, "that if an arranged marriage means the marrying of a female without her consent, then such a marriage may be annulled if the female so wishes."

The Qur'an does not regard difference in economic or social status to be an obstacle to marriage. The chief criterion in the selection of a spouse is virtue or righteousness. While there is no mention of dowry which a woman is expected to bring into her marriage from her parent's house, the Qur'an makes *mahr* (dower) which a man must give, not to his bride's family but to her, a prerequisite for the consummation of marriage unless the wife willingly forgoes it.

According to Qur'anic teaching, men and women have equitable and proportionate rights and responsibilities within a marriage. But recognizing the weak and vulnerable position of women in society, the Qur'an shows particular concern for protecting women's rights not only in the context of marriage, but also in cases of slander, divorce, maintenance and the care of children, etc. In case of marital problems, the Qur'an recommends that steps be taken by arbiters from both sides to attempt to resolve the problems and save the marriage. However, if a marriage cannot be saved, it should be dissolved in a spirit of kindness and equity.

One of the institutions on account of which Islam has been most attacked by non-Muslims is polygamy. However, there is only one Qur'anic passage where specific reference is made to polygamy as a social institution. Permission to take more than one wife is given under highly exceptional circumstances and with stringent conditions attached. That polygamy was permitted only in the context of safeguarding the property or rights of orphans is clear from a close reading of Surah 4: *An-Nisaa'*: 2-3.

One of the most revolutionary steps taken by the Qur'an for the empowerment of women was to give women the right of inheritance. Few women in the world have had this right until the modern period. According to Qur'anic prescription not only could women inherit on the death of a close relative, they could also receive bequests or gifts in the lifetime of a benevolent caretaker. The fact that women – to whom no financial responsibility was ascribed - were given a share in inheritance indicates the Qur'an's concern to give women financial autonomy and security.