

# Islamic Social Reforms from a Woman's Perspective

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## Abstract

*There are many misconceptions relating to Islam created by western scholars and their followers and imitators. These are most pronounced with regard to status of women in Islam. Without giving due regard to the historical, cultural and contextual variables, they often challenge and criticise the notions in Islam concerning marriage, Dower, Maintenance, polygamy and Inheritance. These are very complicated and normative issues.*

*. It is difficult to discuss these misconceptions relating to the right's of women in Islam in this paper because of a limited space. So in this paper, I have tried to counter some of the allegations, which put Islam in bad light with regard to issues and rights of women and analyzed those in the light of Quran. In this direction, this paper also discusses the view's, thoughts and opinions of the some Islamic scholars regarding the women right of choice in marriage dower and maintenance.*

## Introduction

In pre-Islamic Arabia, the position and status of women was extremely degraded and oppressed. At the time of rise of Islam, the Arab society was raked with all sort of inequalities. Tribal disparities, slavery system with abuse and extreme exploitation of slaves, gender discrimination and female infanticide were common practice.<sup>1</sup> Arabs never wanted to have a female child as it was considered a burden and liability. The Arabian tribes of Quraysh were proud of in destroying their female children by burying them alive.<sup>2</sup> The birth of the daughter was embarrassing for the father and a mark of dishonour.<sup>3</sup> The condition of women in the rest of the world were in no way better. The caste system had been the cause of great

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distress and deprivation in Hindu society. Women were also viciously discriminated in matters of marriage, inheritance, education and health. According to Manu Raj, ancient India's greatest lawgiver says, "In childhood must a female be dependent on her father, in youth on her husband, her lord being dead on her son's, a woman must never seek independence."<sup>4</sup> The condition of European women was also not better. In short the women before the advent of Islam, everywhere and in particularly Arabia were living in bondage without basic human rights and dignity. Islam attempted to change this inhuman situation and made serious attempts at improving the individual as well as social status of women.

It is generally assumed that in Islam women are considered inferior in terms of dignity and rights. The subjugated status of women in many Muslim societies also lends credence to this belief and argument. Such misconception also created, partly due to several such practices and customs that in different Muslim societies go in the name of Islam. While, in fact those are inconsistent with the true spirit of Islam. It is a wrong perception because it emanates from ignorance about real Islam. There is difference between what Islam prescribes and what Muslim societies have been actually practicing. Then, there is also a fundamental difference between universally applicable (Quranic) precepts of Islam and culturally conditioned *Shariah* based precepts, which are not specifically mandated by Qur'an. It is one thing to say that Qur'an discriminates against women, and another, that *Shariah* is not consistent with the basic rights of women. To say that a particular Muslim community is not sensitive and violates the rights of women is still different perspective. There might be willful misapplication of *Shariah* law based on misinterpretation, prejudices and ignorance about anthropological and scientific perspective.

### **Human Creation in the Qur'an**

Islam is a universal religion, which is its most distinctive feature as wide in its conception as Humanity. Islam teaches that Allah is the source of all creation and that human beings are the best of his creation. The concept of the sovereignty of God is the central theme and aspect of Islamic thought, around which all other attributes revolve. It is the most powerful thrust to demolish all immoral barriers which separate man from man on flimsy grounds. In Quran, at many places it is mentioned that all sovereignty belongs to Allah. The Quran establishes equality of sexes in dignity and rights.

The equality of men and women in creation is mentioned in Qur'an.

*O mankind! We have created you from a single pair of male and female; and we have made you into nations and tribes that you may recognise each other. Verily, the most*

*honoured of you, in the sight of Allah, is he who is the most righteous in conduct of you". Surely, Allah is All Knowing. All Aware (with all things)<sup>5</sup>*

*Whoever works righteousness, man or woman, and has faith verily to him We give a new life, a life that is good and pure, and We will bestow on such their reward according to the best of their actions. <sup>6</sup>*

*O mankind !fear your Guardian Lord, Who created you from a single soul, created, out of it, His mate, and from them twain scattered(like seeds)countless men and women; fear Allah, through whom ye demand your mutual( rights), and be heedful of the wombs( that bore you) :for Allah ever watches over you.<sup>7</sup>*

In these verses, it lays down in most emphatic terms that in the eyes of Allah all human beings are equal. His will is supreme. He does not discriminate among human beings and in conferring rewards and punishments. The people – whether, high and low, rich and poor, white and black, male and female – are all equal in the sight of Allah, if they perform righteous deeds. All, in the last analysis, are responsible and accountable for their deeds to Him. In the verse (4:1), Allah proclaims that the same spirit dwells among all men and women, and the essence of soul and nature of both man and woman is same. Another impressive awareness of the sense of equality before Allah is seen again at the time of the annual pilgrimage to Makkah, where millions of believers from every Muslim country merge their differences of status, and in complete equality stand before their creator.

### **Woman as an Individual**

According to Murtaza Mutahhari (1920-1979) Qur'an is not just a collection of laws and dry commands without comments. It contains both laws and history, exhortation and the interpretation of creation and countless other subjects with exposition and explanation. The Quran is not a treatise on philosophy, but it clearly expresses views concerning the three basic topics of philosophy; the universe, mankind and society.<sup>8</sup> The contribution of Islam towards the safety and protection of the rights of women should be judged in the light of the status of woman during those times and also their position in some other religions. Orthodox Hinduism assigned a very low position to women. According to Buddhism, *Nirvana* (Salvation) which is the ultimate goal of human life cannot be attained in the company of women.<sup>9</sup> In Judaism, the Hebrew scriptures have condemned women to an eternal Divine curse. It says, "of the woman come the beginning of Sin and through her we all die."<sup>10</sup> The entire Christian religious philosophy is based on the concept of original Sin which it attributes to women. According to St. Paul, one of the leading saints of Christianity says, "Women must learn the art of

obedience quietly. I would not allow woman to teach or govern man.<sup>11</sup> They stigmatized woman as the sole culprit. They believed that woman was responsible for causing all disasters and misfortunes in the world.<sup>12</sup>

The Islam gives answer to Christianity's concept of the original Sin which had stigmatized (Disgrace) women as the sole culprit. Quran lays down that Adam and Eve both were guilty because they ate the forbidden fruit together.<sup>13</sup>

Another contemptuous view which exists concerning women is in the field of her spiritual ability. The Quran further stresses the equality of women in regard to the possibilities of spiritual progress by quoting from history the example of some of the noblest women who rose to spiritual eminence and also received divine inspiration.

In Sura Taha the Quran Says, "So we sent the inspiration to the mother of (Musa) Moses, Suckle him (thy Child) but thou hast fears about him, cast him in the river, but fear not, nor grieve (sorrow), for we shall return him to thee."<sup>14</sup> Again in Sura Al-Imran, God instructs the angles to convey his messages to Maryam (Mary) the mother of Isa. "And behold (remember) the angles said: "O Maryam surely Allah has chosen you and purified you above the women of all nations".<sup>15</sup> Islam does not make any difference between man and women in the journey from this world towards *al haqq*.

In this regard Quran says - *For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patients and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast. For men and women who guard their chastity and for men and women who engage much in Allah's remembrance for them has Allah prepared forgiveness and great reward.*<sup>16</sup>

Traditionally, women's spiritual abilities were often questioned. It was held by many that a woman cannot go to Heaven. A woman cannot traverse the spiritual and divine stages of enlightenment. While, the Quran in a number of verses clearly mentions that the reward in the life after death and nearness to Allah do not depend upon one's gender, but upon faith and righteous deeds. Ayatullah Murtaza Mutahhari gives some examples in his book regarding this. The wives of Adam and Ibrahim and the mothers of *Musa* (Moses) and *Isa* (Jesus) are mentioned in great esteem. Although, the Quran refers to the wives of *Nuh* (Noah) and as being unworthy of their husbands, deserving of hell, it does not ignore the wife of *Firawn*

(Pharoah) as a women of distinction (special honour and recognition) under the control of detestable man.<sup>17</sup>

### **Women's Social Independence and Choice in Marriage**

The first issue that was discussed in this paper from the view point of women's rights in Islam is the issue of women's choice in marriage. That the boys as well as girls have a right to choose their partners in marriage is a universally recognized human right today.

Islam liberated the women. It put an end to the absolute control and authority of the fathers over their daughters. It gave them complete freedom, individuality and independence of thought and opinion. Islam formally acknowledged their natural right to consent in the choice of their spouses. The question under consideration is whether the father's permission is essential in the marriage of a girl who marries for the first time.

According to Mutahhari, from the Islamic point of view, there are certain things that are indisputable. Both the sons and the daughters are economically independent to manage their own property, transactions and business.<sup>18</sup>

Every adult, who is sensible and sound minded is entitled to have full control over her property, provided she is mentally mature. A degree of mental and physical maturity enables one to personally safeguard her property and take care of herself. The father, mother, husband, brother or anybody else, has no right to supervise and interferes in this respect.<sup>19</sup>

There is another matter which is considered completely certain in connection with marriage. The adult sons are absolutely free to exercise their will in choosing their partners. No one has a right to interfere with their choice. But in case of daughters, there is a slight difference. If a daughter is a widow or a divorcee, nobody has a right to interfere with her affairs. But in the case of maiden girls, who wants to marry for the first time, the situation is a little different. What is that?

It is beyond any doubt that the father does not have absolute authority over her and cannot force even a maiden daughter to marry anyone he likes without the daughter's desire and consent. There is no dispute over that. But there exist a difference of opinion among the jurists (*fuqah*) on the point whether an unmarried girl can contract a marriage without obtaining the approval of her father? Whether the validity of her marriage is in any way conditional upon the consent of her father? However, there is one more point about which there is absolutely no dispute in Islam. It is that if the father withholds from giving his

approval without a sound and reasonable basis, he loses his right to decide about his daughter in a limited sense of consent, too. The Jurists of Islam are unanimous that in such a case, the daughter has complete freedom to contract a marriage with anyone of her choice. However, the Jurists differ on the point, whether the validity of the marriage of a maiden girl depends on the approval of her father? Whether the approval of father is a necessary condition in case of marriage of his daughter?

The majority of the Jurists, of recent times, are of the view that it does not constitute a necessary condition. However, there is a group of Fuqaha who consider it a necessary condition. This being a disputed point, Mutahhari does not discuss it very deeply. But from a sociological and psychological point of view, he considers it necessary to deal with. According to him, there is logic behind the philosophy that a maiden girl must not, or at least should not, marry a man without the agreement of her father. It is not because girl is considered to be deficient in some respect or is counted as inferior to man as regards social maturity. If women were considered incapable of managing their own affairs, why should Islam acknowledge the freedom of grown-up women to manage their own economic affairs and accept voluntary transactions, involving money and property.<sup>20</sup>

According to Mutahhari, the requirement of father's consent relates to a definite aspect of male and female psychology. It relates specifically to the predatory side of man's character and his instinct of alluring the woman, on the one hand, and women's propensity to easily and eagerly trust as well as her instinct of credulity in regard to man's faithfulness and truthfulness. As long as the woman is a maiden and has not much experience of man's nature, she can easily be lured, manipulated or exploited by men. That is why it is essential, or at least, desirable that a girl who has had no experience of men, should consult her father and should obtain his consent prior to contracting a marriage. Fathers are supposed to understand the prospective grooms better, and leaving aside very exceptional cases, wish happiness and well being of their daughters. In such case, woman is not degraded or treated inferior. It is just that she is extended additional protection and her interests are better taken care of. It is ironic to assume that taking father's permission to marry would in any way cut upon her individuality or freedom. In a traditional family set-up, it will not amount to bondage, but care, elderly respect, modesty, consensus and healthy family bonds. So guardian's permission is very reasonable in that context. The girls have final choice whom they wish to marry or not marry. Only its validity depends upon the consent of father, provided he does not withhold it with any bad intention or wrong reasons. He should also be competent to exercise his judgment rightly and effectively. So, father's consent, particularly for a dependent girl, cannot

be regarded as against the basic human rights or liberty. It is just a precaution to safeguard the interests of inexperienced girls and is based on a sort of suspicion about the male nature. In this respect no objection can be raised against the requirement of father's consent for a daughter's marriage.<sup>21</sup>

What is objectionable is the custom prevailing among Muslims. Most of the fathers, still, think that they have absolute authority over daughters. They regard it as against her modesty, if a girl expresses her views about the selection of her life partner. They mostly do not pay attention to intellectual maturity and wishes of the girl. They do not recognize her freedom to think independently and her right to marry according to her choice. The major schools (Maliki Hanbali, Hanafi Shaffi, Jafari) generally agree that a Muslim women needs a wali (guardian, usually her father) to enter into a marriage, but they disagree significantly as to the extent, nature and duration of wali's authority over the subject.<sup>22</sup>

Syed Jalaluddin Omari, a scholar, reformer and author very clearly presents his opinion in this regard. He said generally in our societies women did not have the right to speak and express her opinion in the matters of marriage or any other issue of life. Her objection or opinion in the matter of marriage was considered extremely undesirable and most improper (violation of feminine decorum). The society interpreted it in ways reflecting on her moral character. It is generally assume that, if she (women) giving freedom in matrimonial matters is against her own interests. She is likely to take faulty decisions due to her immaturity and lack of experience. No doubt, her parents or guardians more experienced and having better knowledge of men's nature, and thus are less chances likely to error in their decisions. Moreover, they are her well wishers and cannot deceive her. Undoubtedly, we can not deny from the truth that her guardians can make a better selection of the partner in life for her. But at the same time one cannot deny that at many times guardians are guilty of excesses in this regard. They often make these matches a means of serving selfish ends. Therefore it is not proper that we leave the decision of selecting of partners for girls entirely to the guardians.<sup>23</sup>

A well established, Hanafi School of thought, views the mature woman as capable of contracting a marriage, with the wali playing merely an advisory role. However, if the woman ignores wali's advice and wishes to marry someone unsuitable, then the wali immediately acquires remarkable powers over her marriage.<sup>24</sup>

However, if the issue at stake is the very right of an able-bodied and able-minded adult girl to choose and marry a man of her choice, against the wish of her father, the views of Mutahhari or Hanafi School become problematic. In a traditional social set-up, such kinds of

justifications as are given by Mutahhari or Hanafi may be considered valid. But it is a different situation when an independent unmarried girl is bent upon exercising her choice, irrespective of disapproval from her father. What is the criteria for her father to decide whether her choice is right or wrong? What about her right to choose? What if she comes out and says that she wishes to marry an unsuitable man; she wishes to be allured? It is fine to preserve and defend family values and family bonds. The father has unlimited right to persuade and convince the girl about the right choice. It is also morally proper for a girl to adhere to, the advice of her father. But the fundamental question in today's context, when women are educated and well exposed, is - if the choice of adult girl regarding her spouse comes in irreconcilable conflict with the choice of her father, whose will i.e. choice should prevail, and under what conditions? The response needs a clear cut stand, either this way or that way. Whether the answer should be in the light of fiqh developed over centuries and practices of past Muslim societies? Or, should the answer be in the light of Quranic injunctions as applied in the context of contemporary societies?

Islam has certainly attached importance to the guardian of the girl in marriage, but it has also stressed the point that her permission is essential in a marriage tie. The widow or a divorcee shall not be given in marriage without asking of for her opinion and a virgin without her consent. If a guardian of a woman gives her away in marriage against her wishes and she disapproves of it such marriage would be declared null and void (nullified).<sup>25</sup> Marriage contract is a very important event and decision to start a new phase of life for both of them, girl and a boy. It would not be proper and reasonable to impose upon the girl the decision about her future life against her wishes or without her consent. In Islam women have been granted full freedom in the choice of her husband, nobody has got the right to give her away in marriage without her wish and consent.

### **Dower and Maintenance**

In Islam man has acknowledged the right of the woman to a dower (*Mahr*) on the occasion of marriage. He used to pay something of value to the woman.

*Mahr* (Dower) is a gift that the believing man gives to his bride on the occasion of Marriage. It is an integral part of every Islamic marriage contract. *Mahr* is usually translated either a sum of money or other form of property which is given by the husband to his wife at the time of Nikhah. Islam has ordained man to pay the dower of the woman who he takes in Nikhah compulsorily<sup>26</sup>. The jurists have consensus on the issue that without dower Islam does not consider Nikah valid.<sup>27</sup> It becomes the exclusive property of the bride after marriage and

she can use it according to her wishes. Neither the parents nor anybody else has any share or right in the dower.<sup>28</sup>

The concept of paying dower also existed during the period of *jahiliyah* or before the advent of Islam but in corrupt form<sup>29</sup>. In its corrupt form it exists even today in several traditional or tribal societies of the world. Islam abolished the customs of the “time of ignorance” (the pre-Islamic period) concerning the dower and restored it to its rational and logical position.

However, the Arabs had practically deprived women of it in various ways. In the pre – Islamic period, the parents or guardians of women considered the dower as their right in lieu of their services in having brought them up and nursed them.<sup>30</sup> They regarded her dower as their own property and took possession of whatever she was given as dower. The fathers, or in case they had died the brothers believed they had the right of guardianship and power over daughters. They considered the dower of their daughters belonging to themselves and not to their daughter.<sup>31</sup> Regarding this Jalaluddin Omari said the Arabs regarded the daughter as a disgrace to themselves and the news of the birth of a daughter overwhelmed them with grief and shame. However from this angle it was a source of happiness also to them that her dower increases their wealth.<sup>32</sup>

Anyhow, this custom was abolished by Islam. The father of the girl has no right to consider the dower as his property, even if his motive is to spend it for his daughter. It is the girl (daughter) herself who has the right to exercise her will regarding the dower. She has the authority to use it in any way she likes. Neither the parents nor any body else has any share or right in the dower. Dower money must be paid or fixed before the solemnization of a marriage and it is the exclusive property of the woman (bride) to determine the amount of dower in Islam.

In this regard Quran says:

*“And gave the women (on marriage) their dower as a free gift as an ; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.”*<sup>33</sup>

During the period of *Jahiliyah* (ignorance) there was yet another custom, a strategic planning (stratagem) for getting rid of a woman’s dower which has been called “*shighar*” in Hadith. This custom was against the women and spirit of Islam in as much as a person gave his daughter in marriage to another person on condition that he in turn would give his daughter in marriage to him. In this exchange neither of them paid either woman any dower.<sup>34</sup>

Islam put an end to this unjust practice. Islam abolished the customs of the “time of ignorance”(pre Islamic period) concerning the dower and restored to its original and logical position. There is consensus of the *Ulama* (Scholars) that Islam declared this practice of Jahiliyah unlawful<sup>35</sup>.

Dower is connected with the modesty and chastity of a woman. There is also an aspect of the woman’s comfort and satisfaction as well as financial aid. She can benefit there by in meeting her needs, can spend it for a noble cause or invest it profitably in business as she likes.<sup>36</sup>

The Qur’an does not specify any amount for *Mahr*. And also the Islamic shariah has not fixed the quantum of *Mahr*. In other words there is no limit prescribe by Islamic shariah about the amount of dower. It can be increase or decrease according to the social and economic condition and status of husband and wife, mutual relations and trust on one another<sup>37</sup>. It is the right of bride (wife) to demand as much as she desires. It could be nominal or it could be quite substantial<sup>38</sup>. In this regard Qur’an says:

*“Wed them with the leave of their guardians and give them their dowers according to what is customary (reasonable)”*.<sup>39</sup>

### **Dower is not the Purchase Price of Bride**

*Mahr* or Dower in Islam is not the purchase price of bride. Sometime, the practice of dower is mentioned sarcastically as the bride price paid by the husband for the bride. And many times people consider *Mahr* as against the honour and dignity of a woman. This shows ignorance about the nature of *Mahr*. In Islam women is not a commodity or property of the parents or any other guardian who can be purchased or sale.<sup>40</sup> She has an independent identity of her own.

How the Quran presents dower .In another *Surah* (verse) of Holy Qur’an Allah mentions:

*“Thus hath Allah ordained (prohibition) against you except for these, all others are lawful, provided you seek (them in Marriage) with gifts from your property, desiring chastity; not Fornication .Give them their dowery for the enjoyment you have of them as a duty”*.<sup>41</sup>

This makes it evident that *Mahr* entitles man to and makes it lawful for him to gratify his desire but it does not make her his property after *Mahr* is paid. Syed Jalaluddin Omari agrees with Zamakhasri by quoting this verse of Qur’an that *Mahr* is the return of the benefit that man derives from the woman through the bond of *Nikah*. It is *Mahr* that differentiate

between *Nikah* (lawful wedlock) and illegal marriage (gratification of lust) according to Jalaluddin Umari<sup>42</sup>.

### ***Mahr* is the Proof of Sincerity and Honesty**

The fact is that dower is a proof of a husband's sincerity and love. Declaring it the price of the bride is an insult and wrong perception about this system. Through payment of *Mahr*, a husband proves that he will live up to the woman's expectation of her good faith and shall not deceive her<sup>43</sup>. Jalaluddin Umari also defines the reason and passion behind the payment of dower in the sense of faith and religion. He said that the dower of the women must be paid as a religious duty binding on man with answerability here and hereafter.<sup>44</sup> It is also legally obligatory upon man. It should be paid without the express demand for it from the wife.<sup>45</sup>

However, the Qur'an does not use the word *Mahr*, but either *Saduqatun* or *ujurun* is derived from "*sadaqah*" or "*Sadaq*" which means truthfulness, love, friendship, sincerity and a gift given as an act of virtue. Thus Engineer Asghar Ali clearly said according to the Islamic concept the man (Husband) must pay to the woman (wife) some amount as a token of his love, truthfulness and sincerity.<sup>46</sup>

### **Criticism on *Mahr***

Some people think and give arguments against the system of *Mahr* (dower). According to them *Mahr* or dower might have been regarded as a token of love in a particular period and it might have had some importance and utility at that time. However, the circumstances and social trends differ from time to time. The present day social values regard it as a negation of conjugal love. And they believe practically *Mahr* has lost its importance in view of the fact that the woman is an earner of livelihood in her own right and does not look to any one for support. The importance of *Mahr* become ineffective with the passage of time or does it persist even today? Was it is provisional ordinance or is it of the nature of abiding laws and ordainments?

The argument against the *Mahr* is that in our present society or world the avenues of economic effort are open to her and other facilities in the form of earning propositions are freely available to her to a degree where she has become totally independent of man? And the payment of *Mahr* considered not necessary. The quantum of *Mahr* is also an issue that comes repeatedly for consideration.

Firstly, Islamic shariah attach importance to *Mahr* . Islamic shariah take and presents it as an ordainment of importance and utility. It is also mentioned above that Islamic Jurists unanimously united and opine strictly on the point that *Nikah* (Islamic Marriage contract) is not valid and prohibited without *Mahr* .Secondly, but most importantly some above mentioned Qur'anic verses defines the importance and utility of *Mahr* . The Qur'an has ordained *Mahr* definitely and with great stress. There is not any Quranic injunctions which give hint to their being provisional nature or specified for particular time of period and which one can call an abiding law. According to the Islamic teachings the obligation of *Mahr* is binding and eternal. *Mahr* denotes the value and also means of keeping the conjugal relationship intact.

The Jurist differ on the issue of fixation of the minimum amount of dower. They can keep it very low if they are so pleased, and they are also permitted to keep it very high under their particular circumstances.

It has been reported that when the Hazrat Umar, the second rightly guided caliph once while addressing a Muslim gathering asked and advised them not to fix very high *Mahr* and wanted to limit it to four hundred *dirhams*. A woman in the audience stood up and raised the objection to his suggestion. And said that he had no right to make any such decision as it went against the definite teaching of the Qur'an. Then she quoted the relevant Quranic verses. On hearing this from woman, Umar remarked that the woman was right and Umar's decision was wrong. And he withdrew his proposed ceiling on *Mahr*.<sup>47</sup> The traditions and Islamic teachings have not prevented people from fixing higher quantity of *Mahr*. However, Islam urges people to keep it low or moderate. Thus it is clear then that although the fixing of higher amounts to be given as dower is not strictly forbidden from the legal point of view. This practice sometimes and some cases considered to be socially undesirable.

Mutahhari believed that the purpose of the introduction of the dower is the result of a very wise plan which is employed in the context of creation to keep a balance in the relations of men and women and to keep them united. Dower is connected with the modesty and chastity of a woman.

According to Maulana Wahiduddin Khan the real meaning of *Mahr*(dower), a sum of money that the groom hands over to the bride at the time of marriage is a token and a pledge of his willing acceptance of the responsibility of bearing all necessary expenses of his life.<sup>48</sup> In another place he said, a woman has a legal right to maintenance, which devolves upon her husband. If he fails in this regard, the woman can receive it through the court.<sup>49</sup>

At last Mutahhari said, dower is a kind of evidence which leads to the conclusion that woman and man are created with different aptitudes, and that the law of creation has bestowed upon them different attributes, according to their natural and innate rights.<sup>50</sup>

Many jurists have rejected the comparison between the marriage contracts and sale. They agreed that it was a public and a legal contract between a man and a woman giving rise to certain rights and duties for both of them. The attitude of the jurists merely concedes validity to the usages and conventions of the society which had remained male dominated although Islam had intended to introduce far-reaching reforms in the fabric (customs) of the pre-Islam society and Quran's intention and purpose was improve the status of woman.

### **Maintenance**

Before the marriage the responsibility of the girl's upbringing is given (devolves) to the father. But after marriage her husband is responsible or binding too one for her maintenance. Moreover, he was responsible, during the whole period of marriage, for the maintenance and upkeep (*nafaqah*) of his wife and children. The meaning of "Nafaqah" which is the Arabic word equivalent of "maintenance" is what a person spends on his family. Maintenance includes food, clothing, and lodging. According to the *shariah*, the maintenance of the wife is compulsorily and the responsibility of the husband, without consideration of her financial status.<sup>51</sup> She is not obliged to give her husband anything from her income. Even if a man (husband) is poor and she is wealthy, the husband liable to give her maintenance according to his capacity and means.<sup>52</sup>In this regard Qur'an says:

*Let him who has abundance spend out of his abundance,  
And whoever has his means of subsistence straitened to  
him let him spend out of that which Allah has given him.  
Allah lays not on any soul a burden beyond that which  
he has given it.*<sup>53</sup>

Thus it means a man who has abundant means must spend abundantly on his wife and if his means are limited he should spend accordingly but he must maintain his wife and family. In other words every man(husband) is obligated to maintain his wife and children according to his means.

Man is considered as the head of the family. In this regard Holy Qur'an says:

*Man are protector and maintainers of women( family) because Allah has given the one more(strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard intimacy in(the husband's)absence which God would have (ordained) them guard.*<sup>54</sup>

At home, man is the protector and the head. This is because man is by birth physically strong creature. But its no means that man is superior to woman in the absolute sense. The wordings of the above mentioned verse (4:34) means that everyone is superior to other in some particular respect.

Islam has acknowledged dower and maintenance as a necessary and effective factor in strengthening the mutual relationship between husband and wife, safeguarding the tranquility of the house hold, and to establish unity between husband and wife according to Mutahhari. As Islam considers dower and maintenance to be obligatory, the wife is automatically exempted from the financial expenditure and that responsibility has been laid upon the husband.<sup>2</sup> A group of scholars of the west have raised objection against dower & maintenance and said why we do not give equal share to man and woman, so that we should not be obliged to compensate the deficit by round way of dower and maintenance? Anyhow the financial and economic aspect is not the only objective of Islam, has kept in view many aspects of the question some of which are based on nature and psychology. Within the family, men and women are to share in their obligations and responsibilities according to their gender, their natural endowments, talents and inclinations, bearing in mind their common responsibilities towards their creator and their fellow beings.

Moreover, the special psychological and biological considerations regarding man and women and the fact that physiologically man is more fit and able to produce and earn wealth as compared to woman and should always be there as the person responsible to meet for the expenses of women. And lastly the subtle psychological and social considerations which are source of strength in family life. All these aspects have been kept in view by Islam.

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