

Women's Social Rights in Islam

حقوق المرأة الاجتماعية في الإسلام

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1. Introduction

Islam is not just a religion to be read in a book; rather, it sanctifies a whole way of life as it enters into people's clothing, food and drink. In the pre-Islamic society, nearly all women were bought and sold or inherited. Women were treated like commodities. However, after the mission of the Prophet Mohammed, a new dawn began for women in which they were no longer treated like commodities but were respected as human beings. Islamic law granted women rights in all aspects of life as it gave them the right to choose a spouse, along with the right to separate. Last but not least, Islamic law values women as mothers, wives and daughters.

This paper examines the role of Islam in raising the status of women and then it explores how Islam guaranteed women equal rights to men in term of personal status.

2. The Islamic law approach to equality between men and women

One of the most important features of Islamic law is the elimination of discrimination between men and women. In several places, the Qur'an confirms that men and women are equal: for instance, the Qur'an emphasises that both men and women share the same spiritual human nature when it says: "O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women."¹ Moreover, in Islam, men and women are equal in their inherent dignity since God made both genders trustees of the earth collectively. The Qur'an states: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference."² Furthermore, the Qur'an emphasises that both women and men have identical moral and religious responsibilities and duties. It says: "And their Lord responded to them, 'Never will I allow to be lost the work of [any] worker among you, whether male or female; you are of one another'. "³ Jamal Badawi argues that it is clear from the Islamic texts that men and women are equal in Islam, whether in terms of their humanity or their spirit. In addition, he argues that nowhere in the Islamic texts is there a mention of the superiority of one gender over the other. Thus, human misinterpretations of the Islamic texts, together with culture, are blamed for breaching Islamic teaching and in the creation of the notion of man's superiority over women.⁴

In fact, full equality between men and women in Islam is beyond doubt. However, this equality is based on complementary roles for men and women. The Qur'an states: "By the night when it covers. And [by] the day when it appears. And [by] He who created the male and female (*allele*)."⁵ In another verse in the Qur'an it is stated: "And we created you in pairs. And made your sleep [a means for] rest. And made the night as clothing. And made the day for livelihood."⁶

The verses emphasise the principle of complementarity between men and women in the universe, just as the night and day are different in nature, for instance. The daytime is infused with light, which makes it easier for people to work, while the night is infused with darkness, which makes it better for people to rest and sleep. If God had made the day continuous, it would be hard for people to find sufficient rest and sleep to start a new day. Similarly, if God had made it continually night, it would be difficult for people to work and move around. Therefore, as the day and night have complementary roles to each other, so do men and women.⁷ God created men and women differently in nature since each of them has a different complementary role in life. Al Sharawi states that these roles given by God to men and women do not mean to discriminate between them; rather, the main job for a man is to earn money for his family. However, this does not mean that he does not have an important role as a father and it does not mean that a woman does not have the right to work if she so wishes.⁸

Thus, equality between men and women in Islamic law is based on the concept of complementarity. This means that men and women have equal rights but in different ways. For instance, Islamic law gives both husband and wife the right to divorce equally but differently; moreover, it gives them both equal but different economic rights. Jamal Badawi argues that perhaps it is more accurate to say that Islam offers gender equity rather than gender equality: "The term "equity" is used instead of the more common expression "equality," which is sometimes misunderstood to mean absolute equality in each and every detailed item of comparison rather than overall equality. Equity is used here to mean justice and overall equality in the totality of rights and responsibilities of both genders and allows for the possibility of variations in specific items within the overall balance and equality."⁹

3. Women's social rights before Islam

In pre-Islamic Arab society, women had no rights as there was no specific number of divorces and no fixed number of wives that a man could have. In addition, women did not have the right to choose a husband;

neither did they have any rights in marriage. Furthermore, women were inherited. For instance, if a man died and left a wife (or wives) and children, the eldest son inherited that wife (or wives) unless she was also his mother. If he wanted to marry any of them, he had to announce his desire to marry by placing a dress on the woman.¹⁰

Moreover, according to Aisha (the wife of the Prophet Mohammed), there were several practices which were offensive to women in pre-Islamic society. One of these practices was where the husband sent his wife, after she had finished menstruating, to another man with whom to have sexual intercourse; she would remain away until she fell pregnant. After that, she could return to the husband. The purpose of that practise was based on the husband's desire to have a child. Another example of such a practice was where a group of men (fewer than ten) visited a woman to have sexual intercourse with her. If she conceived a child and gave birth, the woman would choose one of those men to be a father to the child; the chosen man could not refuse. Moreover, some women drew attention to themselves by hanging flags on their homes. They would be visited by a number of men for sexual intercourse and if they conceived a child and gave birth, the men who frequently visited would then decide who was the father through a physiognomist.¹¹

In fact, since these practices in pre-Islamic Arab society reflected abuses of the rights of both women and children, when Islam emerged, it approved only of marriage and prohibited all those practices which insulted women.

Islam also forbids marriage with one's father's wife/wives. The Qur'an says: "And do not marry those [women] whom your fathers married, except what has already occurred. Indeed, it was an immorality and hateful [to Allah] and was evil as a way."¹² Inheriting women is also forbidden: "Ye are forbidden to inherit women against their will."¹³ In addition, Islam forbids Shiggar marriages in which two men exchange their daughters or wards for marriage where each of them would be the dowry of the other.¹⁴ According to the Prophet Mohammed, narrated by Ibn 'Umar: "Allah's Apostle forbade Ash-Shiggar, which means that somebody marries his daughter to somebody else, and the latter marries his daughter to the former without paying Mahr."¹⁵

In addition, Islam forbids the marriage of mothers, grandmothers, aunts, nieces, sisters and daughters: "Prohibited to you (for marriage) are – your mothers, daughters, sisters, father's sisters, mother's sisters, brother's daughters, sister's daughters; foster mothers (who have suckled you), foster sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in – no prohibition if ye have not gone in – (those who have been) wives to your sons emanating from your loins; and two sisters in wedlock at one and the same time."¹⁶

Besides prohibiting abuses of women's rights through these types of marriage, Islam gave rights to women for the first time in the history of the Arabian Peninsula. Umar bin al-Khattab, a Prophet confidant and contemporary of the pre-Islamic Arab society before he embraced Islam, stated: "In Arab society women were not given any value and we did not share with them of any of our matters. We did not even speak with them, and after the emergence of Islam the status of women raised and they have rights."¹⁷

4. Women's social rights after Islam

The original intent of Islamic law was to act in the interests of people, to maintain those interests, and to address any harm that could affect those interests. The interests noted here are not of human vision, they are from the Shari'a. One of the interests that the Islamic Shari'a seeks to achieve is necessity and these necessities are the elements that people's lives and a stable society depend on. In Islamic law there are five necessities that should be protected: religion, life, reason, offspring and property.¹⁸ For instance, to protect human life, God has forbidden killing, and to protect offspring, Islamic Shari'a permits marriage.¹⁹

In fact, Islamic law aims to build a healthy community along with a happy family, which is one of the main pillars of the community. For this reason, Islamic law cares about all elements of family life and protects its rights whether they concern husband or wife, mother or father, son or daughter; the only way to create such a family in Islam is through marriage. The definition of marriage in Islamic law is that it is a contract between a man and a woman who wish to enjoy each other and create a good family along with a healthy society.²⁰

4.1 A woman's right to enter marriage

There are conditions in order for a marriage to be valid in Islam. The first condition of marriage in Islam is that both spouses must be able to be identified clearly, whether by giving their names or by description; the second condition is the consent of the spouses as a marriage would be void if one of the parties were forced.

According to the Hanbali, which was applied in Saudi Arabia, and the Al-Shafei and Malik schools, the second condition of Islamic marriage is to have a guardian. Indeed, this provision is based on the Prophet Mohammed's statement: "There is no (valid) marriage without a *wali* (guardian)." ²¹ This condition is applied in many Arabic countries such as Egypt, Kuwait, the United Arab Emirates and Saudi Arabia. Consequently, in these countries, women cannot marry without a guardian, and if a woman is married without her guardian's permission, her marriage is invalid. ²²

The guardian (*wali*) is the man who is a blood relative to the woman on her father's side (*usbah*), such as her father, her paternal grandfather, her son or her paternal uncle. Therefore, a woman's relative from her mother's side, such as the maternal uncle, could not be her guardian in marriage as he would not be *usbah*. ²³ The father of the bride would have priority to be her guardian if he met all the required conditions. (This is discussed later in this section.) However, the guardian should not force his ward to marry a man she does not want to marry. ²⁴ According to Prophet Mohammed: "A non-virgin woman may not be married against her wish, and a virgin may not be married without her permission." ²⁵ So, if a guardian forces his ward to marry someone she does not want to marry, the marriage will be invalid, according to Prophet Mohammed. "Once a virgin girl came to the Prophet and said that her father had married her to a man against her wishes. The Prophet gave her the right to repudiate the marriage." ²⁶ However, if the woman would like to marry a man who is unsuitable, her guardian has the right to prevent her from marrying him. ²⁷ In fact, this is in contrast to the situation before Islam where a woman's guardian could marry her to someone else without her consent. According to Khansa bint Khidam Al-Ansariya: "Her father gave her in marriage when she was a matron and she was unhappy in that marriage. So, she went to Allah's Apostle and he declared that marriage invalid." ²⁸

Bin Uthaymeen believes that Islam has placed a great responsibility on the guardian towards his ward as he must not exploit his guardianship for personal gain. ²⁹ Al Qardawi believes that Islam places an obligation on the guardian towards the woman as he should support her and help her to choose the best life partner. In addition, the guardian's main concern, when choosing the husband, should be the husband's good character. ³⁰ The Prophet Mohammed said, "If someone comes to you (for marriage) and you are satisfied with his piety and character, then accept him as a bridegroom to your daughter. If you do not, there will be a *fitnah* on earth, and a big corruption." ³¹

Saleh Abdul-Hadi explained why the guardian is essential in marriage. He considered that the intention of Islam with regard to the requirement for a guardian is that the original purpose of marriage goes beyond the intimacy between a man and a woman. It extends to love, mercy, cooperation in life matters, maintaining humanity and the good upbringing of children, which are all essential ingredients for a successful marriage. As a result, not every man is capable of achieving these or capable of bearing this responsibility. Additionally, in marriage, the woman is not the only person affected by the outcomes of a marriage; her family will also share these outcomes. Consequently, if she marries a good man who makes her happy, her family will share her that happiness; equally, if she is married to man who makes her unhappy, her family will share her unhappiness. ³² Moreover, Abdul-Hadi noted that the marriage decision affects the whole family. He believed that choosing a spouse is not easy. It requires experience, rationality and emotion at the same time and so, for this reason, he believed that both the guardian and the daughter are significant in making this decision. ³³

Accordingly, as the guardian has an influential role in a woman's life, certain conditions should be placed upon him so make sure he is qualified for the responsibility. First, the guardian should be a male, ³⁴ as the Prophet said: "No woman may conduct the marriage contract of another woman, and no woman can conduct the marriage contract on behalf of her own self." ³⁵ Second, he must be a free man (not a slave). Bin Uthemen considered that the reason for the requirement of the freedom of the guardian was because a slave is not free to manage his own personal affairs, let alone the affairs of others. ³⁶ The third condition is that the guardian must be an adult as a minor is unable to understand the value of marriage. The fourth condition is that the guardian should be of sound mind while the fifth is that the guardian must be mature and wise (*rushd*), which means he should be able to understand issues of compatibility and the interests of marriage. ³⁷ The sixth condition is that the guardian should be of good character and that includes piety and the attitude (*adaalah*) of his conduct because if the guardian is not of good character, he may not pay sufficient attention to or give proper counsel concerning the woman's marital affairs. The seventh condition is that there must be unity of religion between the guardian and the bride. Therefore, the guardian should be Muslim, as must his ward. ³⁸ In fact, it is clear that the scholars viewed the requirement for a guardian as a condition for a

valid marriage as they assumed that, in most cases, the presence of the guardian was not a diminution of the rights of women; it was intended to support them. This is because, in most cases, a father is very close to his daughter and wishes the best for her. For this reason, if the father violated this rule or did not exercise it as it should be done, he would lose that guardianship. Mohammed Munajjid argued that, if a woman wished to marry someone who had good manners and her guardian refused to allow her to marry him, he would lose his guardianship.³⁹ Moreover, there are many who believe that women in the past were different from women in the current age. For instance, women in the era of the Prophet Mohammed were even ashamed to give words of approval in support of their marriage. Aisha said that she asked the Prophet: ""In the case of a young girl whose parents marry her, should her permission be sought or not?" He replied, "Yes, she must give her permission." She then said, "But a virgin will be shy, O Allah's Messenger." He answered: "Her silence is [considered as] her permission."⁴⁰ However, in the present era, women are completely different and, for this reason, perhaps scholars should re-examine this issue. (See Chapter Four for further discussion.) Moreover, it is interesting to note that the scholars who stipulated that there must be a guardian for a woman in the marriage contract did not require a guardian for women in financial matters. However, a woman might be under age when she had a guardian so she could not involve herself in any financial dealings without his permission. Indeed, this may reinforce the argument that, by insisting on a guardian for a woman in a marriage contract, this is trying to protect her from making an emotional decision about marriage, not because she has poorer mental capabilities. Furthermore, although the main objective regarding the requirement for the guardian is the interest of the woman, there are, however, some cases in Saudi Arabia where the guardian has abused a woman's rights and has denied her the right to choose her spouse. Therefore, in this regard, it might be better for Saudi Arabia to follow another school, such as the Hanafi school, in the case of guardianship.

The Hanafi school disagreed with the other schools in terms of requiring a guardian for the marriage contract as this school believed that a woman has the right to marry,⁴¹ even without the permission of her guardian, if the groom is compatible with her. However, if a woman chooses to marry a man who is not compatible, the guardian has the right to object to the marriage.⁴² Hanafi's view is based on the following verses: "Do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis.⁴³ And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner."⁴⁴ In addition, al Hanafi believed that, as the Qur'an gives women the right to establish a contract in financial matters without a guardian, women should also have the right to contract their own marriage without guardian.⁴⁵

Consequently, the interpretation of the Ahmed, Al-Shafei and Malik schools is that guardianship is the responsibility of a man towards a woman; this should be based on love and concern for the woman's interests. In addition, it must be taken seriously and it must be ensured that the guardian is competent to bear this responsibility. In Hanafi's interpretation, however, when a woman becomes an adult, she does not need her guardian's support in marriage. In fact, both interpretations tend to protect women's rights in marriage but they use different methods.

4.2 Dowries

As an estimate of the wife, Islam requires a man to pay a dowry for a woman as an announcement by him of his wish to marry her. The dowry is a gift from the husband to his wife, not a price for the wife or an exchange in return for her affections.⁴⁶ The Holy Qur'an states: "And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease."⁴⁷

In addition, the husband should not take back the dowry if he divorces his wife. According to the Qur'an: "But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back."⁴⁸

4.3 A woman's rights during marriage

Islamic law guarantees a wife rights from her husband before the marriage, rights during the marriage, and even in the event of the marriage ending.

4.3.1 A wife's maintenance

In Islamic law, a woman has the right to work and earn money if she wishes to. However, there is no obligation on her to work and bear the responsibility of her family and so such a decision is optional and she may decide if she would like to work or not. In fact, in Islamic law, the man is responsible for providing food, clothing and housing for a woman without being extravagant or miserly; this is a basic Qur'anic

principle that should be followed by the husband.⁴⁹ The Qur'an provides: "Let a man of wealth spend from his wealth, and he whose provision is restricted – let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it."⁵⁰

Moreover, in the event of a husband being miserly or refusing to spend on his wife and children, Islam permits a wife to take what she and her children need from her husband's wealth. without his knowledge if necessary.⁵¹ A woman came to Prophet Mohammed saying, "Abu Sufyan (her husband) is a miser. He does not give my children and me enough sustenance. Am I allowed to take from his money secretly?" The Prophet said to her, "You and your sons may take what is sufficient reasonably and fairly."⁵²

Furthermore, according to Muslim scholars, if the wife requests to be separated from her husband because of his poverty or his refusal to pay alimony, the court can force him to divorce her, as Islamic law does not allow a woman to suffer hunger and need if her husband will not pay alimony. Therefore, Islam gives the woman the right to divorce him in such circumstances.⁵³ Indeed, the right to maintenance does not depend on a woman's provision of home care as, in Islamic law, she is not required to carry out such work; instead, she has the right to maintenance as a wife. Furthermore, the husband must provide for his wife, even if she is wealthy. Al Fawzan argues that a wife has the right to alimony whether she is wealthy or poor and that the right to alimony is not dependent on the needs of the wife; rather, it is the obligation of the husband towards his wife.⁵⁴ Indeed, the right to maintenance is guaranteed, even for women who decide not to work but stay at home and enjoy a comfortable life.

4.3.2 Good cohabitation

Good cohabitation with a wife means that the husband should treat his wife well in all aspects, in terms of both how he speaks to her and how he treats her.⁵⁵ According to the Prophet Mohammed, "The most perfect in faith amongst believers is he who is best in manners and kindest to his wife."⁵⁶

In addition, according to the Qur'an: "And live with them in kindness. For if you dislike them – perhaps you dislike a thing and Allah makes therein much good."⁵⁷

Bin Kather argues that good cohabitation means to speak in a kind way, act in a kind way, to look good for her, and to be as good to her as he would like her to be to him.⁵⁸ Al-Ghazali argues that good cohabitation means behaving with good morals towards one's wife, not harming her, and being patient with her anger or with her recklessness.⁵⁹ Moreover, Prophet Mohammed adds another meaning to good cohabitation as he prohibits offending one's wife and scolds those who harm her, saying: "How could you treat them like animals in the day and then want to be intimate with them at night?"⁶⁰

4.3.3 A woman's right to separate

Although Islamic law permits divorce, it does not encourage it as divorce destroys the family, and so, in Islam, divorce is a permissible law that is hated by God. According to Prophet Mohammed, "Of all the lawful things, divorce is the most hated by Allah."⁶¹

Consequently, if acrimony persists between the spouses and their problems do not respond to all possible solutions, divorce may be the only solution for them. According to the Qur'an, "Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment."⁶² Qaradawi argues that divorce in Islamic law is similar to a painful surgical procedure where a man or woman amputates part of his/her body in order to preserve the rest of it, and gets rid of the damage, which may be greater than the divorce itself.⁶³ Accordingly, if the life of spouses becomes impossible and they cannot carry on their life together, Islamic law gives them both the right to take the decision to separate for a while and go their different ways. The next section discusses cases where separation is the decision of the women. After that, it discusses cases where separation is the decision of the men.

4.3.4 Separation between spouses as a decision of the wife

Riffat Hassan argues that one of the most significant rights granted by Islamic law to women is the right to dissolve a marriage as this right is not guaranteed to women in any other religion.⁶⁴ According to the Qur'an: "And women shall have rights similar to the right against them, according to what is equitable."⁶⁵

In Islamic law, divorce occurs when the husband says the phrase "You are divorced" to his wife. Every time he says this phrase, he loses one of the permitted number of divorces, which is only three. On the other hand, if a wife is unhappy with her husband, whether by reason of his poor behaviour or because he does not fulfil her needs, or if the husband has financial or physical difficulties, Islamic law gives the woman the right to separate through two methods. Indeed, although Islamic law places many restrictions on a husband who would like divorce his wife, no such restrictions are set for the wife. The first method is *Khul'a*, which

is where the wife initiates divorce proceedings on the condition that she returns her dowry to her husband. According to the Qur'an, "If it be that ye desire the life of this World, and its glitter, then come! I will provide for your enjoyment and set you free in a handsome manner."⁶⁶ Prophet Mohammed stated that the wife of Thabit bin Qais bin Shammas came and said: "O Allah's Apostle! I do not blame Thabit for any defects in his character or his religion, but I am afraid that I (being a Muslim) may become unthankful for Allah's Blessings." To that, Allah's Apostle said (to her), "Will you return his garden to him?" She said, "Yes." So, she returned his garden to him and the Prophet told him to divorce her."⁶⁷

According to the Hadith, the wife showed implicitly that she did not like her husband and was not blissful with him, by clarifying that she was afraid that her presence with him (*Thabit*) might lead her to be unthankful to God. Therefore, the wife asked the Prophet that she might be separated from her husband although there was no problem with his morals. In addition, the wife did not provide Prophet Mohammed with any other reason except that she hated him. The Prophet, however, accepted her request by asking her husband to divorce her. This meant that the wife could acquire a separation from her husband because she was not happy with him, even though she did not have a clear reason for such hatred. In fact, Barera's story is another case that confirms this principle in Islam. Barera was a wife who wished to leave her husband as she hated him for no other reason than she could not accept him as a husband. On the other hand, Mogheth (her husband) loved her and when he knew that she wanted to leave him, he was saddened and so asked Prophet Mohammed to reconcile them. So, the Prophet felt sorrow for him and, as a result, he went to Barera and asked her to return to her husband. She asked if he was ordering her to do so and he answered, "I am not ordering you, I am only interceding." She said that she did not wish to return to him. ⁶⁸ After that the Prophet commented on this case saying it was strange how much Mogheth loved Barera and how much Barera hated him.⁶⁹ According to the Qur'an, "But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself."⁷⁰

According to Al Tabari, the interpretation of this verse is that if any husband or wife cannot commit him/herself to the decrees of God, which are the duties of the husband and wife towards each other, such as good treatment and not harming each other, whether in word or deed and, as a result, if the wife cannot carry out her duties to her husband for any reason, she is allowed to separate herself from him.⁷¹ On the other hand, Islamic law forbids the husband to hurt his wife by refusing to carry out his duties towards her or by planning to get back his dowry by making her bored with him, thus leading her to divorce herself from him. The objective of such prohibition is that Shari'a law seeks to limit a husband's manipulation, which could lead women to suffer the pain of divorce and the pain of financial hardship at the same time.⁷² According to the Qur'an: "O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them in kindness."⁷³ The second solution given to women by Shari'a law is to put a condition in the marriage contract that the wife may divorce if she wishes. In such cases, the husband should divorce her if she requests it, as a husband should not breach the marriage contract.⁷⁴ The Qur'an states: "O you who have believed, fulfil [all] contracts."⁷⁵ The wife also has the right to request a divorce if the husband harms her as it is not permissible for a husband to harm his wife. If he harms her by beating her or stops supporting her financially, for example, she could ask the judge to divorce her, and then the judge must force the husband to divorce her.⁷⁶ According to the Qur'an, "and do not keep them, intending harm, to transgress [against them]. And whoever does that has certainly wronged himself."⁷⁷

In fact, Islamic law gives both husband and wife the right (although differently) to dissolve the marriage while it may appear that dissolving a marriage is easier for a man than for a woman. In this regard, however, it is interesting to note that, although Islamic law places many conditions on the husband with regard to divorce which can only take place at certain times and under certain conditions, such restrictions are not placed upon a wife who wishes to separate from her husband. ⁷⁸

4.3.5 Separation between spouses as a decision of the husband

Islamic law encourages minimising divorce; in addition, it encourages couples to make divorce the last resort. For this reason, Islam inspires the husband who is considering divorcing his wife to be realistic as he should not expect perfection from her and should not only focus on her shortcomings; he should consider her attributes too. According to Prophet Mohammed, "If he dislikes one of her characteristics, he will be pleased with another."⁷⁹

Furthermore, Islamic law also encourages the husband, before he divorces his wife, to apply logic and reason. So, if he feels hatred towards his wife, he should not show such emotion.⁸⁰ According to the Qur'an,

“And live with them in kindness. For if you dislike them – perhaps you dislike a thing and Allah makes therein much good.”⁸¹ Moreover, Islamic law encourages the family to intervene, if problems between spouses are evident, by calling upon a reliable member of her family and his family. In short, a family council should be formulated to attempt to reform, reconcile and resolve the crisis between the couple.⁸² The Qur'an states: “And if you fear dissent between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever knowing and acquainted [with all things].”⁸³

4.3 .6 Cases where divorce occurs

Thus, if the previous solutions do not succeed in reconciling the spouses, the husband may insist on divorcing his wife. In Islamic law, divorce occurs upon the husband saying the phrase “You are divorced” to his wife. Every time he says this phrase, he loses one of the permitted number of divorces, which is only three. However, a husband does not have the right to divorce merely by word of mouth at any time and under any conditions as Islamic law places many limits and conditions before those words become effective. For example, a husband cannot divorce his wife at any time. For instance, it is not permissible for the husband to divorce his wife when she is menstruating. In addition, he should not divorce her during the clean period if he is having intercourse with her during this time.⁸⁴ This is according to Abdullah bin 'Umar who, during the lifetime of Prophet Mohammed, divorced his wife while she was menstruating. Umar bin Al-Khattab asked Prophet Mohammed about this and the Prophet said, “Order him (your son) to take her back and keep her till she is clean and then to wait till she gets her next period and becomes clean again, whereupon, if he wishes to keep her, he can do so, and if he wishes to divorce her, he can divorce her before having sexual intercourse with her; and that is the prescribed period which Allah has fixed for the women to be divorced.”⁸⁵ Furthermore, divorce is not effective under any circumstances. For instance, a husband who wishes to divorce should be in a state of consciousness, be calm and capable of free choice. Subsequently, if the husband was unconscious or being forced to divorce, the divorce would not be valid. Also, if the husband was angry so that his anger caused him to pronounce the divorce when he did not fully intend to do so, the divorce would not be valid. Additionally, if the husband was drunk, the divorce would not be valid. According to Prophet Mohammed, “There is no divorce and no manumission in the event of *ighlaaq*.”⁸⁶ Most scholars believe *ighlaaq* represents the state of extreme anger or compulsion and therefore the husband who divorces should intend to divorce and be aware of his words and actions, otherwise the divorce will not take place.⁸⁷ In fact, all these restrictions emphasise that the spirit of Islamic law seeks to minimise the number of divorce cases in Islamic society as it makes divorce subject to certain times and certain conditions. Moreover, if a couple have not separated after the first and second divorces, this is considered in Islam as a retainable divorce. This means that the couple could return to each other and live together normally. However, if the husband divorces his wife three times, the divorce will be considered as a non-returnable divorce.⁸⁸ Accordingly, Islamic law gives the spouses two chances to resolve the situation and to consider the result of the divorce. If these two chances do not work, the third divorce should be to end the marriage.⁸⁹ Indeed, although Islamic law has put in place many restrictions to reduce the number of divorces, in many Islamic states today, husbands misuse their right to divorce as many men divorce their wives without providing any justification. The spirit of Islamic law, however, attempts to minimise the number of divorces and protect wives from husbands' misuse of divorce. In this era, there may be a need to put in place more restrictions with regard to the husband's power of divorce. For instance, in Islamic law, divorce, as discussed before, should involve a rational decision. Therefore, it may be more appropriate for Islamic law today to make divorce effective only by going through the courts as the judge will make sure that a husband's decision to divorce is based on rational thinking.

5. Conclusion

In a society where little girls were killed and where women were inherited, Islam appeared with a completely different concept for women. Islam values women and gives them rights. In fact, Islam guarantees rights for women in all aspects, making them participate hand in hand with men and without discrimination in all spheres of life. However, customs and traditions were and still are the greatest obstacle in the way of women achieving their ambitions and obtaining the rights that are guaranteed to them by Islamic law. Customs and traditions have negatively influenced interpretations of the Qur'an and the Sunnah, which have led to these texts being interpreted in ways that are not commensurate with the current requirements of the times, especially with regard to women's rights. To obtain women's rights, the Qur'an and the Sunnah must be re-interpreted in the proper context by using *Ijtihad*.

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- ⁸ Shaarawy, *Women in the Holy Quran* p.15
- ⁹ Badawi, *Gender equity in Islam* p.43
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