

Laws Regarding Family Inclusive of Marriage, Dowry, Custody, Divorce, Maintenance and Inheritance

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ABSTRACT

Family law is a branch of law that governs the relationships and obligations between individuals within a family, covering areas such as marriage, dowry, custody, divorce, maintenance, and inheritance. These laws serve to protect individuals, ensure justice, and provide solutions to various familial conflicts. The importance of family law cannot be overstated, as it establishes the legal framework that defines rights and responsibilities in a family structure. It not only ensures the protection of rights but also aims to resolve disputes and guide individuals through the complexities of family life. The laws vary from country to country, influenced by cultural practices, religious beliefs, and social norms. Marriage is the legal union between two individuals, recognized by law, which establishes certain rights and responsibilities. This paper aims to present that certain social practices are not condition for marriage, and laws prohibit these practices such as dowry etc. similarly it discusses Custody laws that primarily focus on the protection and welfare of children in cases of marital separation or divorce. When parents separate or divorce, the court determines which parent will have physical and legal custody of the children. Along the side it also discusses that Divorce is the legal dissolution of a marriage, and family laws provide the procedures and grounds for divorce. The aim of divorce laws is to ensure that both

parties are treated fairly and that any dependents, especially children, are not adversely affected by the dissolution of the marriage. It also touches the issue of maintenance and inheritance laws that refers to the financial support provided by one spouse to the other after divorce or separation, or by parents to children for their upkeep and inheritance laws determine how a deceased person's estate is distributed among heirs, ensuring that family members receive their rightful share of assets according to the order of succession.

Keywords: Marriage, Dowry, Custody, Divorce, Maintenance, Inheritance

Introduction

The laws governing family relationships, including marriage, dowry, custody, divorce, maintenance, and inheritance, play a crucial role in ensuring justice, equality, and protection for all family members. They are designed to address the complexities of familial ties, offer a mechanism for dispute resolution, and promote fairness within the family unit. Family law continues to evolve in response to changing social norms and needs, reflecting the diverse cultural, religious, and societal practices across different regions. Understanding and enforcing these laws is vital to protecting individuals' rights, particularly those who are vulnerable, such as women and children, and to ensuring the stability and harmony of families in society. The legal rights of women have long been a source of misunderstanding, which may have contributed to the belief, held by some misconception, that women have a God-given inferiority to men. While looking at the legal rights of women, a basic understanding of Islamic law is necessary which is totally different. Sharia is the law of God and it is incumbent upon Muslims to observe it¹. The divine sources of Sharia are the Qur'an and the authentic teachings of Prophet Muhammad ﷺ. For the most part, the Qur'an and Sunna provide general principles of conduct with a limited number of specific legal rules.² Islamic law from its source to shaping into a legal system. It has been shown that ultimate objective of development of legal reasoning is to increase humane welfare, as is always

¹ M.F.Osman, Sharia in contemporary society, Multimedia vera International, 1994, p.18 <http://www.mwllusa.org>

² Gillani, Syed Hasnat Ahmad Shah, and Mufti Muhammad Anas Rizwan. "Khīyyār Al 'Aib: A Tool for Achieving Fairness in Financial Transactions." *AL-ASAR Islamic Research Journal* 2, no. 3 (2022). Gillani, Syed Hasnat Ahmad Shah, and Mufti Muhammad Anas Rizwan. "Khīyyār Al 'Aib: A Tool for Achieving Fairness in Financial Transactions." *AL-ASAR Islamic Research Journal* 2, no. 3 (2022)

is in the case of Muqāsid al Shari'ah. Fuqahā the jurist of Islamic law developed this legal system relying upon these resources . Through the process of ijihad (personal reasoning) the divine teachings can be interpreted and implemented to address the changing circumstances of Muslims, thus, ijihad is one of the most important source of Islamic law after the Qur'an and reliable sources of Sunna. ¹.

The Islamic concept of justice should be taken into consideration while discussing legal rights, particularly those of related to personal laws. Especially when it comes to women's legal rights, the two most contentious issues are inheritance and witnessing. The divine and eternal laws of sharia must be upheld while admitting that more study by Islamic scholars is required in certain areas to handle evolving situations and, if required, to reformulate fiqh.

Marriage Laws: Definition, Requirements, and Legal Framework

Marriage laws regulate the legal union between individuals, defining the rights and duties of both spouses. They establish the requirements for marriage, such as the legal age of marriage, consent, and the procedures to formalize the union (e.g., registration, documentation, and solemnization). In addition to the formal aspects, marriage laws also comprehending different issues such as polygamy, forced marriages, and the conditions under which a marriage can be considered invalid² and the validity of marriages under various conditions. These laws provide a platform for individuals to ensure the recognition of their relationship and offer protection in terms of property rights, financial security, and support.

Dowry Laws: Prevention of Exploitation and Legal Boundaries

Dowry laws aim to prevent the exploitation and abuse of women due to dowry demands. Dowry refers to the practice where the bride's family provides gifts, money, or property to the groom's family. In many countries, dowry-related harassment is punishable by law, and specific laws have been enacted to eliminate this harmful custom. These laws ensure that dowry cannot be demanded as a precondition for marriage and that any dowry disputes are addressed through legal measures to prevent violence and financial exploitation. In many jurisdictions, marriage is viewed as a contract that legally binds the partners to certain duties, including mutual respect, care, and loyalty. The concept of dowry has been

¹ Muhammad Hashim Kamali, Principles of Islamic jurisprudence, Islamic Texts Society,1991,p.366.

² Abdul Latif, Syed, Concept of Society in Islam and Prayers in Islarn, Hyderabad printing works, Hyderabad Deccan, 1937·P23

prevalent in various societies, where one party, typically the bride's family, provides gifts, money, or property to the groom's family. In some regions, dowry laws have been enacted to curb the misuse and exploitation related to dowry practices. In countries where dowry is still practiced, the law often requires a written agreement or formal acknowledgment of dowry-related transactions. Legal measures are in place to punish those who harass or abuse others based on dowry-related disputes, protecting women and families from such exploitation.

Child Custody Laws: Protecting the Rights of Children and Parents

Child custody laws determine the care and upbringing of children following parental separation or divorce. These laws emphasize the child's best interests as the primary factor in custody decisions. Courts evaluate factors such as the child's age, health, and emotional attachment to each parent, and the ability of each parent to provide a stable and supportive environment. Custody laws prioritize the best interests of the child, considering factors such as the child's emotional and physical well-being, the parents' ability to provide care, and the child's own wishes if of sufficient age. There are typically two types of custody: physical custody (where the child lives) and legal custody (the authority to make decisions regarding the child's education, healthcare, and general welfare). Shared custody arrangements are common in many jurisdictions, where both parents share time and decision-making responsibilities.

Divorce Laws: Grounds, Procedures, and Legal Implications

Divorce laws provide the legal framework for ending a marriage, including grounds for divorce, the process of dissolution, and the division of marital assets. In many jurisdictions, divorce can be initiated on fault-based grounds (e.g., adultery, cruelty, abandonment) or no-fault grounds (irreconcilable differences). Divorce laws also determine the distribution of property, alimony, and the custody of children. The goal is to ensure that both parties are treated equitably and that children are protected from the negative effects of marital dissolution.¹

Maintenance Laws: Financial Support for Spouses and Children

Maintenance laws ensure the provision of financial support for spouses and children following separation or divorce. Maintenance (or alimony) laws address situations where one spouse, typically the wife or children, is financially dependent and unable to support themselves after divorce. The amount of maintenance is determined by factors such as the paying

¹ Lois Lyrna al Faruqi Women Quemic Society", American Trust Published, 1994, p33

spouse's ability to provide, the recipient spouse's needs, and the standard of living during the marriage. Maintenance can be temporary or permanent depending on circumstances. In many legal systems, maintenance is an essential part of divorce settlements, ensuring that the spouse who is financially disadvantaged or unable to support themselves receives adequate support. Maintenance laws often take into account the financial needs of the spouse or children, the paying spouse's ability to provide support, and the standard of living during the marriage. Maintenance can be temporary or permanent, depending on the circumstances, and is subject to periodic review to accommodate changes in financial conditions.

Inheritance Laws: Succession, Wills, and Distribution of Assets

Inheritance laws govern the distribution of a deceased person's estate among heirs. These laws dictate the legal process for the distribution of property and assets, either based on a will or the laws of intestacy (when there is no will). Inheritance laws ensure that family members, including spouses, children, and extended family, receive their rightful share of the deceased's estate. The law also addresses issues such as the rights of the surviving spouse, the division of joint assets, and the debts of the deceased. In many legal systems, inheritance is governed by either a will or the laws of intestate succession (when someone dies without a will). Inheritance laws also address issues such as property rights, debts, and taxes. The intention behind these laws is to ensure that the deceased's assets are distributed in a fair and orderly manner, in line with both legal and personal expectations.

Domestic Violence Laws: Protection and Legal Redress for Victims

Domestic violence laws provide protection to individuals, particularly women and children, from physical, emotional, or psychological abuse within the family. These laws offer legal remedies such as restraining orders, police protection, and legal actions against the abuser. Domestic violence laws aim to prevent abuse within the household and ensure that victims can access support services and the legal system to escape harmful situations. These laws often emphasize the need to protect children and vulnerable family members from violence.¹

Guardianship Laws: Legal Custodianship and Care of Minors

Guardianship laws define the rights and responsibilities of individuals appointed to care for children or minors when biological parents are unable to do so. Guardianship may be established in cases of orphaned children,

¹ Abdul-Reuf, Muhammad. The Islamic View of Women and the Family, New York: Speller, 1977,P65

parental incapacity, or abandonment. These laws determine how guardians are appointed, the powers and duties they hold, and the legal processes to ensure that minors are well cared for. Guardianship can be temporary or permanent, and in many cases, the court will act in the best interest of the child when deciding who will serve as a guardian.

Adoption Laws: Procedures and Legal Rights of Adoptive Parents and Children

Adoption laws govern the legal process by which individuals or couples take on the legal responsibility for raising a child who is not their biological offspring. These laws ensure that the adoption process is fair, transparent, and conducted in the best interest of the child. Adoption laws also address the legal rights of adoptive parents, the child's inheritance rights, and the relationship between the child and their birth family. These laws often include rigorous screening processes for adoptive parents and may involve court proceedings to finalize the adoption.¹

Marriage and Family Property Laws: Rights of Spouses and Asset Distribution

Marriage and family property laws regulate the ownership, management, and distribution of property acquired during marriage. These laws often define whether the property is jointly owned or separate, and how it will be divided in case of divorce or separation. In some legal systems, the principle of community property applies, meaning that all property and income acquired during the marriage are shared equally between the spouses. In other jurisdictions, property may be divided based on the contributions of each spouse. The law also addresses issues such as the right of a spouse to inherit or claim a share of family property upon the other spouse's death.²

Women as Witnesses in Cases of Divorce

The Qur'an stipulates that there must be two witnesses in divorce trials, but it makes no reference of gender, suggesting that it is irrelevant. "...And let two persons of known probity from among your own community witness what you have decided; and do yourselves bear true witness before God.

¹ Ahmed, Aziz, History of Islamic Society, Edinburgh, University Press 1975,P242

² Muhsin Amina Wadud, De-Quran and Woman, Kuala Lumpur, Penerbit Fajar Baki SDN INID, 1992 p 102

إِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِعُرُوفٍ أَوْ فَرَاقِهِنَّ بِعُرُوفٍ وَأَشْهَدُوا ذَوَى عَدْلٍ
مِّنكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَٰلِكُمْ يُوعَظُ بِهِ أَمَنَ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَن
يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا

Once more, divorce is an important act for which the Qur'an has numerous regulations. Its omission of any locus of the gender of the witnesses is additional proof that the debtor-creditor relationship is distinct. Women as witnesses to the bequest "O you who have attained to faith! Let there be witnesses to what you do when death approaches you and you are about to make bequests: two persons of probity from among your own people, or if the pangs of death come upon you while you are traveling far from home -two other persons from among people other than your own. Take hold of the two after having prayed; and if you have any doubt in your mind, let each of them swear by God, 'We shall not sell this [our word] for any price, even though it were for the sake of a near kinsfolk; and neither shall we conceal ought of what we have witnessed before God or else, may we indeed be counted among the sinful. But if afterwards it should come to light that the two witnesses have become guilty of this very sin, then two others from among those whom the two former have deprived of their right-shall take their place"¹

The gender of the witnesses is once more left out of the Qur'an in this scenario, where precautions are being made to protect their integrity. Notably, priority was given to witnesses "from among your own people." This was a pertinent condition that was stated, but gender was left unspecified and is therefore meaningless.

Inheritance Rights of Women

The "inequality" between a man's and a woman's share of inheritance, as expressed in verses 11 and 12 of An-Nisa', is the main focus of the attacks against Islamic inheritance law. The ignorant critics can easily draw the conclusion that, although the Qur'an still protects the rights of women heirs, it does so "unfairly" by granting them fewer rights than those enjoyed by men heirs if they look at these verses alone. However, this so-called "unfair" treatment only applies to children, as parents and siblings are treated equally in both verses regardless of gender. Islam was innovative when it came to women's inheritance. Women were not only not allowed to inherit from their family members prior to the Qur'anic commandment, but they were also bequeathed as though they were

¹ Qur'an 5:106- 107

property that would be divided upon the death of a brother, father, or spouse. Islam thus altered women's standing in a way never seen before by granting them the power to inherit. Furthermore, this right was not obtained by political pressure but rather was bestowed by God. It's also noteworthy that the verses on inheritance appear in Chapter 4 of the Qur'an, which is titled "Women." This may indicate how important this topic is for women. The Qur'an states: "Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind."¹ In terms of the right to inherit, women and men are equal legal entities; thus, whether women can inherit is not controversial. Rather, the dispute centers around the "share" that is to be inherited. The inheritance verses demonstrate God's will in detailing the rights of each family member where the society was tribal and patriarchal and where women generally had no financial security other than that provided by men; however, there may be hidden insight in these verses that is beneficial to other types of societies as well. Islamic scholars, while respecting the permanent divine law, must explore the application and inherent wisdom of these verses to ensure that the Islamic principle of justice prevails.²

The accusations of inequality and unfairness of the Islamic law on inheritance therefore stands with no basis for the claims. While the modern society struggles to define the best way to protect the rights of both men and women alike, Islam is a step ahead by outlining the most refined and specific rules on inheritance that is known to the civilized world, 1300 years in advance. What is more amazing is that while Islam emerge at the time when the status of a woman was at an all-time low and her rights were totally deprived, Islam has never failed to gradually improve the status of the women to the highest standard by giving a fair treatment to them, which is beyond imagination if the situation 1400 years ago is taken into consideration.

Marriage

The Qur'an refers to marriage as a "Misaq" that is a sacred covenant or agreement between husband and wife.

¹ Qur'an 4:7

² Abou Fadi Khalid, from an article first published in the July/Aug 1991 issue of THE MINARET and reprinted in VOICES, vol. 1, no. 2, Dec/Jan1992,P123

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا يَجُزُّ لَكُمْ أَنْ تَرِثُوا آلَ نِسَاءِكُمْ كَرِهَآ وَلَا تَعْضُلُوهُنَّ لِتَذَهَبُوا
بِبَعْضِ مَا ءَاتَيْنَتْهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفِطْحَةٍ مِّنْ يَدَيْهِمْ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِن
كَرِهْتُمُوهُنَّ فَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

"Oh! Yon who believe, you are forbidden to inherit women against their will!"¹

Islamic law mandates that both parties give their consent before becoming married. A woman cannot be coerced into marriage by anyone, not even her father. Parents are unable to impose or coerce their daughter's will, but they can offer guidance and support on marriage. In some instances, Prophet Muhammad ﷺ offered the option to either uphold or declare some marriages null and void in the absence of the daughter's agreement.

Ibn Abbas reported that a girl came to the, Prophet Muhammad ﷺ and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice (between accepting the marriage and invalidating it).²"

In another version, the girl said: "Actually I accept this marriage but I wanted to let women know that parents have no right (to force a husband on them)"³

Since a woman in Islam is not married to the house, she is seen as a homemaker rather than a housewife. When a woman marries a male in Islam, it does not mean that she is married to a master and should be treated as a slave; rather, it means that she is married to him equal and should be treated with dignity and love as a partner.

The Prophet ﷺ said the most perfect believers are those that are best in character and behaviour and those that are best to their families (that is to their wives)"⁴

It is clear that the Qur'an and Hadith oppose parents' rights to marry their children against their will or without their consent. Since the stress on capability (24:33) is directly tied to the parties involved and not to the

¹ Qur'an 4:19

² Ibn- Hanbal No.2469)

³ Ibn- Maja No.1875

⁴ Ibn- Hanbal No.7396

parents, the teachings of the Qur'an and Hadith are directed at the individuals getting married rather than their parents.¹

Parents' power is frequently defended by claiming that it is their religious duty to arrange their children's marriage. The truth is that Muslims are not even required to get married. (Qur'an 24:33, Ibn Maja 1984, vol. 1:340, Bukhari 1987, vol. 5:1950) First, since it is dependent on capacity. Second, it is important to examine the well-known Hadith that emphasizes the necessity of marriage by claiming that it is the Prophet's Sunna. The context makes it clear that Sunna of marriage is stressed in opposition to celibacy as a worthy religious act. Third, there is disagreement among Muslim jurists regarding whether marriage is required by religion. ."²

Dower

In Surah An-Nisa, after giving the details of those between whom marriage is unlawful, it is said:

فَمَا اسْتَبْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِي مَا تَرَضَيْتُمْ بِهِ
مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

"Except such women, others are lawful provided you seek (them in marriage) with gifts from your property."³

The term "Mahr" (dower) is used for these gifts in our social norms and the other words "Ajoor" or "Saduqaah" and "Frida" have been used for the purpose of marriage gifts in Islamic legal literature as well. The interpretation of these terms acknowledges that every man who accepts a wife has a divinely mandated obligation (FARIDA) to provide for women. It is important to take God's precepts seriously. As a result, everyone who believes that the Qur'an is God's revelation to humanity has an obligation to carefully study its teachings in order to reap the benefits of living within God's predetermined parameters. This issue carries a direct impact on many of our lives. After all, most people, at one point in their lives or another, enter into a marriage. It is important to comprehend, and then carry out this, and all of God's commandments in the best, and most righteous of manners.⁴

¹ Muhammad Khalid Masud " Islamic Laws and Women" Background Paper at the International Conference on Islamic Laws and Women in the modern World from Grant Forum, Islamabad 1996

² ibid

³ Qur'an 4:24

⁴ Bodman, Herbert and Nayerch Toludi. Women in Muslim Societies: Diversity Within Unity Lynne Rienner, New York, 1998,P111

With that added understanding of the Islamic concept word UJOOR, as looked up in the dictionary, means WAGES, and not dowry. This is its common usage in the Arabic language. Although, the word UJOOR in most dictionaries indeed means a monetary wage, the same word is used in the Qur'an with a different meaning. As is the case when studying any Qur'anic issue, to rely on the dictionary alone is not always a wise and accurate means of understanding the Qur'an. We all know that the dictionary will tell us that the word UMMY means 'illiterate', however the same word in the Qur'an means 'gentile'. Other examples include the words 'Khimar', 'Shaheed' and 'Taharah', which all are used to mean different things colloquially, versus its' Qur'anic usage. It is, therefore, important to examine other occurrences of the word UJOOR, and the contexts they employ. The Qur'an has explained it further that Mahr is not a compensation for anything. This is a gift, without the concept of remuneration or reward.

وَأْتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا

The Qur'an has also used the word "Nihlah" for it:

"And give the women (on marriage) their dowry as free gift". In giving a "gift" is no concept of gain or compensation. 'Dowry' has no set amount in the Qur'an. "Mahr" is everything that is chosen by mutual accord, but as it must be paid, it has also been called a "duty" (Divine Command).

وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدْرَهُ وَعَلَى الْمَقْتِرِ قَدْرُهُ مَتَاعًا بِالْمَعْرُوفِ ۗ حَقًّا عَلَى الْمُحْسِنِينَ

As such, it should be commensurate with one's financial situation. Guidance in this regard is also provided in. "the wealthy according to his capability and the poor according to his capability - a provision according to what is acceptable, a duty upon the doers of good."

The dowry should be paid at the moment of marriage, shortly after nikah or may be deferred or overdue for certain time limits with the consent of women. However, it is clear from Surah Al Baqarah verse 236 that there may be instances in which the amount of dowry could not be agreed upon at the time of marriage. This verse explains this. "There is no blame on you if you divorce women before consummation or the fixation of their dowry.¹ That means if for some reason the amount of dowry could not be

¹ Qur'an 2:236

fixed at the time of marriage, it can be determined later on. Dower is the property of the woman; no one has the right to deprive her of this amount. However, a woman can remit a part thereof if she so desires.¹

"Pay your wives' dowers without considering a reward, just as a honeybee would give her honey without considering a reward. The woman gladly sends a portion of the dower, which is a gift rather than an exchange, so you are free to keep it for yourself.

A little later in the same surah has been said that the amount of dower can be altered by mutual consent. In the words of Qur'an:

*"But if you agree mutually to vary the dower after it has been prescribed, there is no blame on you."*²

After marriage if divorce occurs before consummation, then:

If the dower has not been fixed, then the man ought to pay something according to his economic status. Surah Al- Baqarah says:

If dower is fixed, half of it shall have to be paid; but if the woman or her agent so agrees, or if the court of law thinks it necessary under certain circumstances, it can also be remitted fully:

"And if you divorce them before consummation and the dower was agreed upon, they will be responsible for half of it unless they voluntarily waive it or he transfers it to the person holding the marriage tie. And letting go of what is owed to you is closer to Taqwa, or obeying Allah's law. Additionally, remember that you must treat each other with grace. Allah undoubtedly observes whatever you do.,³

The custom of dower, which is a popular practice among Muslim communities in Indo-Pak, is not justified by the Qur'anic teachings. Man's demand or expectation of 'Jahez (dowry) is incredibly unfair. According to the Qur'an, men are supposed to provide for women and not take anything from them. This is part of the Hindu religion and has grown commonplace. Those who claim that Hazrat Fatimah's dowry was given by the Prophet ﷺ themselves are incorrect. The Prophet ﷺ never gave his daughters dowries. Historians frequently cite the story of Hazrat Fatimah, but they often forget that when Hazrat Ali requested for Hazrat Fatimah's hand in marriage, the Prophet ﷺ questioned him about their domestic arrangements. He denied this, stating that the only property he currently owned was the horse's saddle. He complied with the prophet's ﷺ request to sell it. The Prophet ﷺ

¹ Afzal, Iqbal, The Culture of Islam, the classical period, 3 rev. Lahore, Institute of Islamic Culture, 1981,P231

² Qur'an 4:24

³ Qur'an 2:237

purchased home goods using the money Hazrat Ali received from the transaction, which our Indo-Pak Muslims have been spreading as a dowry. Therefore, dowries have no Islamic basis and are only a habit.¹

Divorce

According to the jurists, divorce is "the abolition of the bond of marriage." In Islamic law, divorce is referred to as "Talaq" (طلاق). Here are the different types of divorce in Islamic law, 1. Talaq (طلاق) - Divorce initiated by the husband. 2. Khula (خُلْع) - Divorce initiated by the wife, where she returns her dowry (mahr) to the husband. 3. Mubara'at (مُبَارَاة) - Mutual divorce, where both husband and wife agree to divorce. 4. Faskh (فَسْخ) - Annulment of marriage, usually due to a defect or impediment in the marriage contract. It is also known as judicial talaq. The verses of sura *Baqara* which provide the Qur'anic foundation for divorce describe its validity in terms of pronunciation as "Divorce is pronounced twice; then honorable retention or setting free kindly" and "O Prophet, whenever you (and other Muslims) divorce women, divorce them when they have reached their period" ..

"Order him [your son] to take her back and hold her until she is clean, and then wait until she gets her next period and becomes clean again,". He can then choose to keep her if he wants to, but he must file for divorce before engaging in activity with her. God has set this time frame [number of days] for the women who are supposed to get divorced.²

In Islamic law, divorce is indeed considered a disliked practiced and discouraged by prophet ﷺ in hadith reported by Abu Dawud," that most hateful of permissible things to Allah is divorce" Islamic teachings emphasize treating spouse with justice and fairness keeping in view the element of compassion and kindness both spouses are equally held responsible to keep this relationship alive. Both of them are bound by putting corresponding duties towards each other's, none of them has superiority in terms of morals and values.as it is noematic value of Islam hat best of you are those who are best to their wives.

¹ Adil, Mohammad Shoaib, Islam and wife beating, an article published in "La Dame' the magazine of the Daily The Nation, in 1991,P123

² Burhan-ud-din, Sanmishli Mohammad, Muashrati Masail Din-e-Fitrat li Roshni Main, Lahore, Maktab-e-Alhasan, 1982,P98

Custody of Children

For those who want to finish nursing, mothers must continue to do so for a period of two years. The child's father is responsible for providing nursing moms with food and clothing in an aesthetically pleasing manner. Nobody should be taxed more than they can handle. Neither the mother nor the person to whom the child is born should have to endure hardships because of their child.¹

The Qur'an makes no explicit indication of who shall be granted custody of minors following the divorce of their parents. When a divorce occurs and the wife is nursing a child, the mother should continue to nurse the child for two full years, if the father wants to finish the term. However, he will pay for their clothing and food according to the guidelines. No one should be burdened more than they can handle; for example, a mother should not be treated unfairly because of her child, nor should the father. However, if the father passes away in the interim, his heir will take over in the manner that the two of them agreed upon. As long as the mother receives the agreed-upon remuneration from the husband, they are not held responsible for the weaning process or the alternative arrangements. Therefore, the rule that should be followed in this situation is that neither the mother nor the father should have to endure needless hardships. The Islamic state will also choose who would pay for the children's expenses until they reach adulthood in order to accomplish this goal.²

Maintenance

Men are the guardian and maintainers of women because Allah has given the one more (strength) than the other and because they support them from their means.³

The wife is entitled to "Nafka" maintenance from her husband upon marriage. Even if the wife has her own resources, she still has the right to the husband's food, clothing, housing, and other personal expenses. The husband has a duty to provide for his wife and kids in a way that is appropriate for his social and financial standing. In Muslim law, Nafka refers to more than just giving them food and clothing. In addition, it covers appropriate housing as well as numerous other ancillary costs and expenses that the wife typically faces. Regardless of his illness, incarceration, or the wife's wealth, a husband's bounden responsibility is

¹Qur'an 2:233

² Ghulam Ahmed Perwaiz Quranic Laws Translated by Dr. Syed Abdul wadud Talu-e- Islam Trust Lahore, 2000 pp 134- 135.

³ Qur'an4:34

to provide for her.¹ Therefore as long as he remains in his wedlock, he shall be responsible. This includes the place of residence as well.

During a waiting period of a divorced woman ie. during Iddat, the above stated responsibility lies on the husband. For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.²

Prophet! ﷺ When a woman files for divorce, she does it at the appropriate times and counts those times correctly. and be afraid of Allah, your Lord: and do not force them to leave their homes or have anything to do with them, unless they are openly obscene. Allah has established certain boundaries, and anyone who crosses them is seriously wronging his or her soul. You have no idea if Allah would thereafter create a fresh circumstance.³

Let the ladies (in 'iddah) live as you do, according to your means: irritate them without limiting them. If they carry a child in their womb, you should spend your money on them until they give birth. If they breastfeed your child, you should compensate them. You should also consult with each other about what is fair and reasonable. Additionally, if you are having trouble, allow another woman to nurse the child on the father's behalf.⁴

The wealthy man should spend his money as he can, while the one with little resources should spend what Allah has given him. No one is burdened by Allah beyond what He has provided for them. After a hardship, Allah will provide relief shortly. .⁵

Muslim women's concerns are now drawing attention to the reality in Muslim nations, where the social, political, and economic structures are a synthesis of Islamic laws and codes with occasionally contradictory aspects of foreign or cultural life. The rights, obligations, and responsibilities of Muslim women are being subordinated by these socially gendered injustices. Societies, which are to some extent patriarchal and often women's rights given by Islam are denied especially inheritance and maintenance. Having discussed the realities of Women's status in the hard core and Muslim regions of the world and comparing it to the ideology of

¹ Rasheeda Patel, Socio- Economic Political Status and Women and Law in Pakistan, Faiza Publishers, Karachi 1991 pp 154.

² Qur'an 2:241

³ Qur'an 65:1

⁴ Barlas Asma Believing Women" in Islam Unreading Patriarchal Interpretations of the Qur'an. Austin TX: University of Texas Press, 2002.P34

⁵ Qur'an 65-6

Islam, it appears that legally, socially, and economically-defined fluxes are widening a gap between the ideals of Islam on women and the actual realities they experience. The re-negotiation of identities of women who embrace Islamic values and the balancing of the conflict between gender ideologies must at some point focus on this very fundamental construct that has so far gone barely unquestioned.¹

Conclusion

Family laws, including those related to marriage, dowry, custody, divorce, maintenance, and inheritance, are essential for establishing order and ensuring fairness within the family unit. These laws serve as a foundation for protecting individual rights, particularly those of vulnerable family members such as women, children, and the elderly. They provide clear legal frameworks for resolving disputes and conflicts that arise within the family, ensuring that each party receives their due rights and obligations are fulfilled. Marriage laws protect the integrity of relationships by setting legal requirements for unions, while dowry laws work towards eliminating harmful traditional practices that can lead to exploitation. Custody and divorce laws focus on safeguarding the well-being of children and ensuring a fair distribution of assets and responsibilities when marriages end. Maintenance laws provide financial support to spouses and children, ensuring that they are not left in a vulnerable position following a separation or divorce. Inheritance laws ensure that a deceased person's estate is fairly divided, preventing disputes and protecting the rights of heirs. In conclusion, family laws are vital in maintaining social order and harmony, reflecting the values of justice, equality, and respect for human dignity. These laws must continue to evolve in response to changing societal needs, ensuring that they protect the rights and well-being of all family members, fostering a secure and supportive environment for individuals to thrive within their family structure.

¹ Splitting Identities: The Gap between Real and Ideal on the Status of Women in Islam, Amar Wahab Journal of Islamic Guidance (Dec - 1997) Vol.1 No. 3 page: 3-7 web site: www.orgonline.net