

**THE ISSUE OF GENDER EQUALITY
AND THE STATUS OF WOMEN IN
ISLAMIC LAW**

By:-

AHMED OMERE ALII

ID NO;- D4 LA 72021/2000

CENTER HARAR

SIGNITURE

**FACULTY OF LAW
ST MARY'S UNIVERSITY COLLEGE**

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CANDIDATE:- AHMED OMERE ALII

EXAMINER: _____ SIGNATURE _____

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INTRODUCTION

The issue of gender equality is important, relevant and current. Debates and writings on the subject are increasing and diverse in their perspectives.

The term Gender refers to economic, social and cultural attributes and opportunities associated with being male or female within a given society at a specific period of Time.

Gender equity on the other hand can be defined as equal treatment of men and women in law and politics, and equal access to resource and service within a females, communities and society at large.

The Islamic law (sharia law) consists of both the Quran and the authentic Sunnah (hadith).

The Quran is the record of God(Allah), while the sunnah (some times referred to as hadith), concerns to the words, actions, confirmations of prophet Muhammed in matters pertaing to the meaning and practice of Islam, thus, the authority of Islamic law emanates from these two sources.

In Islamic jurisprudence, law and religion are intimately connected. i.e, it is not only the religion but also the legal system unlike all the secular laws does not draw any sharp distinction between legal rules on the one hand, and religious, moral and social rules on the other. Therefore, the scope of sharia law is very wider than the secular law.

Under Islamic law the protection of women's rights are well decreed under Quranic verses and hadith but in practice these rights and the status of women are undermined and largely overtook by the prevalent local culture.

It is the common experience everywhere, that, what the law intends to achieve and the practice of the people as regards to that law, are two different things in this respect. It is helpful to know to what degree the Muslim communities have deviated of what the sharia provides and how far it has been affected by the different cultural environment. Due to this fact, the Issue of gender equality in Islamic law has been subjected of some comments and criticisms by a number of Muslim and non-Muslim commentators. In dealing with this part we will have to touch only on such principles as the issue of gender equality, the status of women, the question of polygamy and initiation of divorce.

For the purpose of the paper, the study focuses on the Quranic verses and hadiths to analyses specially, the problems of women's equality related matters in Muslim community.

For the better understanding of the messages the paper is divided in to four chapters: The first chapter deals with general over view of gender equality, under this, nature of Islamic law, definition of gender equality, women in ancient civilization and the contrary arguments with the equality of men and women will be dealt.

The second chapter deals with the status of women in Islam, under this, the presumption of people towards Islamic law, Fundamentals of spiritual and human equality, legal and political, Economic and social aspects of women in Islam. Further more, the Question of polygamy will be seen in chapter three, under this, the definition of polygamy, the position of western secular law and Islamic law regarding to polygamy, justifications and practical problems.

Finally under chapter four, Dissolution of marriage, forms of divorce and the initiation of marriage will be dealt, next to end of the chapter four conclusion and recommendations will be addressed.

1. Wolii gala seenaa Ityoophiyaa hanga bara 1983

Durirraa kaasee biyyatti kana kan gamsiisan rakkoolee bu'uura lamatu ture. Isaanis, Hiyyummaa fi Duubatti hafummaa turan Hiyyummaan hanqina oomishtummaa, galii uummataa fi hanqina tajaajila hawaasummatiin kan madaalamuudha.

Duubatti hafummaan ammoo Ilaalcha farra dimokraasummaa, barmaatalee duubattihafaa fi Aadaa dimokraasii horachuu dhabuun madaalama.

Maddi rakkinaalee kanneen lamaanii Dhiibbaa, hacuuccaa fi cunqursaa sirnoonni dabran ummatarraan gahaa ture ta uunsaa wol hin gaafachiisu.

Sirnaalee hanga bara 1983 turan keessaa tokko sirna nugusaawaa ture. Sirni kun diinagdeen isaa kan hundaae Abbaa lafummaa irratti ture, kanarra kan ka'e hundeeffama mootumma giddu-galeessaa fi lafa babalifanna mootummaa minilikiin wolqabate, hafti larka uummataatii baate kan nugusaa fi Abbootii lafaa taate. yeroo kanatti qoteebulaan oomisha dafqa isaa xuruuratee oomishe keessa harka caalu Abbootii lafaati galii gochaa ture, kana qofa otuu hin taane humnaanis maatii nugusaa fi Abbootii lafaa akka tajaajilu dirqamaa ture.

Sirna kana mormuuf dabree dabree fincilli haajiraatu malee, qoteebulaan sirna kana jalaa bahuu hin dandeenye.

Kanarraa kan kae si'aa'inni qotee bulaan omishmishtummaaf qabu hanqachaa dhufe Baayinni uummataas saffisaan dablaa deeme

Kununsi lafaa fi qabeenya uumamaaf godhamu dadhabaa dhufe, Rakkoleen kun wolitti. Idaamanii beela 1966 sababa ta'an taateen kun sirni abbaa lafaa ummata balaarra akka hanbisuu hin dandeenye saaxila baasun kufaatii sirnichaatiif sababa ta'e.

Kufaatii kanabooda sabaa fi sablammoonni hacuuccan sira naafxanyummaa garmale gamsiise gaafii wolqixummaa lallabuu jalfaban.

Qotee bultoonni abummaa lafaa fi oomisha, uummanni magaaless mirga demokraasii fi jireenya fooyya'aaf mormii isaani itti fufan, Dhumarrattis sirn nugusaawaa xumurame. yeroo kanatti uummanni sirnaan waan hin qindaainiif kaumsa mootummaa abbaairreef karaa bane.

Mootummaan Abbaairrees kunis gaafii uummataa guutumatti deebisuu hindndeenye Diinagdeen mootummaa abbaairree kallattiidhaan lafarratti kan hundaa'ee ta'uu baatuuyyuu. tooftaalee garaagaraa baasuun oomisha qoteebulaa maloota ykn tooftalee garaagaraatiin ammas akkuma sirna dabree saama ature, Ijaaramuun woldaa qoteebulootaafi sirni sooshaalizmii tooftaalee kaneen keessa kan jalqabaati.

Maqaa sirna sooshalizimitin worshaaleefi manni magaalota tooannaa mootummaa jala akka taan toosifamanii jiru Abbootiin qabeenyaas mahallqa garshii 500,000 ol horachuu fi sochoosuu akka hin dandeenye seeraan daangefaman.

sirni dargiis akkuma kan dabree fedhii fi hawwii ummanni wolqixummaa fi bilisummaa diinagdeef kaasuu deebisuu hin dandeenye, kana malees umriiangoo isaa dheerefachuuf, gaafilee kanneen humnaan dhaamsurratti boba'e, woggootii 17t horaanni adeemsifamaa ture, sababii kanaan qabeenyaa fi lubbuu namaa garmalee sardamuun oomishtummaan dadhabaa dhufuun. diinagdeen mootummas dhumarratti Humnoota Dimokraasiin angorraa ari'ame.

2. Dhufatii Humnoota Dimokraasii

Kufaatii mootummaa dargiitiin booda biyya kana keessatti sirna siyaasaa, Diinagdee fi Hawaasummaa haaraatu uumame, kufaatii dargiitti aanee ji'a tokkoof A.D.W.U.I. mootumma biyyatti erga tooate booda woxabajjii 24,1983 konfiransii mootummaa ceeumsa ijaaru kan paartileen hundi keessatti hirmaatan adeemsifame. Chartariin mootummaan cee'umsa ittin bulus wixineefamee biyyattiin daandii dimokrasii tokko jette jalfabde.

2.1. Tarkaanfii worrefsa dimokraasii kan duraa

A. Diinagdee farrummaa dimokrasii diiguu

Biyya kana keessatti yeroo sirni nafxanyumman itti jalfaberra eegale diinagdee sirna kanaaf bu'uura ta'an lafaa fi maxantummaa dhabamsiiuun barbachisaa to'ee argame ture.

Gaafii lafaa deebisuun sirna Dargii irrotti ture garuu bifa dimokraasumma diriirsuun waan hin tainiin rakkinaalee qotee bulaa hiikuu hin dandeenye, omishin qoteebulaan lafarra argatus tooftaa garaagaraatiin tooannaa mootuma jala akka oolu godhamaa ture haallii kun. qoteebulaa 85% lafaa fi oomisha isaa irratti murteessumma dhabuun, kan fedhe filatee kan fedhe bitatee bilisummaan gabayaa bilisaa keessatti socho'uu hin danda'u

kanaaf, worraqsii dimokraasii, diinaqdee hundee farra dimokraasii ta'e fi rakkina ummata 85% kana furuuf kan danla'amus, yoo bilisumman oomishtummaa fi murtcessummaa qabaate qofa ta'uu isaa amanuun haala kana jijjiiru dando'ee jira

B, Sabaa fi sablammoota mirga ofiin of bulchuu gonfachiisuu

Hacuuccaan sabaa fi sablanmootairratti raawwatamaa ture, gaafii dhuunfaa ykn garee takoo waan hin taiiniif, fala siyaasaa argachwin dirqama ture.

kana gochuun abbummaa angoo siyaasaa sabbaaf sablammilee hundaafu wolqixxummaan mirkaneessuun barbachisaa ture. kanaaf tokkoon tokkoo sabootaa dhiibbaa tokko malee waaee ofii, ofiin akka murteessaan gochuuf akka. Isaaniif mijaa'etti Naannoon, zooniifi Aanatti qindaa'uun mirga ofiin of bulchuu akka itti fayyadaman taasifamee ture. Haaluma kanaan Aanaa fi zooniin addaa, angoo isaaniif malu of biratti hanbifachuun kan hafe mootummaa naannoof haalli itti kennan casaa fediraalawaa diriire.

Naannoleen Aangoo heera mootummaatiin adda bahee kennameetti bilisaan akka itti fayyaaamaan taasifame.

sirna kana keessatti mootummaan Fedraalaafi mootummaleen naannoo, wolabummaa birnadummaa wolqixa fabu sirni qoqqoodaa (hirmaanna) angoo fediraalawaa kun heera mootumma Boqanna 5 keewwata 50 jalatti akka armaan gadiitti kaameejira.

"Maotummaan Fediraalaa fi Naannolee, angoo seera tumuu, hojjirra oolchuufi murtii kennu fabu." jedha.

Bogannama kana, keewwata 9 jalatti, "Angoon Fedraalaafi mootummaa naannoo Heera mootummaa kanaan murtaa ee jira. Angoon mootumma Fediraalaati kenname, mootumma naannoon kabajamuu faba, kan

naannolee kennames mootummaa Fedraalaatiin kabajamuu qaba." jedha.

Kanaaf barbaachisummaan mirga kanaa ijoo fi baayee murteessaa dha.

C. Dhimma wolii irratti wolqixxummaan hirmaachuu

Hanguma, mirgisabaafi sablammoota wa'ee ofii isaani murteessuu irratti barbaachisaa ta'e, dhimma wolii irrattis wolqixxummaan akka murteessan, mirgan gonfachiisuun barbaachisaa ta'ee waan argameef, angoo joo mootummaa Fediraala kan ta'e mana maree bakka buoota uummataa fi mana moree Fedireeshiinitti akka ijaaraman taasifame jira. Manneen kana keessatti saboonni martinuu wolqixummaan hirmaatuun, mirga isaaniif laatame, karaa dimokiraatawaa ta'een itti fayyadamu.

D. Hiree ofii ofiin murteefachuu

Mirgoota armaan ouitti ibsan qofa mirkaneessuun, gahaa waan hin taaneef wolqixxummaa sabaafi sablammoota daran mirkaneessuuf, mirga hiree ofii ofiif murteefachuu hanga fottoquutti jedhuu mirkaneessuun barbaachisaa tae waan argameef, mirgi kunis Heera mootummaatiin kaawamee jira. (keewwata 39.)

Barbaachisummaan mirga kanaa waasadiif ture.

- i. sabni cunqursaa fi hacuuccan garmalee gamsiisee ture, mirgi keessan haala armaan oliitiin isiinif kabjama jechuu qofaan, ofitti amananii tokkummaa biyyooleessa ijjaaruuf ofshakku, kanaaf sodaa kana dhabamsiisuuf. Bakka wolqixxumman jedhame hin jirretti wobii isadhumaa akka tauuf.
- ii. Humni wolqixumma fallessuun, sirna hacuuccaa debiisee ijaaraaf yaadu yoo jirate ykn yoo uumame, humnikun akka isa hin baasne beekke akka irra dhaabbatuuf, maaliif, saboonni mirga kanatti fayyadamanii gaafii fottoquu kaasuu waan danda'aniif.
- iii. Dhumarratti, yagguu mirgi kun hojirra ooluun dirqama ta'ee argame, balaa tokko malee, karaa nagaatiin hojirra oolchuf akka toluuf yaadamee kan mirkanaa'e. kanaafuu, mirga kana mirkaneessuun sochii worraqsa dimokraasii ijaaruu keessatti shora gudda faba.

E. Afaan, seenaa fi Aadaan saboota akka kabajamu godhuu

sabaafi sablammoonni Afaan ofiitiin fayyaadmuu danda'uun mirga wolfixumma mirkaneessuu keessaatti akan bu'uurati. haaluma wolfakkaatuun. seenaafi Aadaa saba tokkoos akka kabajamu mirkaneessuun bu'ura wolfixxummaati kanarra kan ka'e. Afaan, seenaa fi Aadaan ityoophiya kan saba tokko tauu dhiisee, wolitti dhufeenya seenaa fi Aadaa ummatoota Itiyoophiya guutuu ta'a sana booda lammi eenyumma ofiitti

amanee ittiin boonu, uumuun dandaama yeroo kanatti, tokkumma Itiyoophiyaa dimokiraatowaa kan fedhiifi wolitti dhufeenya uummatoota isheetiin ijeaaramte, haala amansiisan uumun dandama.

Barbaachisummaan mirga Afaanii, seenaa fi Aadaas kanumaaf ture. haaluma kanan, Heerri mootummaa keewata 39(2) akkas jechuun ibsa.

"Tokkoon tokko saba, sabiammaotaa fi uummatoota Itiyoophiyaa, mirga afaan ofiitin dubbachuu, barreesuni fi guddisuu qabu, akkasumas mirga Aadaa ofii ibsuu, guddisuu fi babalisuu fi seena ofii kunuunsuu qaba."
jedha.

3. Gufuu sirna kanaa

Itiyoophiyaa tokkumma Feediraalawaa fi kan sabaa fi sablamoota hunda hin mufachisne (komachiisne) ijaajaruuf akka arman olitti laalle kanaan gama hundaan tattaaffii cimaa gochaa turte, haataa malee, sirna kanaa gufuu kan taan. waan hedduutu jiru, kanaafuu sira dimokraasii worraaqa ijaaruun cinaatti, gufuulee kanneen addaan baasanii beekuufi irratti qabsawun barbaachisa ture, Rakkooleen kunniins, oftuumma, Dhiphummaa fi maxxantummaa dha.

A. oftuummaa

oftuummaan yaada diiggaa, garee muraasa amala maxxantummaa horataniin yaadamuudha.

Ilaalchi oftullummaa, Itiyoophiyaan biyya sabaa fi sablammii hedduu taatee otuu jirtu, haqa kana amanuu fi fudhachuu dhiisuudha. kana qofa otuu hin taane biyyi tun biyya sabaa fi sablammii tauu issii akka dadhabinatti laaluun, akkumma sirna Fiudaalizimii, olaantummaa sabaa tokko qofa calqqisiisuuf yaalii godhuudha.

B. Dhiphumma

Dhiphumman yaada yeroo sirni cunqursaafi hakuuccan itti babalateetti uumame ta'e, gama tokkon oftuumma mormun amala dimokraasii yoo coll aqqisiisu gama biraon ammoo qabsoon uummata kallatti sirrin gara angooti akka hin geenye gochuun, qabsoo uummata gufachiisa.

Dhiphumman, biyya kami fi yeroo kamittu qabsoo uummata kollattii sirriin angooti geessee hin beeku kanaafuu, Adeemsa karaa dogoggoraafi I-dimokraatawaa ta'ee dha.

C. Maxxantummaa

Maxxantummaan, angooti fayyadamuun ykn Abbootti angooti shariikuun otuu gabaa bilisa keessatti hin dorgomin qaxxaamuraan duromuu(sooranuuf) yaalii gochu haalli kun oomishtonni sirna gabaa bilisaa keessatti dorgomanii dabruuf guufuu itti ta'a akkasumas sirni diinadee I-dimokraatawaa ta'e akka uumamu sochuun diinagdeen biyyatti akka duubatti hafu godha angoon giyaasaas madda galii tae akka tajaajilu taa.

Dhaadanno oftuummaa fi Dhiphummaatiin, maxxantoonni garaangootti dhufuuf yaalan, fedhii maxxantumma isanii kana ifatti baasanii yoo socho'an milkaauu akka hin dandeenye ifatti waan beekaniif fedha isanii kana haguuggi (golga) fedhii saba balaatii dhoksanii, fedha isanii kana haguuggi (golga) fedhii saba balaatiin dhoksanii fakkeesanii bobbaatti jiru haguuggi kanneen keessa beekkamon. qoqqoda, bajataa, fi angoo siyaasa akkasumas maqaa tokkumma Itiyooophiyaa egsisuutiin xaaqaa isanii hafarsaa fiigu. Amalli kunniin yoomiyyuu taanaan ammaan booda bakka hin fabu, argachuus hin danda'u.

4. Sochii Miseensota DH.D.U.O. haala qabatamaa

A. Sochii siyaasaa

Hayyuun haaraan oftuummaa, dhiphumma fi maxxantummaan daandii dogoggoraa fi badii ta'uu isaa hubatee, sochii fi qabsoon inni geggeessu dimokiraatawaafi kollatti sirri kan fabate ta'uu qaba

*BDU keessatti, yerao dheeraaf, qabsaon barattaota oromoo harki cadlu daandii dogoggoraa irra turuun issaa ifatti beekama, yeroo kanatti BDU keessatti lubbuu namaatiif qabeenya mootummaa irraan balaa guddaa qaqqabaa turan. haata'u malee, sochiin akkasii, Meeshaa diinaa taasissuu irra dabree bu'aa woyiituu fiduu hin dandeenye, sabaiin isaas qabsoo kallattii sirri irra jiru waan hin tainiif.

* BDU:- Bahir Dar Universty

Bara kana keessa sochiin miseensota Dh.D.U.O. garmalee cimaa dhufe, jijjii ramoota gurguddaa fi injifannao bgonsaa gonfachuu dandamee jira. Injifannoo kaneen keessa

- sochii mormitoota dadhabsiisuu
- ofitti amanummaa horachuu
- kilabii (Gumii) mooraakeessa jiran keessatti hirmaachuu.
- Jijjirama ilaalchaa fi yaadaa fiduu

Sochii Mormitoota dadhabsiisuu

Sochiin mormitaata bar kana baayee dadhabee jira kanarratti miseensonni Dh.D.U.O BDU hordoffii cimaa irratti gochuun, akka isaan ergama diinaa fiixaan hin baasne battalumatti itti dhaqqabuun ergamni isaanii fashala'uu danda'ee jira.

Barattaonni ergama diinaa geggeesuuf of ijaaran kana itti dhaqqabuun akka sceratti dhiyaatan godhamanii jiru. Isaan hafan ammoo of eeggannoon barreefamaan itti kennamee barnoota isaanii irratti akka deebi'an taasifamanii jiru.

Kana gochuu keessatti mormitoonni, miseensonni Dh.D.U.O hangam kaayyoo sirrii fi kayyao sabaatiif akka dhaabbanne hubachuu danda'anii jiru, gocha isaaniitiif balaa guddaaf kan of saaxilan, tattaaffii miseensota keenyaatiif balarraa oolani jiru, kun ammoo hangam sabaaf akka quufamnu ifatti isaan barsiisee jira of duraatis gocha akkasii akka hin raawwane

waadaa nuuseenanii jiru eenyu faa akka sechoosus wolsaaxileessanii jiru.

Ofitti amanummaa horachuu

ofitti amanummaa horachuu keessatti miseensonni Dh.D.U.O. bara 1998 irraa kaasee *BDU keessatti hanga bara kanaa (2000) ofitti amanumma hi horann.c.miseensonii fi sochiin sodaatamu kan mormitootaa ture, miseensi keenya an miseensa Dh.D.U.O ti jedhee of ibsuu sodaachaa ture amma garuu, ofitti amanuun sodaa tokko malee akka barbaachisaa ta eetti socho'uu dandeenye jira.

Miseensonni keenys, sochiin Dh.D.U.O. hangam akka sirrii ta'ee fi kaayyoo dhugaa ta'e guyyaarra gara guyyaatti wontoota qabatamaa arganirraa ka'uun eenyummaa dhaabaafi maalumma isaa gadi fageenyan hubachuun, dhaaba boonsaa fi kaayyoo sirriita'uu isaattii boonuu dandeenyee jirra.

Gumii Moora keessatti hirmaachuu

Kilabii (gumii) mooraa BDU keessa jiran keessatti hirmaachuu ilaalchisee, miseensonni keenya bard kana (2000) jijjiirama seena BDU keessatti hin mulatin (argamin) fiduu dandamee jira. Seenaa BDU keessatti miseensi keenya (barataan oromoo) przadaantii barttoota BDU ta'uu dhiisii miseensa kuwansilii

* Bahir Dar Universty

kanaa ta'ee argamee hinbeeku, bara kana garuu miseensonni keeny kilaboota mooraa BDU keessa socho'an hedduu keessatti edduu gurgadda fabanii argamu kun seenaa boonsaafi kan jalfaba ta'uu isaarrayyuu, Ilaaleha dogoggoraa, ***"oromoon dhiphumma isaa dhiisee biyya bulchuuf ga umsa hin qabu jedhanii, barattoota olold oofaniif ragaa amansiisaa ta'ee mulachuu dandaae jira. kun tarkaanfii ga'umsa miseensota keenya ifatti argisiise keessa tokko.***

Jijjiirama ilaalchaa fi yaadaa fiduu

Jijjiirama ilaalchaa fi yaadaa fiduu keessatii miseensonni Dh.D.U.O BDU armamaan dura hariiroon mormitoota woliinqaban, hariiroo diinummaa ture bara kana (2000) garuu akkas miti, mormitoota keenya akka diinaatti laaluu otuu hin taane, wolitti kalaayuun kallattiindhaan woliin falmuun amansiisuuf dandeenye jira. kanumarra kan ka'e barattoota ciccimoo gara dhaaba keenatti fiduu dandeenye jira. Isaan hafan ammoo kanneen ilaalanii yeroo ofii isaanitti gara miseensa keenyaatti dhufuu danda'anii jiru.

Wolumaa galatti miseensonni Dh.D.U.O. BDU gama hundaan sochii qabatamaa gochuun as qofa osoo hin taane. miseensota keenya (Dh.D.U.O) kan universitii biroo jiraniif fi dargaggoota oromiyaatif fakkeenyumma gaarii diriirsuu keenyaaf maqaa

miseensota Dh.D.U.O, BDU tiin gammachuu boonsaatu natti dhagahama sababiinssa qabsoon Dh.D.U.O. tumsaafi injifannoo akkanaa orgachuun hangam qabsoon uummata oromoo kallattii sirrii fabatee sochoutti akka jiru sabboontonni dimokraasii hundinuu qabatamaan arguun injifannoo kanatti ni boonu jedhee amana.

B. Diinagdee fi Hawaasumma

Miseensonni Dh.D.O.U. BDU, akkuma barruu woraqaa qoannoo kana keessatti haala siyaasaa, Diinagdee, fi Hawaasumma, biyyatti kana sirnoota dabran irraa kaasee keessa babahuun yaalametti, umanni oromoo bikkamirra (eessa) akka jiru hubachuun namarakkisu.

kanaaf, miseensonni Dh.D.U.O BDU injifannoo gama siyaasaattiin argame kana gama diinagdee fi hawaasummatiin injifannoo boonsa galmeesisuu dhaaf baachiin eebbifamtaota BDU. waadaa galanii jiru,

gama diinagdee ilaalchise sochii misooma diinagdee naannoo oromiyatti geggeefamaa jiru bu'aa qabsoo sirrii Dh.D.U.O to'uu isaa itti amananii jiru keessumaayyuu sochii fi injifannoo qoteebuloota naannoo oromiyaa dinqisiifachuun, haalli diinagee woggootii shaniif wolitti aansee galmeefame kun haala kanaan itti fufnaan. guddinni diinagdee biyyatti saffisaan akka deemu tilmaamuun dandamee jira.

Miseensonni Dh.D.U.O BDU sochii diinagdee kana kallattiidhaan itti seenuun tumsa isaanirra eegamu akka gumaa chan waadaa galanii jiru.

Waa'ee Dhimma hawaasummaa illaalchii sochii mootummaan naannoo oromiya rakkinaalee hawaasa furuuf gochaa jiru dingisiifachuun. gama kanaanis arsaa barbaachisa ta'e kafaluuf misee nsonni Dh.D.U.O BDU mirkaneessanii jiru.

Wolumaagalatti sochiinii fi tumsi miseensonni keeny gama siyaasan, diinagdeen fi hawasummaatiin qaban akka armaan olitti ilaalle ta'ee. sirna dimookiraasi worraqsaatiif waardiya akka dhaabbaatan mirkaneessanii jiru.

CHAPTER ONE

GENERAL OVER VIEW OF GENDER EQUALITY

1.1. Nature of Islamic Law

The issue of gender equality is important, relevant, and current. Debates and writings on the subject are increasing and diverse in their perspectives. The Islamic perspective on the issue is the least understandable and most misrepresented by non Muslims and some Muslims as well.

It may however be necessary before embarking up on the discussion of specific problems to dealt in this paper to make a few general remarks about the nature of Islamic low or the Sharia as it is more commonly called.

The teachings of Islam are based essentially on the Quran and the authentic sunnah. The Quran is the records of Allah (God), dictated verbatim to prophet Muhammed in installments, either verse by verse or a group of verses, through the angel Gabriel over a period of 23 years, between 610 and 633AD. Sunnah (sometimes referred to as hadith) refers to the words, actions and confirmations of prophet Muhammed in matters pertaining to the meaning and practice of Islam. To Muslims, hadith is a form of revelation given to prophet Muhammad, but not verbatim, as is the case with Quran. The Quran and the sunnah, properly and unbiasedly understood, to provide the basic source of authority for any position or view that is attributed to Islam¹.

Islam is not only a religion but also a legal system. All the rules in the sharia are based on the teaching of the Quran and the traditions of the

¹ Mostafa Malaekah, woman in Islam, P.1, pra. 2

prophet. To put it another way, the Islamic law or Sharia, unlike all secular laws does not draw any sharp distinction between legal rules on the one hand religious, moral and social rules on the other hand. Hence, in Islam, religion and law are indivisible. Due to that fact, Islamic law has widest scope than the secular legal systems. Any action can be classified under Islamic law in one of the five basic categories: obligatory (wagib), voluntary (Mustehab) but commendable, permissible (Mubah) Reprehensible (Kerah) and Forbidden (Haram)². Generally, the sharia provides the rules relating to religious beliefs, morality and transactions between human beings.

A brief historical introduction is rendered more necessary by the fact that the issue of gender equality in Islam has been the subject of some comments and criticisms by a number of Muslims and non-Muslim commentators.

The status which women reached during the present era was not achieved due to the kindness of men or due to natural progress. It was rather achieved through a long struggle and sacrifice on womens part and only when society needed womens contribution and work specially during the two world wars and due to escalation of technological change³. But in Islamic law the issue of gender equality and the status of women well decreed in the wholly Quran. However, misrepresentation and misinterpretation of Quranic verses has been significant effect on rights and status of women⁴. To provide a fair evaluation of what Islamic law is contributed to ward the restoration of women's dignity and rights, it may be useful to review how women were treated in general in previous civilization and religions which preceded Islam (before 610 AD). After this historical background, we see the definition of gender equality and the

² Philpis adn Henry, F., Marriage Law in Africa, oxford university press, London New York, 1971, P-128

³ Zakir Mustafa, The substantive law applied by Muslim courts in Ethiopia, Vol. 9, No.-1, PP 52-53

⁴ Malaekah Mostafa, Woman in Islam. P. 15

equality of women and men as general and the contrary argument to this issue.

1.2. Definition of Gender Equality

Before we directly enter to the definition of gender equality it seems necessary to know briefly what the term 'Gender' refers to.

The term gender refers to the economic, social and cultural attributes and opportunities associated with being male or female. - - - Gender attributes and characteristics, encompassing, inter alia, the roles that men and women play and the expectations placed up on them, vary widely among societies and change over time. But the fact that gender attributes are socially constructed means that they are also amenable to change in ways that can make a society more just and equitable.⁵

More shortly, the term gender refers to the economic, social and cultural attributes and opportunities associated with being male or female with in a given society in a particular point in time. Therefore, as it is understandable from the definition, what expected from some body being female or male within one society may not in other society, subject to the time of expectation. Another thing we can understand is whatever it is socially constructed, it can be influenced or controlled in a way it brings just and equitable among society through time.

When we come to the definition of gender equality we can cite the following definition.

⁵ Population and reproductive Health Indicators, WWW//G:\concepts and Definitions.htm,2008. P-1, Pra-1.

*"Gender equality means equal treatment of women and men in a laws and politics and equal access to resources and services within families, communities and society at large."*⁶

The meaning of gender equality needs to be understood briefly because, it seems that many arguments from different states and religious leaders come from misunderstanding of the meaning. Every body may hear that when people argue. Saying that, How equality between women and men is realized? How two different things can be equal unless they are exactly the same? This issue will be dealt at the end of this chapter.

When we come back to the definition. It can easily understood from the words "treatment" and "access" Hence, what the definition refers to is not Biological or physical or any other natural difference, rather it refers to the opportunity of equal treatment in law and politics and equal access to resources and services within the family, community and the society at large.

Other synonym phrases that need to be identified is 'Gender equity' it is defined as follows.

*"Gender equity means fairness and justice in the distribution of benefits and responsibilities between women and men."*⁷

Gender equity usually requires women specific programs and policies to end the existing gender discrimination. Like affirmative action, designed to favour people who are at disadvantage or treated unfairly.

The equality between men and women exists when both sexes are able to share equality in the distribution of power and influence, have equal opportunities for financial independence through employment or through

⁶ World health organization, WWW//G:\Gender and reproductive rights glossary.Ltm.2008, P-1, Pro.2.

⁷ Ibid, P.1, pra. 3.

setting up on businesses; enjoy equal access to education and the opportunity to develop personal ambitions, interests and talents, shared responsibility for the home and children, and are completely free from coercion, intimidation and gender based violence both at work and at home.⁸ Where gender inequality exists, it is generally women who are primarily excluded or discriminated in relation to decision making and access to economic and social resources which directly impact on their rights.

1.3. Women in Ancient Civilization

As I have indicated previously, for assessment of Islamic law contribution to women's dignity and rights, it may be better to see the historical background of women's status in some selected areas of ancient civilization. To meet this objective, The Indian, The Roman, The Athens, The Scandinavian countries, The Britain, The France and The Mosaic (Jewish) law are the main concern.

A. The Indian Women

*"In India, subjection was a cardinal principle, day and night must women be held by their protectors in a state of dependence says 'mams'. The rule of inheritance was agnatic, that is descent traced through males to the exclusion of females."*⁹ In Hindu scriptures, the description of a good wife is as follows: *"A woman whose mind, speech and body are kept in subjection, acquires high renown in this world, and, in the next the same a bode with her husband."*¹⁰

⁸ Ibid, cited at note 5

⁹ The Encyclopedia Britannica, 1911.

¹⁰ Mace, David and Vera, marriage: East and West.

B. The Roman Women

A Roman woman was described by a historian as *"a babe, a minor, a ward, a person incapable of doing or acting anything according to her own individual taste, a person continually under the tutelage and guardianship of her husband."*¹¹

In the Encyclopedia Britannica, 1911, the legal status of women in the Roman civilization summarized as follows:

*In Roman Law a woman was even in historic times completely dependent. If married she and her property passed into the power of her husband - - - the wife was the purchased property of her husband, and like a slave acquired only for his benefit. A woman would not exercise any civil or public office - - - could not be a witness, surety, tutor, or curator; she could not adopt or be adopted or make will or contract.*¹²

The Islamic law position in this regard will be seen later in chapter two in detail.

C. The Women In Athens

In Athens, women were not better off than either the Indian or the Roman women.

*"The Athenian women were always minors subject to some male; to their father, to their brother, or to some of their male kin."*¹³ Her consent in marriage was not generally put in to consideration and *"she was obliged to*

¹¹ Allen, E.A., History of civilization

¹² Ibid, cited at note 10.

¹³ Ibid, cited at note 11.

*submit to the wishes of her parents and received, from them her husband and her lord, even though he were stranger to her."*¹⁴

D. The women in the Scandinavian countries

In Scandinavian races women were:

*Under perpetual tutelage, whether married or unmarried or the code of Christian v. at the end of the 17th century. It was enacted that if a woman married without the consent of her tutor he might have. If he wished, administration and usufruct of her foods during her life.*¹⁵

E. The Women in the Britain

In Britain the right of married women to own property was not recognized until the late 19th century *"By a series of acts starting with the married women's property. Act in 1870, amended in 1882, married women achieved the right to own property and enter in to contracts on a par with spinsters, widows, and divorcees."*¹⁶

F. The Women in the France

In France, It was not until 1938 that the French law was amended so as to recognize the eligibility of women to contract. A married women, however, was still required to secure her husbands permission before she could dispense with her private property.¹⁷ i.e. until 1938.

G. In the Mosaic (Jewish) Law

In the mosaic law, the wife was betrothed, under encyclopedia Biblica, 1902 the concept of betroth is explained as follows:

¹⁴ Ibid.

¹⁵ The Encyclopedia Britannica, 1911.

¹⁶ The Encyclopedia Britannica, 1968.

¹⁷ Ibid

*"To betroth a wife to oneself meant simply to acquire possession of her by payment of the purchase money. The betrothed is a girl for whom the purchase money has been paid."*¹⁸ From the legal point of view, the consent of the girl was not necessary requirement for the validation of her marriage. The need for consent is nowhere suggested in the law.¹⁹

As to the right to divorce can be read under the same encyclopedia as follows: *"The woman being man's property, his right to divorce her follows as a matter of course."*²⁰ therefore under mosaic law the right to divorce was held only by man. The encyclopedia Britannica, 1911, states that the right to divorce was held only by man, *"In the mosaic law divorce was a privilege of the husband only - - - ."*²¹

1.4. Equality of Women and Men

1.4.1. Essence of Equality of Men and women

The fundamental principles governing human relationships is the oneness of humankind. The belief that all human beings are equal. The equality of women and men is basic requirement derived from this principle. Though the capacity of each person may be different the opportunity to make a contribution must be available to women and men equally without any discrimination.²²

Essentials to the development of the oneness of human kind is the realization of the interdependence of individuals and their equality in the

¹⁸ The Encyclopedia Biblical 1902.

¹⁹ Ibid cited at not 15.

²⁰ Ibid

²¹ Ibid

²² Abdul. Baha, Equality of women and men, WWWiol.ie/isp/egendo 21/equality.htm, 2007, P. 1

sight of God. The writings of Abdul Bahai, states that how possible effort of each member of human kind benefits the whole human race.²³

- - - And let it be known once more that until woman and man recognize and realize equality, social and political progress here or any where will not be possible for world of humanity consists of two parts or member, one is woman; the other is man. Until these two members are equal in strength, the oneness of humanity cannot be established and the happiness and felicity of mankind will not be a reality - - - .²⁴

The Bahai's writing also indicates that the lack of opportunity for women has even prevents men from exercising their capacities to the full.

Women have equal rights with men up on earth, in religion and society, they are a very important element. As long as women are prevented from attaining their highest possibilities, so long will men be unable to achieve the greatness which might be theirs.²⁵

Today the world is entering in to an era in which we will need to utilize full advantages of the human resources of planet in order to solve complicated global problem. The requirement of the present day differs from those of the past. The solutions will require more responsibility and compassion must balance the increases of knowledge than scientific ingenuity. The gender equality of every person is necessary to balance the advanced technology of modern times and its possible negative side effects.²⁶

The world in the past has been ruled by force and the man has dominated over the women by reason of his more forceful and aggressive qualities

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

both of body and mind. But the balance is already shifting, force is losing its weight nothing to do with the force. In this world today, rather, mental alertness, intuition and the spiritual qualities have and service in which the women are strong participation ever where and in every position is acceptable in the present world. Hence, the new age will be an age of less masculine and more permitted with feminine ideals or to speak more exactly, will an age in which the masculine and feminine elements of the civilization will be more evenly balanced.²⁷

1.4.2. Education As Key Factor To Bring The Required Equality

The inter dependence among human beings no longer can be based on rigidly defined roles or obligations rather it need flexible and all round. hence, all people should be entitled to receive an education and to advance in the trades or profession each according to his or her capabilities.²⁸ The full potential of human race and only be realized when each individual members has fully developed his or her own capabilities. The importance of the equality of educational rights for both women and men is emphasized in the Bahais writing as follows:

*Woman's lack of progress and proficiency has been due to the need of equal education and opportunity, there is no doubt she would be the counterpart of man in ability and capacity. The happiness of mankind will be realized when women and men co-ordinate and advanced equally for each is the complement and helpmeet of the others.*²⁹

The Islamic law position as regard to the education is very rigid, as it is a crucial in the upbringing of daughters that greatly influences their futures

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

as well as the community as a whole under Islamic law education is not only a right but also a responsibility for all males and females. The prophet Muhammod (S.A.W.) said.

*"Seeking knowledge is mandatory for every muslim."*³⁰ There for the primary step to achieve of equality is, the education by the parents of both daughters and sons. So that, the women will have the opportunity to prove their equality of capacity in every where.

In order to promote unity of the sexes, daughters and sons must follow the same curriculum. When both sexes receive the same opportunity of education, then the equality of men and women be realized and there by, we begin to discover the way to world peace, economic stability and justice.³¹

Education for women is essential for development of civilization as they play a crucial role in the training of the coming generation from its infancy. Here, what is clear from the practical world is the formal education alone, however, is not enough to bring the wanted result because there are deep-rooted, prejudices preconceptions, expectation, habits, patterns of socially constructed behavior, stereotypes, etc. the combination of this and other factors have significant impact on the achievement of radical change. So, in order to minimize such negative effects trough time there must be complimentary endeavors side by side. Among such efforts, Affirmative actions which is implemented by the government policy program is well known all over the world. This right is internationally decreed under ICCPR³² as well as in our law under Art

³⁰ Malaekah Mostafa, Woman In Islam, (Hadith Narrated by al. Bayhafi and Ibn-Majah). 2004.

³¹ Ibid cited at 22

³² Internation covenant on civil and political right commentary, under Article 26

35(3) of FDRE constitution. The rationale behind such act is to remedy the existing legacy of inequality and discrimination suffered by women.³³

The coming to maturity of the human race depends up on the commitment of each individual to the principles of justice and to the small steps that he or she can take everyday to eliminate prejudice and to realize the equality of man and woman.

1.5. Contrary Argument with The Equality of Men and Women.

Concerning the issue of gender equality many people raise different attitudes, some are constructive while others are distractive. This difference in attitude can be emanated from different factors. Among these, personal philosophical grounds, deep rooted traditions, Religious influences, Educational back grounds, negative stereotypes (images) of femininity etc. Some times, the misunderstanding of the definition of gender equality also creates problem. Let see the following expression:

*"It was worth emphasizing that you can never have 'equality' between two things that are not equal by definition. And so for example, you can have equality among people, but not between 'men and 'women'."*³⁴ In the above quoted idea, the argument seems based on the menness or womennss. There are, of course, certain physical differences between the two sex. From earliest times, the fact the women were the child bearers helped establish a division of tasks between women and men in every society, only women bear children and nurse infants, leading to a tradition of women assuming most of the responsibility for child care. Men by contrast, have been free to work at a greater distances from their families. In early societies, this division of labor did not necessarily suggest

³³ The constitution of Federal Democratic Republic of Ethiopia Article 35(3).

³⁴ Angry Harry. <http://www.angryharry.com/complexequalitynotachievable.htm>.2007, P.8

inequality.³⁵ Women also differ physically from men in being, on average, smaller and less powerfully muscled. These physical differences helped to define certain physically demanding or dangerous jobs as 'men's work'.³⁶ But when we say equality between men and women, we are not referring to their Biological, physical or any other natural difference. Indeed, these difference limits in some case to act or behave in a certain manner which is unique to their respective sex.

Hence, to define the 'equality of men and women' this natural difference should not put in to consideration. As we have understood from the definition, it refers to accessibility of opportunities to equal treatment in law and politics and equal access to resources and services every where equal to men.

People who argue in a way quoted above have the belief that "*[t]he searching for equality between men and women is like a dog chasing its own tail. It will always out of reach. And the very act of chasing it is costing us a great deal and causing tremendous damage to us.*"³⁷ and they say, It is fuelling a never ending war (the hostility) between men and women. Because, such movement for equality generated largely by extremely vindictive groups of women whose careers depend on for ever stirring up hatred to wards men.³⁸

They say most feminists and women groups' want the existence of a permanent gender war in order to generate their support and their funding, and also to maintain their positions of power as well as their jobs that they wish to cling on to.³⁹

³⁵ The world Book encyclopedia, 2001, V. 21, P. 383

³⁶ Ibid

³⁷ Ibid, cited at 34

³⁸ Ibid

³⁹ Ibid

Generally, what ever arguments exist the issue of gender equality is unchallengeable; Since, it is very important. The world today need to realize gender equality, to face (resist) the complicated world problems associated with the advancement of technology and the human creative capacity. Women can attain every activity with men, despite the fact that, there are some barriers, the division of tasks that originally had been determined by physical differences became a matter of tradition. Since the creation of machinery canceled out the advantage of male strength and the birth control gave women the means to regulate their childbearing. Moreover, to rule out all the remaining barriers to women's participation of every position it needs the commitment of every person, since, the progress that each of us makes to wards the equality of women and men, benefits all of us and contributes to the unfoldment of world peace.

CHAPTER TWO

THE STATUS OF WOMEN IN ISLAMIC LAW

2.1. Presumption To Ward Islamic Law

Many people hurry to the conclusion that women in Islam are degraded as inferior and subordinate to men. We shall attempt to test the truth of that assertion by looking at some relevant Quranic verses and reforms brought about Islam in this regard.

One may appreciate the reforms made by Islam by referring to the situations that existed in this regard before the advent of Islamic Law. In the pre-Islamic era as we have seen in chapter one, in many areas of the world women were subject to their protectors. They were under perpetual tutelage whether married or unmarried. They were deprived of many rights. They have no right to free consent to marriage, right to divorce, have no right to possess personal property, financial security and right to inherit. Among all things, they were deprived the very basic right: right to life, to speak and express their opinion freely and participation in social affairs and law. The Quran ended the cruel practice of female infanticide which was before Islamic law which practiced by Muslim community particularly in Arab Muslims.¹ But the situation is now different under Islamic law.

2.2. Fundamentals of Spiritual and Human Equality In Islam

In the 7th century the divine revelation echoed in the wide desert of Arabia with the new and universal message to humanity. According to the Holy Quran, men and women have the same human and spiritual nature.

¹ Malaekah Mostafa, Women in Islam, 2007, P. 2

There is no any sex based difference or discrimination in sight of the God. This can be rear from the Quranic verse.

"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 - - -".²

This Quranic verse shows that all human being created from one soul whether men or women and therefore have equal spiritual responsibility. The Quran also does not blame woman for the "fall of man" nor does it view pregnancy and childbirth as punishments for "eating from the forbidden tree." On the contrary, the Quran depicts Adam and Eve as equally responsible for their sin in the Garden, never singling out Even for blame. Both repented, and both were forgiven.³

"We said: Get dawn all of you from this place (paradise), then whenever there comes to you Guidance from me - - - "4

So, we have seen above both men and women have the same religious and moral duties and responsibilities.

The Islamic law is quite clear about the Issue of the claimed superiority or inferiority of any human, men or women. The sole bases for superiority of any person over another is piety and righteousness not gender, color, or nationality or social status.⁵

Islamic law also provides many human rights protection for the individual. The following are some of these provisions:

² Malakah Mustofa, More On Women In Islam, WWW.Islam-guide.com/ch3-13-1.htm, 2007

³ Ibid

⁴ The Quran, Surah.2(Al-Baqarah), P.9, V.No. 36.

⁵ Malaek Mustafa, supra note 2, P. 5

The right and the property of all citizens are considered sacred. Whether a person is Muslim or not. Islamic law also provides protection for individual's honor. The prophet Muhammed (S.A.W) said:-

*" Truly your blood, your property and your honor are inviolable."*⁶

Racism is another issue which related to human equality. As this regard the Islamic guidance states as follows.

*"O Man kind, we have created you from a male and a female and have made you in to nations and tribes for you to know one another. Truly the noblest of you with God is the most pious - - -"*⁷

As it clear from the above verse, Racism, which can be a ground for various discrimination is clearly rejected under Islamic law. The sole favour in the sight of God under Islam, is not color, nationality, wealth, social status, and sex rather, righteousness of a person. Other prophets hadeeth (S.A.W) reflects the same attitude to the equality of human being.

*"O people, your God is one and your father is one, An Arab is not better than a non-Arab and a non Arab is not better than a black person and a black person is not better than red person except in piety."*⁸

The colors mentioned in the prophetic saying are illustrative. The meaning of the saying is that in Islamic law no one is better than another because of his color, whether it is white, black, red or any other color and grounds of discrimination for human being. In this regard, Art 26 of ICCPR and Art 25 of FDRE constitution states the following without any difference.

⁶ G.A Brief illustrated guide to understanding Islam, Darussalam, Houston, Texas, USA., (1997), P. 61

⁷ Ibid

⁸ Ibid, P. 62

*All person are equal before the law and are entitled without any discrimination to the equal protection of law. in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as: race, colour, sex, language, religion, political or other opinions national or social origin, property, birth or other status.*⁹

Therefore, human beings are equal and need to be treated equally. Except under certain objective criteria which is reasonable.

2.3. Legal and Political Aspects of Women In Islamic Law

2.3.1. Equality Before The Law and Equal Protection Of Law

The right to equality before the law does not give rise to a claim of what ever nature to substantive equality but instead only to a formal claim that existing laws be applied in the same manner to all persons subject to that law. The right to equality before the law thus is not directed at legislation but rather exclusively at its enforcement.

The Islamic law position as regard to this right is the same to that of secular law. Both genders are entitled to specific rights before the law since justice is genderless. This issue is reflected under Quranic verse.

*"And (as for) the male thief and the female thief, cut of their hands as a recompense for that which they committed - - -".*¹⁰

This provision shows that equal enforcement of law for both genders. However, its implementation is contrary to secular law.

⁹ The communtory on ICCPR, Art. 26, P. 449

¹⁰ The Quran, Surah 5, (Al-Ma'idah) P. 148, V.No. 38.

The right to equal protection of the law refers to legislature, which is accordingly bound to protect the right to equality without any discrimination. This obligation has both negative and positive aspects, on the one hand, the legislature must refrain from any discrimination when enacting laws.¹¹

Generally, these two rights secured under both the secular and spiritual law (Islamic law) in order to protect human being against any discrimination.

2.3.2. Participation of Social and Political Life

Before directly go to the participation of social and political life of women under Islamic law, it seems logical to address Art 25 of ICCPR which deals about political rights of a citizen. It stated as follows "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Art 2 and without unreasonable restrictions.

- a. To take part in the conduct of public affairs, directly or through freely chosen representatives.
- b. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ball of at, guaranteeing the free expression of the will of the electors.
- c. To have access, on general terms of equality, to public service in his country.¹²

These rights are also recognized under Art 38 of the FDRE constitution.

The first generation of human right, which is based on the classical human rights concept of enlightenment, contains not only civil but also

¹¹ Ibid, Noe 9, PP. 466-468

¹² Ibid

political rights. This provision require the state to retrain from interference in to the rights of citizen to freely enjoy his or her political rights. This right further requires the state to take certain positive steps to facilitate the enjoyment of such rights.¹³

When we come to Islamic law, the general rule in social and political life is the participation and collaboration of males and females in public affairs. Among the Quranic provisions regarding participation of both male and female equally in to social affairs of the society; states what follows;

*"The believers, men and women, are Auliy (helpers, supporters, friends, protectors) of one another they enjoy Al-maruf and forbid (people) from Al-munker (acts that Islam has forbidden) - -"*¹⁴

The verse shows that regardless of being female or male every believer has expected to help, support, be friend and protect each other from unaccepted act and conduct within the community.

Concerning political participation of women in Islam, there are sufficient historical evidence which Show the participation of Muslim women in the choice of rulers, public Issues, in law making and even in the battle field and it has been seen in administrative position. Such involvement in social and political affairs was conducted without the participant losing sight of the complementary priorities of both genders and without violating Islamic guidelines of modesty and virtue.¹⁵

Perhaps one needs to know, what were these evidences? Since, seeking for such evidences, seems logical, I am going to show some of them as follows.

¹³ Ibid

¹⁴ Ibid Note 10, Sukah 9, (At-Taubah), P. 256, V.No. 71

¹⁵ Malack Mustafa, supra note 2. P. 11

Under Islamic law women have the right to express their opinion freely, any opinion forwarded cannot be rejected due to the sole reason, that it was suggested by female. If it is right, it will be accepted among many events. It is better to see the history of women's condemning the reduction of dowry money (money given to woman at conclusion of marring).

Once up on a time, Omer Ibnu-hathab (R.I) a kalifa of prophet Muhammad (SAW) come to stage in the Mosque at presence of public and requested the public for reduction of brid-money to four hundred dreham, unfortunately, a woman among those publicly objected the proposal. Then the kalifa changed his mind soon, and said, My suggestion was wrong and she is right.¹⁶ so, from this hadith we understand that, women have full and free right to express their opinion.

Another event was that a woman even can argue with prophet Muhammad (SAW).

*"Indeed, God has heard the statement of her (a woman) that disputed with you (O Muhammad) concerning her husband and complained to God, and God hears the argument between you (both) ---"*¹⁷

So, from this Quranic verse, It is clear that under Islamic law a woman argue what ever she like to defend her right.

One of the evidences to the participation of Muslim women in the exercising of political right is stated as follows. "In the election held by Abdurhaman Ibn-awf, Muslim women have their own position to choose usman Ibn-afan. Then Ibn-awf approved their choice after hearing their comment."¹⁸

¹⁶ Al-Imame Buhari, Tefsir Al-Kertabi, P. 99

¹⁷ The Quran, Surah 58, (Al-Mujadilah), P.,748, V. No. 99

¹⁸ Ahimeddin Jeble, Women's right and equality In Islam, 1999, P. 70

In the battle field also, women's participation is well known in various Quranic verse and Hadith. Generally In Islamic law women are allowed to participate in any field as equally as men. But traditionally, many Muslims and non-Muslims think that women were excluded and made subordinate to men.

2.3.3. Women in Leadership Position

In Islamic law there is no text in the Quran or sunnah that precludes women from any position of leadership, except in leading prayers, although women may lead other women in prayer. Another common question relating to the eligibility of Muslim women to be heads of the state. There is no evidence from the Quran to preclude women from leadership of the state and while one particular hadith is commonly interpreted by scholars to exclude women from the headship of the state. Other scholars do not agree with that interpretation.¹⁹ Here, the issue is not a matter of religious dogma. The latter scholars Maududis support in 1964 of candidacy of lady Fatimah Jinah for president of Pakistan attests to this.

Benazir Bhutto (1953-2007) also well known woman which served as prime minister of Pakistan from 1988 until 1990 and 1993 to 1996. She was the first woman ever to head an elected government in an Islamic nation.²⁰

Other evidence to the possession of women to higher position was, that Omer the second caliphate after prophet (S.A.W.) appointed a woman as market place supervisor, a position that is equivalent in our world to director of the consumer protection department.²¹ Hence, it is clear that

¹⁹ Malackah Mustafa, Supra Note 1, P. 7

²⁰ World Book (Encyclopedia), 2001, P. 278

²¹ Malaekah Mustafa, Supra Note 2

there is no legitimate ground to preclude women from possessing higher position in society at any level.

2.4. Economic Aspects of Women In Islam

2.4.1. The Right To Possess Personal Property

Among the very important rights that woman was deprived both before and after marriage is, the right of independent ownership. In this respect the Islamic law is very strict. It recognize the full property rights of woman before and after marriage.

Many people, even Muslims believe that woman is always disadvantageous under Islamic law but that belief is erroneous, when we closely examine what the rule provided, the true fact may have seen easily and one may see how woman has been protected under Islam in all respects. But conservative interpretation and the shadow of prevalent tradition over took every where not only in Muslim community but also in western society, Where democracy expected successfully advanced. The evidence to that's, the feminine leader in U.S.A. said that, they are not able to achieve their equality with men, what make that ---with in 200 years old democracy of their country (U.S.A), it was the first time when they met in congress to talk about their issue.²² This shows that, the prevalent culture can not be eroded easily.

For the comparison of woman's protection given under Islamic Law as regard to pecuniary relation before and after marriage, It may better to address conditions under the revised family code of Ethiopia (RFCE).

²² Dr. Sheila Ruth, Issues in Feminism 4th ed, Mayfield Publisheing comp. Mountain view, california, London, Toronto P. 556, 1997.

Pecuniary relation is one of the effects of marriage. This effect may generally be classified in to personal or common property. As it is provided under RFC property is taken to be personal when it is possessed by one of the spouses on the day of their marriage or which they acquire after their marriage by succession or donation. Property is also personal when the property is acquired by exchange for property owned personally, or with monies owned personally or derived from the sale of property owned personally. This is the case when the court decides in its favor upon the application of one of the spouses as is dealt with under article 58 of the RFC.²³

Article 58 of the RFC of Ethiopia read as follows:

Property Acquired by onerous Title.

1. Property Acquired, by onerous title by one of the spouses after marriage shall also be personal property of such spouse where such acquisition has been made by exchange for property owned personally, or with monies owned personally or derived from the sale of property owned personally.
2. The provision of Article (1) of this article shall apply only when the court, at the request of one of the spouses has decided that the property thus acquired shall be owned personally by such spouse.²⁴

In case of property not acquired by onerous title there is no more variation with that of Islamic Law's position. Under Islamic law, personal property of woman include property possessed on the day of marriage, property acquired after marriage by donation or succession, property acquired by exchange of property owned personally or with monies owned personally or derived from the sale of property owned personally and increases derived from such person's property are all considered personal property

²³ The Revised Family code proclamation No. 213/2000, Art 57 and 58

²⁴ Ibid

of woman.²⁵ Under Islamic law, whether the property is acquired liberally or otherwise is not the matter, what is needed is the origin of such property or monies used to acquire such property and there is no need of court approval. So, when we compare the Islamic law and secular law, the woman is more favored under Islamic law. Further more, she is not obliged to spend any from such personal property to household expense even for her maintenance, unless she is willing.²⁶ The obligation to cover all expenses of family, is on the shoulder of husband she only retain her original property and increases therefrom to her own. She may use for her luxurious goods, but for fundamental goods expense the law imposes obligation on her husband.²⁷ The administration of such property is also her exclusive right unless they agree in the contract of marriage. She may buy, sale or lease part or all of her personal property without consent of any one, even her husband.²⁸

Woman is also allowed to take expenses without the knowledge of husband, If she is not allocate adequate expenses for her and her children. Once a day a woman come to prophet and told him (S.A.W.) that her husband is greedy and not give her adequate maintenance to her and her child. Then she asked whether she has a right to take without the knowledge of her husband, then the prophet (S.A.W.) has told her that she can. But subject to financial position of her husband.²⁹ The Quranic verse also orders husband to spend expenses for his wife as he can. *"Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what God has given him. God puts no burden on any person beyond what He has given him ---"*³⁰

²⁵ Malaekah Mustafa, Supra Note 1 P. 3

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid At 18 PP. 65-66

³⁰ Ibid

Generally, household expenses are the obligation of husband only. Hence, the right to personal property of woman under Islamic Law strictly protected.

2.4.2. Financial Security

Under Islamic law women are protected from any hard ship condition which they may face in their life spane. They are entitled to receive marital gifts with out limit and to keep present and future properties and income for their own security, even after marriage the primary objective of such entitlement is to secure her financial position, independently for hardship period, such as divorce, waiting period (iddah) in case of divorce or widowhood.³¹

Among those marital gifts, which is mandatory during the conclusion of marriage is the Mahr (bridal gift). Mahr is a gift which the man has to give his dowry, When the contract of marriage is made. The institution of mahr is envisaged in the Quran, "- - -All others are lawful, provided you seek (them in marriage) with Mahr (bridal money given by the husband to his wife at the time of marriage) from your property---." ³²

The Mahr is not a condition which affects the validity of the nikah, for it is not mentioned at the formation of the nikah, the nikah is still valid, for the existence of mahr in the nikah is, indispensable, even if it is not mentioned. In such a case mahr al-mithl or the proper mahr paid to a woman of her status is to be given (The woman of her status is her sister, sister-in-law, etc). There is no upper or lower limit to the mahr, but whatever amount mentioned in the contract of marriage must be paid.

³¹ Malaekah Mustafa, Supra Note 2, P. 5

³² Ibid

In Muhammed Waday V. Amina Ibrahim,³³ a divorced wife accused her husband for his refusal to give the mahr that was stated at the formation of the nikah. The present respondent instituted this case in a Naiba council demanding the mahr from her husband, the appellant as the result of their separation. Her claim was that her husband stated as mahr, a garden of chat at the time of their marriage and that she did not receive any proceed from the said mahr since their marriage. She therefore requested the kadi to order her husband to relinquish to her the said mahr together with its proceeds for eleven years.

The husband on the other hand denied stating the said garden of chat as a mahr; he argued instead saying that the mahr made was a cow which she already took. Pursuant to that kadi ordered the wife to prove what she alleged. Two persons who were present at the formation of the nikah were called and give their testimony to the effect that the mahr stated was the said garden of chat. The Naiba council then passed a decree in favor of the wife ordering the husband to give the said mahr and its proceeds for eleven years. Both the harar kadi council and the sharia court affirmed the decision of the Naiba council.

Such a case is an example of the fact that there are husbands who are unwilling upon divorce to give their wives the mahr they agreed upon at the formation of the nikah.

All things that have value can be given as mahr. This includes money, land, buildings or specific chattels which are useful and ritually clean, such as cattle, sheep, goats etc. it is not necessary that the whole mahr be paid at the conclusion of marriage. It may to postponed either in whole or in part. The woman can refuse to move to her husband's house until he has paid that portion of the mahr, which was due upon the formation of the nikah. However, according to the sharia court kadi's explanation, the

³³ Mohamed Yasin, The law relating to marriage among Ethiopian Muslim, Haile Sellassie I university 1960. P. 48 (Un published)

practice is that the mahr is always stated and the payment postponed in most of the cases.

There are two kinds of mahr, which are known as, the definitely stated one (mahr musamma) and the one not definitely stated (mahr-al-mithl). In the former case, the amount is definitely stated at the formation of the nikah, whereas in the latter case the amount is not stated. But the proper mahr paid to a woman of equal status should be paid.

The existence of a valid nikah makes it incumbent up on the husband to pay the mahr which is a right of the wife. The woman or her wali cannot at the time of the formation of the nikah waive her right to the mahr. She may, however, later on by her own will, release her husband from his obligation. But the sharia rules give warnings against exercising any influence or compulsion by the husband in this connection.

No married woman is required to spend any amount at all from her property and income on the household. A woman who bears a child in marriage is entitled to child support from the child's father, she has no obligation even to feed her child from her income. She may spend for household with her free will. Furthermore, she may make contractual stipulation by contract of marriage as to such pecuniary relation.³⁴ She may create common property by such stipulation. Hence, she has the right to equally shared with her husband in case of divorce. Generally, a Muslim woman is guaranteed support in all stages of her life, as a daughter, wife, mother or sister.

2.4.3. Inheritance Law

A common but erroneous belief that most people criticize without closely observe the justification behind is the rule of inheritance, under this rule

³⁴ Malackah Mustafa, Supra Note 2 P. 7

the man's share of inheritance is twice the inheritance of a female. But ultimately they are financially responsible for their female relatives: such as their wives, daughters, mothers and sisters.³⁵

Females inherit less but retain their share for investment and her financial security, without any legal obligation to spend any part of it, even for their own sustenance (food, clothing, housing, medication, etc).³⁶ In fact there are different circumstances in which a woman may inherit more than, equal to or less than the man. The determining factor is her relation to the deceased. The subject area of the law relating inheritance is known as 'Feraid' however it is wide and complex it is necessary to illustrate some circumstances to these three scenarios.

1. When her share is more than the man

- a. A woman dies and leaves behind a daughter and a husband. The daughter gets half of her mother's estate, while the husband gets one-quarter. i.e. the daughter gets double her fathers share.³⁷
- b. A woman dies and leaves behind a husband, a mother, two full brothers and a half sister from her mother. Her half sister gets one six of the estate while both brothers share in one six. i.e. the half sister gets double the share of each of the woman's brothers.³⁸

2. Equal to the man

- a. A child dies and is survived by both his/her parents. The mother gets a share equal to that of the father. If their child has children one sixth each.³⁹
- b. A man or a woman dies leaving neither ascendants nor descendants but has a half brother and a half sister from the mother, each one gets one sixth of the estate. If there are more than two, then they all

³⁵ Malackah Mustafa, Supra Note 1, P. 3

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

share equally in one third of the estate. i.e. the sister gets an equal share to that of the brother.⁴⁰

3. Less than the man

A parent dies and leaves behind son(s) and daughter(s):

The daughter gets half of the share of her brother.⁴¹ This is because the financial advantages accorded to women over men in marriage and in family have a social counterpart in the Quranic verse, males inherit more but ultimately they are financially responsible for many of their relatives, wife, children, parents if in need. Young brothers and sisters if they have no income and no other person to provide for them. Females inherit less but may retain their entire shares for their financial security without any legal obligation.⁴²

2.4.4. Employment

Another type of erroneous belief toward Islamic law is, the women's right to seek employment. It should first be stated that Islam regards their role in society as they are an integral part of the society. Every man and woman should be aware of rights of women under Quranic provisions, but they are not in most cases.

In Islamic law, there is no decree that forbids women from seeking employment. Whenever she wanted for, she can trade, be employed in private and government institution and can participate in any other work, so long as it does not violate the Islamic modesty.⁴³ Moreover, there is no restriction on benefiting from women's exceptional talents in any field. Some early jurists upheld that a qualified Muslim woman may be appointed to the position of judge whereas other jurists hold different

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ Malackah Mustafa, Supra Note 2, P. 6

opinions. yet, no scholar can point to an explicit text in the Quran or sunnah that categorically excludes women from any lawful type of employment except for the headship of state.⁴⁴ Under Quran, there is no any provision which precludes woman from headship the only one hadith is commonly interpreted by scholars to exclude women from, while other scholars do not agree with that interpretation.⁴⁵

Generally, we clearly understand that there is no explicit provision to that exclusion, so, the matter does not seem to be a religious problem, rather it may be, cultural attitude, just like that problems found wherever in the world including civilized nations. The issue may also be related to required qualification to the position.

2.5. The Social Aspects of women In Islam

2.5.1. Women as a Daughter

Among the very cruel, shocking and ashaming which too hard to hear was the practice of pagan Arabs before coming of Islam. During this time, females were infanticide, they were buried alive.⁴⁶ It was very degrading practice which can never be exercised even by wild animals. It was this what Islamic law ended, which was before Islam. The Quran states that "...and when the girl (who was) buried alive is asked, for what sin she was killed."⁴⁷

This Quranic verse reflects that God is aggressive and ready to pay back them (the parents) who practice this act of cruelty over their child.

The Quran went further to rebuke the unwelcoming attitude, of some parents upon hearing the news of the birth of a baby girl, instead of a baby boy. God has said:

⁴⁴ Malackah Mustafa, Supra Note 1

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ The Quran, Surah 81. (At-Takwir) V.No 8-9, PP-821-822

And When one of them is informed of (the birth of) a female, his face becomes dark, and he suppresses grief. He hides himself from the people because of the ill of which he has been informed Should he keep it in humiliation or bury it in the ground? Certainly, evil is what they decide.⁴⁸

This Quranic verse warns parents whose face becomes dark and felt grief sad due to the hear of the news of birth of female and decide to bury it. Such decision by it self is deemed to commite evil and there by face the consequence of such evil.

The crulity of burring a female child was not heard in history of Ethiopian Muslim. However, the felt of disfavour is very common not only by Muslim community but also by non-Muslims. Many people in Ethiopia specially in country side, have inferior attitude to ward their female children, such attitude is out of Quranic principle. This shows that, the dominance of prevalent local culture over the Quranic verse.

The Holly Quran and other Islamic jurisprudence teach the Muslims to treat both females and males children equally in all aspects without any discrimination. According to tradition of the prophet (S.A.W) parents are duty bound to support and show kindness and justice to their daughters.⁴⁹ The prophet Muhammad (S.A.W) said: "Whosoever supports two daughters until they mature, he and I will come on the day of Judgment as this (and he pointed with his fingers held together)."⁵⁰ Because of inferiority presumption of parents to ward their female child the prophet stats encouragement, so, a believer, If he wants to come together with the noble prophet on the day of Judgment, just he has to support and cultivate his daughters.

⁴⁸ Ibid, suhah 16 (An-Mahl), V.No. 58-59, PP. 354-355.

⁴⁹ Malackah Mustafa, Supra Note 2, P. 7

⁵⁰ Ibid

This support is not limited only to maintenance rather it includes education, which is a crucial aspect in the upbringing of daughters that greatly influences their future. Under Islamic law, education for both sex is not only a right but also a responsibility of all Muslims, (female and male) as the prophet (S.A.W) said: "seeking knowledge is mandatory for every muslims."⁵¹

As a general remark, the Islamic law has made a maximum effort in the protection of females' rights. The law widen the opportunity by providing rights to be treated equally with males and tries to warn parents who were disfavour their female child. The Law also encourages the family to give special attention to their daughters. Further more, it made education (whether religious or secular) mandatory for both sex. Hence one can understand that there is no barriers from Islamic law as regard to every aspects of daughters. But where the problem arise from is, the practical application of such protection. In Ethiopia Muslim community daughter's education is still at lower level. This is due to misunderstanding of society about women education beside the conservative interpretation and the prevalent culture which impose a greater impact on the female education.

2.5.2. Women as a Wife

Marriage in Islam is based on mutual consideration and love, compassion and respect that each spouses marital life becomes complete when supplemented by that of her or his partner.⁵² Among most impressive verses in the Quran about marriage, is the following:

⁵¹ Ibid

⁵² Ibid

*"And of his signs is that, that he created for you from yourselves mates that you may find tranquility in them; and he has put between your affection and mercy. Indeed in that are signs for a people who give thought."*⁵³

The Quran also says "They (the wives) are a garment for you and you are a garment for them."⁵⁴

"The garment is the grace, the beauty, the embellishment of the body, so too are wives to their husbands as the husband to them."⁵⁵

From these and other verses relating to the subject there is nothing that degrades the relationship that naturally ought to exist, that man should treat his wife with love and affection and they are expected to see each other as friend under Islamic law. The husband also responsible for the maintenance, protection and overall leadership of the family, within the framework of consultation and kindness. The mutuality and complementarity of husband and wife does not mean subservience by either party to the other.⁵⁶

Under Islamic law the treatment of women is explicitly provided indifferent place. Among this, the instruction of prophet (S.A.W.) states that:

"I command you to be good to women." and "the best among you are those who are best to their wives."⁵⁷ Further more, the prophet (S.A.W) instructed Muslim man not to be harsh in the treatment of his wife even, if certain aspects of her conduct displease the husband, certain others will please him.⁵⁸

⁵³ The Quran, Surah 30 (Ar-Rum) V.No. 21, P. 544

⁵⁴ A. Galwash, The religion of Islam, Cairo, Imprimerie MISR. S.A.E. (1958). P. 124

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

To create peace environment in the treatment of wife, there is no doubt as to the requirement of free consent to insure that the existence of mutual love and compassion between the two partners. To the existence of such right (free consent) to marriage it seems better to see the history of one daughter at life of the prophet.

Once upon a time, a married daughter has come to prophet and told him that her father gave her to marry a son of her father-in-law, without asking her consent, for his honour. Then, the prophet gave her a chance whether she accept or reject the proposal. Then, she said: "In fact I have accepted what my father proposed, but what I want is, to show other daughters that nobody can force them to accept the marriage proposal without their full and free consent."⁵⁹

Hence, the female has the right to accept or reject marriage proposals. according to Islamic law female can not be forced to marry any one without their consent. This directly conside to Art 6 of RFC of Ethiopia.

What is more, under Islamic law, the Mahr (brid money) settled up on the wife is an obligation imposed on the husband as a sign of respect for the wife. In the event of dissolution of marriage, the husband can retain no part of the wife's property⁶⁰ as we shall see in the discussion of talk (divorce). The power of divorce possessed by the husband is also restricted by the law. The women is given the right of obtaining a separation (from the husband) on reasonable ground.

2.5.3. Women as a mother

Under Islamic law, the Quran elevates kindness to parents and specially mothers to the status second to the warship of God.⁶¹

⁵⁹ Ahimeddin Jeble, Supra Note 18 P. 60

⁶⁰ Malackh Mustafa, Supra Note 1, P. 5

⁶¹ Ibid

*. . . And your lord has decreed that you not warship except him, and to parents, good treatment, whether one or both of them reach old age (while with you. Say not to them (so much as) "uff" (an expression of disapproval or irritation) and do not repel them but speak to them a noble word and lower to them the wing of humility out of mercy and say, ---.*⁶²

Naturally prophet Muhammad (S.A.W) specified this behavior for his followers, rendering to mothers unequal status in human relationships. To this fact, let see the hadith, once upon a time a person came to prophet (S.A.W) and asked him to know, the most worthy of kindness, then the prophet answered him as follows: "The most worthy of kindness is the mother, the mother, the mother and then the father."⁶³

From the above Islamic jurisprudence, parents are given position in social relations, specially, mothers are given the highest status, this is because of their contribution in the uprising of child and attention they give to their child in most cases. When we come to the practical world, it was a mother who play a great role in the shaping of new generation, thus, in order to produce responsible citizen, first mothers themselves need protection in all aspects. For example, a woman who deprived her liberty by her husband, thinks that her daughter may also face such problem hence. she forced to have different attitude to ward her children based on the sex of her children, because, she sees from the practice females are easily deprived of their liberty and this develops in her attitude, the sense of inferiority.

⁶² Ibid

⁶³ Ibid

2.5.4. Women as a sister in General

According to the prophet Muhammad's (S.A.W) saying: "women are shaqa'iq (twin halves or sisters of men)."⁶⁴ This saying is a profound statement that directly relates to the issue of human equality between the genders. The meaning is that, the male is worth one half of the society, while the female is worth other half.⁶⁵

Further more, as a sister, the prophet (S.A.W) taught kindness, care, and respect toward women in general.⁶⁶ "I commend you to be good to women." This instruction is among the most important and the final reminders in the farewell pilgrimage address given shortly before his passing away.⁶⁷ From this, one can judge, how the issue of women was given emphasis under Islamic jurisprudence, however, the practice is the same to other, that is, what the law wants to regulate and the practice of the society is unrelated. Where ever though it may not all in all.

Generally, the issue of women as we have seen from different angles. It is appreciable at least in provision. But when we see the practice, things become contrary, this can be the influences of culture, misunderstanding of the verses or lack of awareness on the part of Muslim society in fact, people simply follow a given religion due to it inherited from his/her ascendant majority of the people do not know what are provided under his/her religious dogma, even some religious leaders themselves know highlight, this is the major problem, hence in such circumstance, the local culture easily over take, the principles of the religion. Therefore, leaders should take care in the interpretation of laws to protect women's rights in all aspects.

⁶⁴ Ibid, P. 10

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

CHAPTER THREE

THE QUESTION OF POLYGAMY

Many people assert that Islam as a religion and/or a legal system advocates polygamy and launch their criticism and attack on it by overlooking the basic teaching of Islam concerning that institution. It is true as we shall see, for example, from the discussion of the Ethiopian situation, that polygamy have been freely and heedlessly practiced by some Muslims without giving any attention to the teachings of Islam concerning the subject. Indeed, polygamy is one of the abused institutions as the result of which many problems and hardships are created in the family life of many Muslims.

3.1. Definition of polygamy

The term polygamy is used in related ways in social anthropology, sociobiology and sociology. Polygamy can be defined as any form of marriage in which a person has more than one spouse.¹

In social anthropology, polygamy is the practice of marriage to more than one spouse simultaneously. Historically, polygamy has been practiced as polygyny (one man having more than one wife) or as polyandry (one woman having more than one husband) or, less commonly as 'polygamy' (one person having many wives and money husbands at the same time).²

In contrast monogamy is the practice of each person having only one spouse. Like monogamy, the term is often used in a defacto sense

¹ Wikipedia, The free encyclopedia, www.en.wikipedia.org/wiki/Image

² Ibid

applying regardless of whether the relationships are recognized by the state.³

In sociobiology, polygamy is a broad sense to mean any form of multiple mating. In a narrower sense, used by zoologists, polygamy includes a pair bond, perhaps temporary.⁴

3.2. Perspectives of polygamy under western legal situation

Secular law in most western countries with large Jewish and Christian populations does not recognize polygamous marriages. However, few of such countries have any laws against living a polygamous lifestyle. They simply refuse to give it any official recognition. Parts of United States, However, criminalize the polygamous lifestyle, although these laws rarely enforced.⁵

In United States polygamist may find it hard to obtain legal immigrant status. Edith Barons, a mother of five in the polygamous community of Bountiful, was denied permanent residence and has been asked to leave the country after ten years in Canada.⁶

Some polygamous families use a system of multiple divorce and legal marriage as loophole in order to avoid committing a criminal act. In such cases, the husband marries the first wife, she takes his last name, he divorces her and then marries the next wife, who takes his name. This is repeated until he has married and divorced all his wives, except possibly the last one. Those divorced women are legally separated from the husband, but they still act as if married to him and expect those around

³ Ibid

⁴ Ibid

⁵ www/en.Wikipedia.org/wiki/Image:Gnomeglobe.sug.

⁶ Ibid

them to acknowledge and respect this. Since only one wife is officially married to the husband at any one time, no law is being broken and so this type of polygamous family unit can be over about their relationship.⁷

In Canada, polygamy is a criminal offence but prosecutions are rare. The Attorney in British Columbia has expressed concerns over, whether this prohibition is constitutional. An independent prosecutor in British-Columbia recommended that Canadian courts be asked to rule on the constitutionality of the law against polygamy.⁸

A 2005 report by the Alberta civil Liberties Research center recommended that Canada decriminalize polygamy stating "criminalization is not the most effective way of dealing with gender inequality in polygamous and plural union relationships. Further more, it may violate the constitutional rights of the parties involved."⁹

David Friedman and Steve Sailer have argued that polygamy tends to benefit most women and disadvantage most men. Friedman uses his viewpoint to argue in favor of legalizing polygamy, while Sailer uses it to argue against legalizing it. The idea is that many women would prefer half or one third of some one especially appealing to being the single spouse of some one that does not provide them better economic utility to them. Shortly, they prefer the one who provide them better economic utility though they share single husband, than the monogamous lifestyle. Also that the remaining women have a better opportunity for finding a spouse to themselves, (specially those women who use marriage as a source of career.) let say that 20% of women are married to 10% of men, that leaves 90% of men to compete over the remaining 80% of women.¹⁰

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

In the US, the libertarian party supports complete decriminalization of polygamy as part of a general belief that the government should not regulate marriages. Individualist feminism and advocates such as Wendy McElroy also support the freedom for adults to voluntarily enter polygamous marriages.¹¹

The American civil liberties union of Menusotah, USA, is also opposed to Menusotah's law against bigamy.¹²

3.3. Polygamy Under Islamic Law

Polygamy and laws concerning polygamy differ greatly throughout the Islamic world and from a very complex and diverse back ground from nation to nation. Where as in some Muslim countries. It may be fairly common, in most others, it is often rare or non-exist. However, there certain core fundamentals which are found in most Muslim countries where the practice occurs.¹³

According to tradition an Islamic law a man may take up to four wives and each of those wives must have their own property, assets and dowry usually the wives have little to no contract with each other and lead separate, individual lives in their own houses and some times in different cities though they all share the same husband.¹⁴

The prophet Muhammed (S.A.W.) for example married many of his wives because they were war widows who were left with nothing and took care of them. Thus, polygamy is legally restricted to men who can manage thing and in some countries there are supplementary legislation which make

¹¹ Ibid

¹² Ibid

¹³ Ameer Ali, The spirt of Islam, London, Christopher, w.1922. P. 229

¹⁴ Ibid P. 230

polygamous marriage subject to the court approval for the existence of justifiable compelling circumstances and the fulfillment of condition to exercise such practice.¹⁵ Thus, it is illegal for a man to marry multiple wives if he is unable to take care of each of them properly. In modern Islamic world, though there is common practice of polygamy there are restrictions as to how it can be practiced.

Under the Quranic verse, that contain the permission to contract up to four contemporaneous marriages is immediately followed by a sentence which greatly restricts the application of the license given in the preceding clause. The verse states; "If you fear that you shall not be able to deal justly with---marry women of your choice two or three or four. . ."¹⁶ people, however, over look the next sentence; that states: "But if you fear that you shall not able to deal justly (with them), then only one- - -that is nearer to prevent you from doing injustice."¹⁷

The word 'justly' (adl) signifies not merely equality of treatment in the matter of lodgment, clothing and other domestic requirements, but also complete equity in love, affection and esteem. It then follows, that polygamy is conditioned on the ability of the husband to treat his wives exact equally in all respects an almost impossible thing to achieve. It may be seen that polygamy is not the true spirit of Islam,. The Quran laid down two condition to permission of polygamy:-

- i. Financial capacity, i.e. the husband should be financially capable of supporting a plurality of wives.
- ii. Justice to all wives; the husband should be able to treat all of his wives impartially.

¹⁵ Supra Note 5

¹⁶ The Quran, surah 4 (An-Nisa) No. 3 P. 105

¹⁷ Ibid

Monogamy is the general rule in Islam and polygamy is a provision in case of necessity or in exceptional case. Under Islam, polygamy is a sort of remedial law in Islam which may come to operation when opportunity arises and compelling circumstances occurred and should not be resorted to when there is no reason for it.¹⁸ Propagation of one's species is an instance in which one may resort to polygamy without the need to divorce, if the first wife found barren. Not only this, there are a number of justifications for the permission of polygamy we will see later on.

It is clear then that, those who indulge in polygamy without obvious reasons are not acting in accordance with the spirit of Islam. As it has been stated earlier. Strict equity and justice towards all wives are obligatory on the husband. In case a man feared that he was directed to be content with one wife only. The Quran then, envisages the inability of man to observe the required equality of treatment in every respect to all his wives and thus emphasizes the desirability of having only one wife. and at the same time suggests a very wise course to follow for those who have been compelled to have more than one wife. It then provides thus:

You will never be able to do perfect justice between wives even if it your ardent desire, so do not incline too much (to one of them by giving her more of your time and provision) so as to leave the other hanging (neither divorced nor married). And if you do justice, and do all that is right and fear Allah by keeping away from all that is wrong, then Allah is Ever oft-Forgiving, ---.¹⁹ The Quran also states as follows--
-and if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better---.²⁰

¹⁸ Ahmed A. Galwash. The Religion of Islam. Cairo: Imprimers MISR. S.A.E, 1958, P. 119

¹⁹ Supra note 16, No 128-129 P. 191

²⁰ Ibid

It is clear from the above Quanic verses that when a man has married two wives in the belief that he is able to treat them equitably and there after finds that he is inclined towards the one in prejudice against the other and is prepared to divorce one of his wives, the above verse lays down directions that both husband and wife should come to an understanding between themselves and be reconciled by foregoing some of their respective rights.

3.4. Justification for Polygamous Relation Under Islam

Polygamy is the major area of criticism by the secular law against Islamic law, Bigamy, which is one types of polygamy, is lawful under Islamic law whereas prohibited under the REC of Ethiopia Art 11 and punishable crime under criminal code of the FDRE Art 650. Under Islamic law polygamy is neither absolutely necessary nor unequivocally forbidden; it is permissible.

Muslim scholars and jurists have advanced reasons such as demographic needs, Economic factors, barrenness of the wife, and chronic illness of the wife etc. The Islamic law justify the conditional permissibility of polygamy due to various compelling circumstances.²¹

Problems like the barrenness of the wife are tenacious in the arguments for the justification of conditional polygamy in Islamic law. Similar argument exists also in other cultures. In traditional Africa for instance, the need for offspring is usually the main purpose of marriage.²² Thus where the wife is found barren, the husband is usually inclined to ward taking another wife, without divorce his barren wife. The question here is

²¹ Supra note 18, P. 122

²² Philpis adn Henry, F., Marriage law in Africa, Oxford Univesity press London New York, 1971 P. 119

what if the man is the one barren? It is often assumed, wrongly, by the society of developing countries that the fault for lack of conception in marriage is always with the wife. Islamic law however recognized defects of the husband. Since these defects defeat the very purpose of marriage, that is to say, satisfaction of sexual urge and procreation of children, the wife has the right to demand for dissolution.²³ The other question would be why a right to dissolution for the woman and a right to polyandry like her male counter part? Islamic jurists have responded with a list of socio-legal arguments to this question, the most compelling perhaps of which is that polyandry can easily lead to family and social disintegration because both concepts of legitimacy of offspring and family linkage would be impaired. There would be always contest for legitimacy between the male spouses each time on a child born in a polyandrous union, which is not the case in a polygamous marriage.²⁴

In case of a barren woman it is often argued that to take second wife is better than either divorcing the barren wife or having offspring outside the marriage through adulterous relationships with other woman. Thus polygamy should not be viewed entirely as blessing for one sex and a curse for the other, but as a legitimate alternative applicable to some difficult crisis situation.

Philip Kilbride, an American anthropologist, in his book, "plural Marriage for our time", proposes polygamy as a solution to some of the ills of the American society at large. He argues that plural marriage may serve as a potential alternative for divorce in many cases in order to obviate the damaging impact of divorce on many children. He maintains that many divorces are caused by the rampant extramarital affairs in the American society.²⁵ According to Kilbride, ending an extramarital affair in a

²³ Al Anwar, Al-Anwar-Li-Ae-malil Abrar. Cairo:Ahmed-al-Babil Halaby, 1960. P. 120

²⁴ Ibid P. 121

²⁵ Supra Note 5

polygamous marriage, rather than in a divorce, is better for the children, "Children would be better served if family augmentation rather than only separation and dissolution were seen as options."²⁶ Moreover, he suggests that other groups will also benefit from plural marriage such as; elderly women who face a chronic shortage of men.²⁷

Many secular jurists exaggerated and projected the issue of polygamy as discrimination against the women. Such attitude may raise from the practical observation of societal experience. But one should know that the practice and the spirit of the Islamic law is two different things, thus it should be underlined that the practice is not in accordance with spirit of Islamic law. While the law granting the right to choose and select a mate, Islam does not want to influence the judgment of the woman who is to become a second or third wife. Islam leaves up to her own discretion.²⁸ This is away that some individual feminists advocate in the wester society because it has it's own advantage for some group in relation to different factors. The Islamic law empowered women to reject a proposal insiting on her free choice as we have seen in chapter two of this paper.

Further more, it is also recognized in Islam that the woman at the time of marriage is empowered to avoid future incompatibilities that might arise as the result of an existence of polygamy. Thus a woman who fears the possibility of a second marriage on the part of her prospective husband can make provisions against its unpleasant effects before she is married.²⁹

As H-Nawab sultan observes:

Polygamy in a word, In Islam, is a remedy. It has its uses and abuses. Islam guards against the latter, and allows the former under restrictions and within stringent limits. More

²⁶ Ibid

²⁷ Ibid

²⁸ Supra Note 18, P. 122

²⁹ Ibid

*knowledge of human needs and exigencies would enlighten the world and enable it to see the necessity of allowing an institution like polygamy with its rare and limited use as in Islam.*³⁰

Some Muslim countries such as Turkey, Tunisia and Syria have enacted legislation restricting polygamy to cases of necessity subject to courts approval.³¹ Thus, adhering to the strict rules of the quran.

3.5. Practical Problems of poligamy

Poligamy disturbs the harmony and happiness of many homes. The spouses who were once living together in love and happiness, each one contributing towards the betterment of their marital life, turn against each other and ruin the peaceful life they were leading because of the husbands marriage to another wife. The responsibilities and the respect that existed formerly between them now disappears. The economic stands of family weakens, since marrying more than one wife entails feeding more mouths and bringing up more children.

The spouses start nagging each other, each wife accusing the husband for the favour he does to the other. What is more, if co-wives live in the same house or vicinity as it is the case usually, tensions between them may be grow into open conflicts which eventually tend to lead to lasting bitterness and hatred which can only be resolved by divorce.

Nowdays in the urban areas people have awared and try to limite themselves to one wife only, since it is difficult to support a plurality of

³⁰ Ibid

³¹ N.J. Coulson, Succession In the Muslim Family. London: Bertley House, 200 Euston Road, N.W.1, 1971 P. 15

wives, their children and bringing them up and sending them to school require more expenses.

Another sensitive problem of polygamy is related to health of spouses for example; if one of this polygamous union is infected with sexually transmitted diseases then others are easily contaminated with. Specially, HIV (AIDS) is the today's great problem for such family unless they are strict on the principles of the Quranic verses, since polygamy may widen the possibility to be contaminated. Therefore; if a person is a true Muslim she/he must be obedient to the Quranic guidance otherwise they are at risk. It does not mean no other means by which they may be exposed to that risk, hence, it needs a great care. Here, One should note that polygamy is not the sole ground for transmission of HIV, this can be clear from the practical world, Middle East Muslim Nations are among those who practice polygamous union but still, it is an area where the HIV distribution is relatively less in the world.

Generally, since the institution of polygamy is much more difficult to administer, it is advisable not to enter into because, conditions under which polygamy is permitted specially the second condition (The exact justice to all wives) is almost impossible as we have seen above, that is why the law provides justification for those who are compelled to lead such institution.

CHAPTER FOUR

DISSOLUTION OF MARRIAGE

4.1. General Remarks

The first thing that comes to one's mind in relation to this part is the assertion that Islamic law permits a man to repudiate his wife at will and without restriction. Whether the law allows repudiation at will and without restriction, one has to first look into the laws governing this subject. It is true that the theory of marriage points to a subordination of the wife to her husband because of her comparative inferiority in discretionary powers. But as we shall see later, these powers are limited in practice.

To begin with, a Muslim is permitted to have recourse to divorce only if there is ample justification for it. The Qur'an forbids a man to seek pretexts for divorcing his wife so long as she remains faithful and cooperative to each other 'If they (women) obey you, then do not seek a way against them.'¹ If a man repudiates his wife without there being any reasonable justification, then he draw upon himself the divine worth, for, "The course of God" said the prophet (S.A.W.) "rests on him who repudiates capriciously."²

It is clear then, that Islam as a religion and a law, discourages divorce in principle and permits it only when it has become altogether impossible for the couple to live together in peace and harmony. The prevailing idea seems to be that divorce should be permitted only when marriage fails in its effects and the parties cease to fulfill the duties that emanate from the marital relationship. As Galwash puts, "There is in fact no justification for permanently yoking together two hostile souls, who might make themselves quite comfortable in new homes, if they were permitted to effect a separation."³

¹ The Quran, Surah 4(An-Niza), No 34, P. 112

² Ahmed A. Galwash. The Religion of Islam. Cairo, Imprimeric MISR S.A.E, 1958. P. 134

³ Ibid, P. 136

The situation is envisaged in the Qur'an for those whose intentions are honest. "--- But if they separate (by divorce), God will provide abundance for everyone of them ---".⁴ But before reaching that stage attempts for reconciliation between the parties have to be made. We read in another place in the Quran the part relating to the directions to be followed with respect to reconciliation. It states: "If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; If they both wish for peace, Allah will cause their reconciliation ---"⁵ As it is clear from these Quranic verses, one has to exhaust all means of reconciliation before resorting to the last measure of repudiation or dissolution of the marriage.

Marriage in Islam is not instituted as a religious rite or sacrament subsequent to which there can be no separation of the parties.⁶ The sharia no doubt envisages the permanency of marital life. Indeed a temporary marriage (muta) is not permitted in Islam. However, in marriage, there may have at first entered in to marriage with the intention of living together permanently, fail to do so, that is why repudiation is permitted as we have seen above, as the last resort.

4.2. Formes of Talak (Divorce)

The word "talak" refers to the repudiation of a wife by the husband. The wife can also pronounce a talak upon herself. If the husband authorizes her to do so. But according to existing practice the wife is not usually given this right, in order to equalize the partner, this right is very important, so she should be authorized during the formation of nikah, as regard to guarantee equal position during repudiation of marriage, However,

⁴ The Quran, Supra note 1, No 130, P. 130

⁵ Ibid, No. 35. P. 112

⁶ Ahmed A. Galwash, supra note 2, P. 131

there are different channels through which a wife can repudiate herself up on difficulty, as we shall see later in this chapter. Under Islamic law there are three types of talak, revocable, irrevocable and conditional.

4.2.1. Revocable Talak

In the revocable talak the husband may revoke the talak he pronounced and take his wife back while she is in the period of waiting. The pronouncement of talak exercised by using unambiguous words such as farak-tu-ki, serrah-tuki, talak-tu-ki, all having the meaning which shows separation from oneself, or repudiation, in such unambiguous ward, saying the ward itself is sufficient to show the existence of an intention to pronounce the talak, even if the intention of the man who uttered those words has been otherwise. However, in the case of ambiguous words or expressions, the intention of the speaker has to be considered.⁷

In Abdella Mohammed V. munira Haji Hassen⁸

The kadi declared a wife divorced because of certain words uttered by the husband. The respondent, wife of the appellant requested the Asella Naiba council that her husband give her a certificate of divorce. Her allegation was that her husband sent her away and while she was living with her father in karsa, he come up one day and asked her father to return her to him. Her father was not willing to return her and in the midst of their argument the husband said to her father, "Give your daughter (meaning the wife) to any one you like."

The husband denied saying those words to her father and the woman moved to prove that by the evidence of witnesses. The kadi permitted her

⁷ Yusuf Al-Irdlibily, Al-Anwar-Li-Aemalil Abrar, Cairo Ahmed-al-Babiy Halaby, 1910, P. 113

⁸ Mohammad Yasin, The Laws relating to marriage among Ethiopian Muslim, Haile sellassie I university 1960. P. 66 (un published)

to call the witnesses and up on the testimony of the witnesses he declared the wife divorced because of those words said to have been uttered by the husband. The kadi, without giving any reasons for his decision, also added that the woman need not observe the iddat. But according to the sharia rules, a divorced women has to observe the iddat. The kadi should have stated his reasons why the woman in the instant case is not required to observe the Iddat.

The words uttered by the husband in the instant case, do not fall with in the category of those words referring unambiguously to the talak, such words and the related ones are ambiguous words which call for the intention of the speaker.⁹ In the instant case the husband was not asked, what he intended when he uttered those words. The fact that, those words were reported to have been uttered when the husband was in a hot argument with his father-in-law, was not considered. What is more, the man simply denied uttering those wards; he could have alternatively argued that even if he uttered those words he did not intend to divorce his wife.

In the revocable talak the circumstances in which a man may revoke the talak pronounced by him is given in the following Quranic verse:

And divorced women shall wait for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, --- and their husbands have the better right to take them back in that period, if they wish for reconciliation. ---¹⁰

It is clear from this verse that a man is given an opportunity of revoking the talak he pronounced over his wife in a haste by with drawing it with in that specified period of waiting. But in order to keep men from abusing

⁹ Sheikh Mohammed-al-Shirbeen. *Al-Ikna*, Cairo Isa-al-Babil Hala by and co-1972, P. 150

¹⁰ The Quran, Surah 2(Al-Beqarah). No 228, P.49

this right by perpetually keeping their wives in a state of waiting the following verse was revealed: "Divorce must be pronounced twice and then (a woman) must be retained in honour or realised in kindness..."¹¹

Revocable talak (talak-al-raji) is any repudiation uttered less than three times and under such circumstances or conditions which do not render it a tripledivorce or the talak uttered three times. The woman is placed under the period of waiting, (Iddat) as soon as the talak is pronounced. In this kind of talak the marriage is considered in existence with all its consequences and the woman has a claim up on the husband for lodging and maintenance as long as the Iddat lasts. During this period the husband has the right to revoke the talak he pronounced earlier. If the period passes without exercising this right, the marriage would be dissolved at its expiry.

4.2.2. Irrevocable Talak (Talak-al-bain)

This forms of talak cannot be revoked, the former husband can only take her back after she got married to another man and divorced. This type of talak may come about in two ways. The first one takes place when a man who has twice previously pronounced the talak, pronounces it again for the third time. This may occur when a husband repudiates his wife and then retakes her during the period of waiting and again pronounces the talak putting her in another period of waiting, he may still take her back during this period, but if he repudiates her again for the third time, he may no longer take her back.¹²

Another way in which a definite or irrevocable talak takes place is when a man pronounces a triple talak at one time, or at one sitting.¹³ According to

¹¹ Ibid, No 229

¹² Al-Anwar, Supra note 7

¹³ Al-Ikna Supra note 9, P. 154

The practice, the latter type is the common one among the people in Ethiopia whenever they pronounce irrevocable talak. The reason for holding this kind of talak as irrevocable or final is said to be due to the manifested intention of the person who declared it.

In a triple or irrevocable talak the marriage is finally dissolved. Like in the case of revocable talak, the woman is put under the period of waiting during which she cannot contract a new marriage. The woman during this period has a claim on the husband for lodging and maintenance if she is pregnant and for lodging only, if she is not pregnant. However, according to the sharia court, the practice here, the divorced woman would go to her relatives as soon as she is divorced and there is no claim for lodging and/or maintenance during the period of waiting.¹⁴

The conclusion of a new marriage between the partners separated, thus is impossible unless the woman has in the mean time entered in to a contract of marriage and completed that marriage with another man. It is said that if the couple wish to marry each other again after the triple talak, they seek a suitable individual who is ready to go through the marriage ceremony with the woman and thereafter repudiate her, the woman then becomes lawful (halal) for her first husband. Such practice is called *Muhalil*.¹⁵

The rational behind, since, such practice creates something inconvenient to the former husband, as a result of such future effect, he is not pushed to ward triple repudiation of talak. If he did knowingly, he will face the consequence, i.e. psychological damage. Therefore, this method is one of those mechanisms of discouraging complete divorce which may result social crisis.

¹⁴ Ibid

¹⁵ Al-Anwar, supra note 7, PP 165-170

4.2.3. Conditional Talak (Talak-U-talik)

This kind of talak may be revocable or irrevocable according to the way in which it is used. This may be the case, for example when a husband states, my wife is divorced if she goes there (this referring to revocable talak) or if he says, my wife is triply divorced if she goes there (clearly referring to irrevocable talak).¹⁶

As the word itself indicates, the effect of conditional talak is dependant upon a future event. Its effect materializes up on the fulfillment of the condition.

***In Ali Hussein V. Shamsia Mohammed.*¹⁷**

The court declared a wife divorced as the result of fulfillment of the condition mentioned by the husband in the conditional talak. The respondent, wife of the appellant instituted this case against here husband in the Addis Abebe kadi council for the issuance of a divorce certificate. Her allegations were that as the result of a dispute between them, her husband made it a condition that if she goes out of the house she is divorced in three talak; and that right away she ran out of the house and went to her brother's home. The husband denied saying what was alleged and later on argued that even if he pronounced that conditional talak, he did it in order to scare his wife and nothing more. The witnesses were called and give their testimony to the effect that the allegations made by the wife were true pursuant to that; the kadi declared that the woman was divorced since the condition was fulfilled.

This decision was reversed in the sharia court and the woman was ordered to return to her husband. The court in its decision said that the

¹⁶ Ibid, PP 134-135

¹⁷ Mohammed Yasin, supra note 8, P. 75

woman was a nashiza (disobedient) who went out of her house against the will of her husband.

A kadi in the sharia court stated in his dissenting opinion:

It is clear that the record before us shows that two witnesses have testified as regards the conational triple talak that the appellant pronounced on his wife, and thereafter the wife left the house and stayed with her brother, furthermore, the document shows that this appellant admitted in front of the kadi in the lower council, that he uttered the conditional talak merely to scare his wife. A person is not permitted to play with talak in order to scare his wife ...¹⁸

In another case, *Fatuma Abdalla V. Umer Abdella*,¹⁹ The husband denied the materialization of the condition mentioned in the conditional talak, the evidence given by witnesses against him, were considered insufficient and so the court asked the husband to take an oath and then ordered the wife to return to him.

The conditional talak is similar to other talaks pronounced by the husband, in that the husband is held liable for the payment of the mahr and for maintenance of the wife during the period of waiting.

In all cases, a talak pronounced by a miner or insane person is invalid.

4.3. The Iddat

This is a period of waiting imposed upon a woman as the result of the termination of her marriage. It also applies to the woman whose husband has died. The reason why this period of waiting is imposed on the woman

¹⁸ Ibid

¹⁹ Ibid, P. 76

in the case of divorce is to ascertain whether the woman is pregnant and also in the case of a revocable talak to provide an opportunity for the husband who has divorced his wife, to take her back. In the case of death of the husband, the period is intended to ascertain whether the woman is pregnant and to provide a period of mourning for the husband who has died.²⁰

In the case of divorce the iddat is necessary only if the marriage was consummated. In case of death of husband, the iddat is necessary whether or not the marriage was consummated, since the woman has to mourn for her husband during that period. The iddat comes to an end upon delivery if the woman was pregnant at the time of her divorce or her husband's death. The period of waiting in the case of death is four months and ten days. In the case of divorce the iddat runs for three tuhr or three menstrual periods. The iddat is three months, if the woman is not of such an age as to menstruate.²¹

As we have seen above in the talak, a divorced woman has a claim against her husband for maintenance and lodging during the period of waiting in the case of revocable talak: If the talak is irrevocable, she is entitled to lodging only and to maintenance also if she is pregnant.

4.4. Initiation of Dissolution of Marriage

Divorce is a last resort, permissible not encouraged, the Quran gives preference to the preservation of faith and the male and female individual's right to felicity; In Islam there are various forms of marriage dissolutions, these include, the husband's initiative, (the wife's initiative) If part of her marital contract. The court's decision on the wife's initiative

²⁰ Al-Anwar, supra note 7 PP-200-201

²¹ Ibid

(for a legitimate reason) and enactment based up on mutual agreement are the major ones. We will see one by one later.

When the continuation of marriage relationship is impossible for any reason, men are still taught to seek a gracious end for it. The Quran states about such cases:

--- ana when you divorce women and they have fulfilled their term (i.e. waiting period), either keep them in kindness or release them in kindness, and do not keep them, intending harm, to transgress (against them).²²

4.4.1. The Husbands Initiative

In Islamic law the husband assumes a greater responsibility in consideration to this, he is allowed in certain cases to initiate and pronounce the dissolution of marriage tie. But this power limited in practice.

A muslim husband is permitted to have recourse to divorce only if there is ample justification for it. The Quran forbids a man to seek pretext for divorcing her wife so long as she remains faithful. It states; "*If they (women) obey you, then do not seek a way against them.*"²³ If a man repudiates his wife with out the existence of reasonable justification then he draws upon himself the divine worth for this, "The curse of God" said the prophet" rests on him who repudiates capriciously.²⁴

Therefore, this unilateral power of repudiation of marriage bond is not exercised arbitrarily, it has its own procedures and conditions to be

²² Ibid

²³ The Quran, surah 4(An-Nisa), No 34, P. 112

²⁴ Galwash, Supra note 2, P. 134

followed, further more, it requires to do so with discretion, kindness and equity.

4.4.2. The wife's Initiative

Since marriage is deserved by the Quran as a partnership of peace and compassion and since every right corresponds with an obligation, the wife is entitled, like husband to initiate and actually dissolve the marriage bond independently, she may do so without the permission of any court or the husband's consent. These types of power commonly called 'delegated divorce' in which a man agrees in the marriage contract to empower a woman to free herself from the marriage bond when she desires. Such stipulation also called 'conditional divorce' in which a husband agrees at the time of formation of marriage contract, that if he does a certain thing contrary to his wife's wish, she will be free to divorce herself from him.²⁵

Some of these forms of divorces are unacceptable to some jurists who, nevertheless, accord the woman in principle the right to seek her freedom through alternative channels. Moreover, if the wife is aggrieved or betrayed she may initiate and actually obtain a divorce through the proper judicial processes.

Since such right is important to the woman, whatever disagreements exist among the jurists; it is what needs to be appreciable for the purpose of equity between the two genders.

4.4.3. The Courts Decision on a Wife's Initiative for a Legitimate Reason

If there is any legitimate ground a woman has a right to petition for the divorce, to the court of law, such type dissolution of the status of marriage

²⁵ Anis Ahmad, Women and social justice, An Islamic paradigm (Islamabad pub) 1996, P. 44

by decree passed by the kadi is known as 'Faskh'. Faskh is usually done on the petition of the wife,²⁶ the husband cannot petition the kadi for faskh since he has the right of pronouncing the talak on his wife. The reason why it is exclusive to the wife is, to secure her upon the failure to be authorized by her husband to repudiate her self unilaterally.

Dissolution of marriage may be granted by faskh, in case such as certain chronic diseases like leprosy, insanity, impotency and similar problems.²⁷

Deserting the marital residence without providing maintenance for the wife, or in ability of the husband to support and non-fulfillment special conditions and obligation of the marriage contract are also grounds for dissolution.²⁸

In case of suit instituted because of maintenance, the husband is given four days with in which he would show his willingness or his ability to provide his wife with the nafaka (maintenance), if he does not show up within the four days, the kadi would grant a faskh to the wife.²⁹

In case khayria Ali V. Ali Sayed³⁰

The wife petitioned the kadi to grant her a faskh on the ground of inability of her husband to provide her with maintenance.

The Naiba council kadi asked the woman to take an oath to the effect that what she had alleged was true and upon her oath granted her a faskh in the absence of her husband. Later on, her husband appeared before the kadi and opposed the decision given on the ground that she should return to him. The kadi, however, asked him whether he could substantiate his

²⁶ Al-Anwar, supra note 7, PP 69-71

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Mohammed Yasin, Supra note 8, P. 82

opposition by proving his ability to provide to do that and the kadi dismissed his opposition.

The husband then appealed to the Addis Ababa kadi council. The kadi council entertained the opposition priorly made by the husband and ordered the wife to return to him. The wife in her turn appealed to the sharia court. The sharia court did not decide the case, but sent it back to the Naiba council.

The reason why the case was sent back is not clear, since the Naiba council had already passed its decision and affirmed it again upon the refusal of the husband to prove his ability to maintain his wife. It may be argued, however, that the Naiba council could have ordered the husband to appear and asked him to defend himself against his wife's allegation, before asking her to take an oath in his absence and relating her on that ground.

Ill-treatment of the wife by the husband does not constitute a serious ground for dissolution of marriage. The kadi refers such cases to hakam (arbitrator). The hakam tries to reconcile the parties, and it is the hakam who declares the separation of the parties if the attempt of reconciliation fails.³¹

4.4.4. Enactment Based upon Mutual Agreement

This form of repudiation takes place by the consent of the parties in which the wife secures her repudiation from the husband in return for a consideration given to the husband by the wife. Its particular name known to as khul, khul envisages the agreement between spouses, in the final analysis to the effect that they separate by divorce. The Quran says;

³¹ Al-Anwer, supra note 7, P.96

--- Except when both parties fear that they would be unable to keep the limits ordained by Allah (eg. to deal with each other on a fair bases) ---then, there is no sin on either of them, if she gives back (the Mahr or a part of it) for Alkhul (divorce).³²

It is clear from this verse that the partners in good faith especially the wife may if she fears that she cannot observe Allah's commands. eg. If she fails to observe duty of fidelity that the law requires from both of them or she fears that in leading a harmonious life with her partner, then she can ransom herself from her husband on the base of agreement, in such case she is required to pay back the mahr or part of it as a compensation to the husband. But the husband is not entitled to such compensation if the cause arises on his part.

There is also hadith to the effect of khul which narrated by Ibn Abbas. The wife of Thabit iban Qais came to the prophet (SAW) and said, "O Allah's messenger I do not blame Thabit for defects in his character or his religion, but I being a muslim, dislike to behave in an Un-Islamic manner (If remain with him)." on that the prophet said to her "will you give back the garden which your husband has given you (as mahr)?" she said 'yes'. Then the prophet said to Thabit "Thabit accept your garden and divorce her once."³³

Here, the prophets saying should be understood as request since khul envisages the spouses agreement.

In Abdurahman Abulla V. Sara hassen³⁴

In this case we have a situation in which the wife wanted a khul by waiving her right to mahr without the consent of the husband. The

³² The Quran, Surah 2 (Al-Bafar) No. 229

³³ Ibid, P. 49

³⁴ Mohammed Yasin, Supra note 8, P. 77

respondent, wife of the appellant, requested her husband at first to divorce her by khul and upon his refusal, she went to the chercher Awradja Kadi council to force her husband to do the same. Her contentions were that she gets sick when she stays with her husband and becomes well when she leaves him that she had tried for five years and her sickness relapsed whenever she went back to him. The husband on the other hand, argued that she had been sick even before they married each other and that he was taking care of her ever since, and would do the same in the future. He argued further saying that his wife made her sickness a pretext in order to leave him and marry someone else. He therefore, moved that she should return and live with him as a wife.

The kadi, however, asked the husband to divorce her by khul and upon refusal, granted the wife a faskh. According to the sharia rules, the kadi cannot order the husband to divorce his wife by khul, since khul in principle is a kind of talak by consent of the spouses.³⁵

The husband then appealed to the sharia court. In the sharia court the decision was reversed and the wife was ordered to go back to her husband. The court pointed out in its decision that the kadi cannot ask the husband to divorce his wife by khul; that is left to the discretion of the husband the court said:

--- The kadi may, however, declare a faskh if it is established that the wife really gets sick whenever she lives with her husband. The sharia rule does not allow a woman to seek separation from her husband on the pretext of sickness.³⁶

³⁵ Ibid

³⁶ Ibid

The compensation to be paid in khul is a matter to be arranged between the spouses. The woman may give back the whole mahr or part of it, If she had already taken it, or she may waive her right to the mahr upon divorce, she may also do it with other rights that she may claim against her husband.

The basic idea in khul is the husband is entitled to compensation only when he is not responsible for the cause and that the cause emanates from the wife.

Generally, under Islamic law women are provided different channels through which they can make themselves free from the marriage tie if the purpose of marriage is failed. Or if there is no any possibility to continue the bond.

CONCLUSION AND RECOMENDATIONS

Islam is not only a religion but also a legal system all the rules in the sharia are based on the teaching of the Quran and the traditions of the prophet. The Islamic law or sharia, unlike all secular laws does not draw any sharp distinction between legal rules on the one hand, religious, moral and social rules on the other hand.

The Issue of gender equality is important, relevant and current. Debates and writings on the subject are increasing and are diverse in their perspectives. The Islamic perspective on the issue is the least understood and most misrepresented by non-Muslims and some Muslims as well.

The term Gender refers to economic, social and cultural attributes and opportunities associated with being male or female within a given society at a specific period of time.

The fundamental principles governing human relationship is the oneness of human kinds, the belief that all human beings are equal. The equality of women and men is basic requirement derived from this principle. Though the capacity of each person may differ, the opportunity to make a contribution must be available to women and men equally without any discrimination.

Equality of men and women only achieved through equal access to education. The Islam law position as regard to the education is very strict, as it is crucial in the upbringing of daughters that greatly influences their future as well as the community as a whole.

Many people conclude that women in Islam are degraded as inferior and subordinate to men, even the concerned Muslim women themselves think so, but this assertion is wrong as we have seen in chapter two of this

paper by looking at some relevant Quranic verses and reforms brought about Islam in this regard.

In ancient civilization as we have seen in chapter one of this paper, in many areas of the world women were subject to their protectors. They were deprived of many rights. They have no right to free consent to marriage, right to divorce, right to possess personal property, financial security and the right inherit. Among an things, they were deprived the very basic rights; right to life, right to speak and express their opinion freely and participation in legislation, social and political affairs of their nation. But under Islamic law these all problems of women were clearly solved as we have seen under chapter two, by addressing relevant laws and practical examples with real evidence. Women can take positional status, even at headship position of the state, which is wrongly asserted, Benazer Bhutto (1953-2007) had been a prim Minster of the Pakistan twice (from 1988-1990 and 1993-1996), thus one can understand that the Islamic law do not deprive women's right, but the problem is the conservative interpretation and the prevalent local culture.

Polygamy and the initiation of divorce are another areas of criticism by secular law against the Islamic law. Secular law in most western countries with large Jewish and Christian populations does not recognize polygamous marriages. They simply refuse to give it any recognition, parts of United States, However, criminalize the polygamous life style, through these laws rarely enforced. The Attorney in British Columbia has expressed concerns over whether this prohibition is constitutional. An independent prosecutor in British Columbia recommended that Canadian courts be asked to rule on the constitutionality of the law against polygamy. Some researchers and individualist feminism forwarded their opinion against laws criminalized polygamy and have raised different justifications.

In Ethiopia polygamy have been freely and heedlessly practiced by some Muslims without giving any attention to the teachings of Islam concerning the subject. Indeed, polygamy is one of the abused institution as the result of which many problems and hardships are created in the family life of many Muslims.

Under Islamic law polygmy is conditioned on the ability of the husband to treat his wives exact equally in an respects an almost impossible thing to achieve. The Quran laid down these conditions as follows.

i) Financial capacity ii) justice to all wives

Thus, polygamy is a sort of remedial law in Islam which may come to operation when opportunity arises and compelling circumstances are occurred.

Regarding limitations on Divorce, in principle a Muslim husband has the power to terminate his marriage unilaterally without being required to give reasons for doing so. However, as we have seen earlier, a Muslim is permitted to have recourse to divorce only if there is ample justification for it. We have seen that the Quran forbids a man to seek pretexts for divorcing his wife so long as she remains faithful.

It is clear then, that Islam as a religion and a law, discourages divorce in principle and permits it only when it has become altogether impossible for the couple to live together in peace and harmony.

There are three types of talak (divorce), these are Revocable Talak in which the husband may revoke the talak he pronounced and take his wife back while she is in the period of waiting. The second type is Irrevocable Talak in this type the husband can not revoke such talak takes place in three repudiation. The third type are known as conditional talak it may be revocable or irrevocable depending up on the way it is repudiated.

In Islamic law there are various forms of marriage dissolutions. These include:- The husband's initiation (Talak), The courts decision on the wife's initiative (For a legitimate reason) (Faskhn), and enactment based upon mutual agreement (khul) are the major ones.

After having summarized the major points in the paper the author recommends the following:-

- Due to the fact that misunderstandings, misrepresentations and conservative interpretations of the Islamic law, the status and the rights of women are undermined. Thus, the whole area of Muslim personal law should be needed a close, careful and comprehensive examination.
- The prevalent cultural influence on the interpretation of Islamic law should be avoided.
- Academically poorness of sharia leaders more complicated the issue, as they are far away from the information of Islamic Research foundation center. Therefore, sharia leaders should equipped themselves with both Religious and academic education.
- In order to aware women about their rights under Islamic law the religious leaders should make their respective effort.
- Islamic law provides equal opportunity to education for both sons and daughters but, practically it is not. Thus, this trend should be changed.
- Women's protection provided under Islamic law should be implemented practically.

GLOSSARY

Adl – Equity.

Amendable – Trends willing to be influenced by something.

Farak-tu-ki – I separated from you.

Faskh – One form of marriage dissolution which initiated by petition of wife with out will of the husband.

FDRE – Federal Democratic Republic of Ethiopia.

Hakam – Arbitrator.

Iddat – A period of waiting imposed upon woman as the result of the termination of her marriage.

Islam – The Muslim religion, All Muslims and Muslim countries in the world.

Islamic Law – A law based on the Quran and the Tradition of prophet Muhammad.

Inter alia – Among many things.

ICCPR – International convention on civil and political Rights.

Khul – One form of marriage dissolution which takes place by the agreement of parts and presupposes the return of consideration.

Mohammedan Law – Islamic Law.

Modesty – Muslim dressing style.

Muslim – A person whose religion is Islam.

Mahr (Dowry) – Property and/or money that a man gives to a wife when they marry.

Nikah – Contract of marriage

Nafaka – Maintenance

Nashiza – Disobedient

Serrah-tu-ki – I divorced you

SAW – Sellalhu Alehi wosellem (peace be upon him)

Tuhr – A duration after ministerial periods.

Tahalil – Legality after prohibition

Talak – Repudiation of marriage tie by a husband or wife

Wali – Agent of woman during formation of contract of marriage.

BIBLIOGRAPHY

Table of Law

1. The Revised Family cod, proc No. 213/2003, Negarit Gezetta, Extraordinary issue No. 1
2. The Criminal code of the FDRE, 2004, Proc. No. 414/2004
3. The constitution of the FDRE, 1995, proc. No. 1/1995
4. Al Quran

Other references

1. Badawi Jamal, Gender Equity in Islam, 2nd ed, American Trust publications, Indian, USA, 1999
2. Badawi, Jamal, The status of woman in Islam, Islamic information foundation, Halifax, Canada, 1971
3. Malakah Mustafa, Woman in Islam (compilation). 2004.
4. Anis Ahmad, Women and social justice, An Islamic paradism (Islamabad pub. Com). 1996
5. Ahmed A. Gal wash. The Religion of Islam Cairo, Imprimeric MISR S.A.E, 1958.
6. Yusuf Al-Irdibily, Al-Anwar-Li-Aemalil Abrar, Cairo Ahmed-ai-Babil Halaby, 1910
7. Mohammad Yasin, The laws relating to marriage among Ethiopia Muslim, H.S.I.U 1960 (unpublished)
8. Shcikh Mohammed-al-Shirbeen. Al-Ikna, Cairo Isa-al-Babil halaby and co-1972.
9. Asaf A.A. Fayzee, outlines of Mohammadan Law. London: oxford university press, 1949.
10. World Book 2001
11. The New Book of Knowledge
12. Mace, David and Vera, marriage East and West
13. Allen, E.A, History of civilization
14. The Encyclopedia Britannica, 1911

15. Encyclopedia Biblical, 1911
16. Encyclopedia Britannica, 1968
17. Dr. Sheila Ruth, Issues in Feminism, 4th ed, Mayfield publishing com. Mountain view California, London, Toronto 1997.
18. L.A. Abu-Harb, A Brief Illustrated guide to understanding Islam, Darussalam Pub. 1996.
19. Philips and Henry, F., Marriage law in Africa, oxford university press London New York, 1971
20. N.J. Couson, succession In the Muslim Family. London: Bartley House, 200 Euston Road, N.W.I, 1971
21. Ahimeddin Jebi, Women's Right and Equality In Islam, (in Amharic), 1999 E.C

The Web Sites

1. WWW.islam.gide.com
2. [www.iol.ie/isplagenda 21/equality.\(2007\)](http://www.iol.ie/isplagenda21/equality.(2007))
3. [www.islam-gide.com/ch 3-13-1.](http://www.islam-gide.com/ch3-13-1)
4. [www.angryharry.com/esEquality Not Achievable.\(2007\)](http://www.angryharry.com/esEqualityNotAchievable.(2007))
5. [www./G:\Gender and reproductive rights glossary. \(2008\)](http://www./G:\Genderandreproductiverights/glossary.(2008))
6. [www/en.wikipedia.org/wiki/Image:Gnomeglobe.sug.](http://www/en.wikipedia.org/wiki/Image:Gnomeglobe.sug)