



FORUM

The Gender Dichotomy: How Sharia Law in the Seventh Century Granted Women Legal Empowerment

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The world's youngest major religion, Islam, was established in the seventh century when the Prophet Muhammad amassed a following dedicated to the revelations he received in the Qur'an. The growth of Islam in the decades after Muhammad's death, combined with the widespread need to implement a coherent ethical account of Islamic actions resulted in the development of a legal system known as *Sharia* law.

The *Sharia* system is based on three central components: the *Quran* (the central sacred text of Islam), *Sunnah* (the Prophet's actions and non-Quranic statements), and *fiqh* (logic). Islamic law and practice stood in contrast to many of the practices of the surrounding Arabian tribes, particularly with regard to the roles and rights of individuals based on their gender. Notions of gender equity in Islamic law have vastly differed between academics and across time periods, however, many traditional and modern Islamic scholars argue that the way in which *Sharia* law was used in court precipitated considerable strides in the advancement of women's rights, levelling the legal playing field between the two genders in the seventh century. Rights regarding inheritance, marriage and divorce, and the social classification of women, are three of the most debated spheres of Islamic law, both within dialogues of contemporary and traditional jurisdiction in terms of exemplifying the progression of women's rights.

I. *Atlaq* and *Mahr*

Under the Quran, both men and women can petition for *atlaq* (divorce), and women do not need a specific reason to file for divorce (such as adultery) — the marriage having broken down is itself a plausible cause for divorce according to *fuqaha* (Islamic judges). In the seventh century, this right was not experienced by women across the world; in fact, the enactment of divorce by a woman was perceived as an uncommon act, and in many regions disallowed in court. For context, in England, women gained the right to divorce only in the nineteenth century under the Matrimonial Causes Act of 1857,— upon colonizing the Ottoman Empire in the nineteenth century, the British discovered “Muslim women had already had the right to divorce for a thousand years”.

Although physical or mental neglect or abuse was not a prerequisite for a divorce to pass through the courts, the ability to divorce was particularly beneficial for Muslim women as it allowed them to leave marriages in which they were being improperly treated. However, it is important to note the distinction between the cases for divorce by men and women — the husband could divorce without cause, but the wife had to have the base reason of “incompatibility” for the initiation of a divorce. This distinction between the preconditions for men and women points to a separation in rights between genders. Nevertheless, in comparing the rights of Muslim women to non-Muslim women in the context of the 600s, the right for Muslim women to instigate a divorce was a significantly more progressive right than those extended to their non-Muslim counterparts in other regions of the world.

Before the topic of divorce entered the conversation, however, there was an inchoate concept known as “mahr” which established a “wife as a contracting party in her own right to her own marriage”. There are different legal interpretations of what the mahr can be or is meant to be, but generally, it is recognized as a “gift or contribution made by the husband-to-be to his wife-to-be, for her exclusive property, as a mark of respect for the bride, and as recognition of her independence”. It is similar in concept to a dowry which is prevalent in some Middle Eastern and Southeast Asian cultures, except, here, the female is receiving the gift or the “mahr” instead of the male. The two are also distinct in the fact that the dowry is used by the husband to take care of his wife, while the mahr consists of property and assets solely under the wife’s discretion. This early concept not only allowed a woman to

have negotiating power within her marriage, but also served as a way to financially protect her in the case of the dissolution of the marriage; rights many women across other parts of the world did not enjoy.

II. Inheritance

In the pre-Islamic era, inheritance in the central Arabian region occurred on the basis of the patriarchal “principle of proximity,” in which wealth and estates were passed along the male lineage of the family, starting with immediate members and moving distally across family relations. The practice of gender-based inheritance put women at an immediate economic and social disadvantage as they would not have personal means to support themselves, and were thereby forced to rely on brothers, fathers, husbands, and other male relatives to provide and care for them. The adoption of Islam in the legal systems of the Hejaz, Najd, and Eastern Arabian regions marked the beginning of a new system of inheritance in which women were entitled to a share of *viz* (inheritance). The transmission of property and assets is complex and highly situationally varied in Islam, but the main difference between pre-Islamic and Islamic law is that under the Islamic rubric, daughters were able to receive an inheritance if a parental figure passed away.

Now, some modernist non-Islamic scholars nevertheless perceive the Islamic law’s bearing on inheritance as limiting for women, given that daughters receive one-half of the share of inheritance that their brothers receive. This is justified in the Qur’an through an explanation of different expectations of men and women based on their gender. Critically, the son receives twice the amount of inheritance, as under *Sharia* law it is required that men utilize their received finances to take care of and financially support the women of the family, including but not limited to his sister. Women, comparatively, are not under any legal obligation to employ their monetary assets for the benefit of the family. Thus, a woman’s entitlement to *viz* created a structure where women do not have to rely on their male family members, and provided them with financial sustainability, a luxury that women in non-Islamic Arabian tribes did not get to experience.

III. Social Status

The social classification of people is the basis of individuals’ treatment and the premise for the privileges people have access to under their respective legal systems. The non-Muslim Bedouin tribes dominating the Arabian Peninsula in the sixth and seventh centuries had rigid hierarchical social structures in which males were perceived as superior to women. Women had severely restricted rights and “were

often considered property to be inherited or seized in a tribal conflict.” The reduction of women to “property” eradicated the legal rights of women, as under the law, they were not seen as individuals with rights but rather property that could be obtained. Under Islamic law, however, spiritual equality is granted to both men and women uniformly and without restriction, and as a result, placed women in an advantageous social position relative to the *jahiliyyah* (pre-Islamic) period’s treatment of women. Islamic law does take into account the physical and psychological differences between men and women, but in terms of many social roles, women and men are on equal footing. In this context, men and women are viewed as equals by God, and the only way for persons to be seen as above one another is through their enactment of *deen* (good deeds). Under this legal categorization of women as individuals with human rights rather than possessions of men, women were enabled to work, encouraged to receive an education, were capable of proprietorship, among other capabilities in the seventh and eighth centuries. The delineation of the woman’s position and standing within the Quran thus granted them abilities to utilize which non-Islamic women could not engage in due to social stratification within their respective communities.

Conclusion

In the context of its time and even in modern perception, Islamic law granted women followers innumerable human rights recognized under the law and addressed many of the inequalities women had been facing as a result of living in a structurally patriarchal society in the seventh century. The division of *viz* created monetary security for women, while the setup of *mahr* protected a woman’s finances prior to the initiation of a marriage. The request for divorce being accessible to women resulted in safety nets for women and the establishment of relative gender equity under the law in terms of social status established the fundamental access women have to their guaranteed rights outlined in the Quran. Whether specific Islamic societies actually enforced the rights entitled to women in court is a question to be debated— and is an issue highly prevalent in many modern Muslim countries with governmental enactment of *Sharia* as the law of the land. Nonetheless, in theory, the structural dynamics of Islamic law and the rights provided by it allowed Muslim women to enjoy many privileges typically experienced by men in the seventh century and creates a system in which women are meant to function independently of men.