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**ISSUES OF WOMEN IN FATA: A STUDY IN THE LIGHT OF  
ISLAMIC SHARI'AH**

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**ABSTRACT**

Federally Administered Tribal Areas (FATA) in Pakistan, have been the focus of international media and think tanks since the dawn of the present century for multidimensional negative trends regarding women. In FATA, the tribal society followed a variety of trends related to women which have thousands years old historical backdrop of Pakhtun civilization. These customs and traditions are therefore helpful for the society, but sometimes come at odd with the Islamic Shariah (Islamic law). Islamic Shariah

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provides balancing differences between the roles, rights, and obligations of women and men. Majority of Pakhtun cultures are not willing to give rights to the women regarding marriage, divorce, civil rights, legal status, dress code, and education based on different interpretations. However, neither the Quran nor Hadith mention that women have to be housewives only. In order to provide rights to women there are different NGOs, Philanthropists, government agencies and volunteers endeavoring for many years, but till today the disgrace/embarrassment of women cannot be overcome by any way. The present study investigates the role of women living in the federally administered tribal areas (FATA) of Pakistan by discussing their problems and suggesting solutions for them from Islamic perspective.

## INTRODUCTION

Administratively, Pakistan is divided into four provinces (Punjab, Sindh, Khyber Pakhtunkhwa and Baluchistan), one capital territory known as Islamabad Capital Territory and Tribal areas which are called Federally Administered Tribal Areas (FATA). FATA is consisted upon seven tribal agencies and six frontier regions. Tribal Agencies include Bajaur, Khyber, Orakzai, Kurram, North Waziristan, South Waziristan and Mohmand agencies while Frontier Regions (F.R) comprise on FRs of Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan and Tank. ( FATA, History of FATA, 20, 2016) The whole area which is presently regarded as FATA remained an unsolvable question for the British colonial power throughout its presence in the Indian sub-continent. The British tried to control this area through various strategies however they never succeeded in controlling it perfectly. After the independence of Pakistan in 1947, status of tribal areas was not changed and administration followed the British legacy. FATA, according to official records, has an almost 3.17 million population, out of which 1.5 million is female population. (Population of FATA, Nov 20, 2016)

Legal cases, whether criminal or civil, are decided by local jirga of elders under the Frontier Crimes Regulations 1901. The Jirga pays important attention to the tribal norms, etiquettes, customs and riwaj (customary law) which are centuries old phenomena.

In addition to their own set of customary laws, rules and social behaviors, the life style in the Tribal Areas of Pakistan is dominated by the Islamic values and principles. Some of the prominent custom features of tribal areas are Melmastia (hospitality), Nang (honor), Badal (revenge), Paighor (taunting), Nanawate (request for reconciliation)etc. which are jointly known as pakhtoonwali. Sometimes the Islamic Shariah and their own cultures intersect and lead to the growth of severe social problems, highlighting the respect, rights and status of women in society. These are Swara (a woman who is married from the family of the murderer, as an alternative to blood-money, to a person in the family of the murdered in order to settle murder dispute); Ghag (declaration, when a boy loves a girl and fires in the air to declare that he would marry her, then he remains prepared for feud with those who attempt to marry her) honor killing and so on. Islam is the first religion that provided a respectable and distinctive status to women which she had never before. But now in the male dominated society of FATA, people have assimilated social, economic and political affairs in accordance with Islamic principles and laws for men only, while women on the other hand are denied of their rights based on these principles. Application of these principles is opposed by men where their interest is ensured so that the status of women remains highly miserable due to the factors of honor, clan and tribe.

For example, if someone killed a man and could not afford to give blood-money, then swara became the custom of the society in order to use women as an alternative for money. Men do not give a share in property and inheritance to women, because it is against their economic interests.

The above mentioned problems can be resolved through the process of identification, analyses and knowledge provided in Islamic Shari'ah.

### 1. Status of women in Islamic Shari'ah:

The biological division of human beings into male and female is the result of purposeful planning on the part of the Creator. A woman is bestowed with the same status, rights and blessings as that of a man in Islamic Shari'ah. As the Qur'an says:

أَتَى لَا أَضِيعُ عَمَلٍ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَى بَعْضُكُمْ مِنْ بَعْضٍ

“I will deny no man or woman among you the reward of their labours. You are members one of another.” ( Qur'an, 03:195)

Islamic codes for men and women are based on their respective, natural constitutions. The Islamic laws are formed to ensure justice between the male and female, keeping in view the biological and physiological differences that lead them to work outdoors and indoors respectively.

#### 1.1.An Additional, Not a superior Quality

Here is a verse of the Qur'an:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ

“Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other.” ( Qur'an ,04:34)

الرِّجَالُ is the Arabic word used in the scriptures to indicate the additional masculine quality of protectiveness. To run a household properly, it should have a guardian. Guardianship is rightly entrusted to the family member who is well qualified to tackle this responsibility; namely, the husband, for protectiveness is a virtue which has been granted by nature in greater measure to men than women. Far from mentioning absolute masculine superiority, the above-quoted verse only implies that man is the master in the home because of the additional attributes with which he has been endowed by nature.

رَفِضٌ is an Arabic expression meaning “excelled some on other”, which occurs several times in the Qur'an. For instance, various kinds of crops and fruits grow from the same soil and water. Of this the Qur'an says:

وَفِي الْأَرْضِ قِطْعٌ مُتَجَوِّرَةٌ وَجَنَّاتٌ مِنْ أَعْنَابٍ وَزُرْعٌ وَنَخِيلٌ صِنَوَانٌ وَغَيْرُ صِنَوَانٍ يُسْقَى بِمَاءٍ وَاحِدٍ وَنُفِضِلُ بَعْضَهَا عَلَى بَعْضٍ فِي الْأَكْلِ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْقِلُونَ

“And in the land, there are adjoining plots: vineyards and corn fields and palm-groves, the single and the clustered. Yet we make some excel others in taste. Surely in this there are signs for men of understanding”.( Qur'an ,13:04)

The following is an excerpt from a commentary on this verse by ‘Abdullah Yusuf ‘Ali, a well-known commentator on the Qur'an:

“The date palm, the crops of food grains, and the grape-vine are all fed by the same kind of water: yet how different to all vegetation. The fruit or eatable produce may vary in shape, size, color, flavor, etc. in endless variety.” (Ali, Abdullah Yusuf (2004), The Holy Qur'an: Text, Translation and Commentary, p. 587)

All commentators on the Qur'an have placed emphasis on this difference and variety, rather than on some fruits being superior, in an absolute sense, to some others. That is to say, each fruit has some particular quality regarding color, and taste, which is not found in other fruits. Similarly, there are differences between men and women. Just as women have uniquely feminine qualities, so also do men have uniquely masculine qualities? That is why God enjoins us not to be jealous of others' qualities: Do not covet the favors by which God has exalted some of you above others. "To men is allotted what they earn, and to women what they earn" ( Qur'an ,04:32).

That is, each has been blessed with different sets of attributes. So what others have should not make one jealous. On the contrary, one should avail whatever talents have been bestowed upon one and, in the processes, make a positive contribution to family and social life.

It is a fact that women are not physically as strong as men, but their physical weakness in no way implies their inferiority to men. The eyes are the most delicate parts of our body, while the nails by comparison are extremely hard. That does not mean that the nails are superior to the eyes. Just as two different kinds of fruits differ in color, taste, shape and texture, without one being superior or inferior to the other, so also do men and women have their different qualities that distinguish male from female without there being any question of superiority or inferiority. If men and women have been endowed with different capacities, it is so that they will play their respective divinely predetermined roles in life with greater ease and effectiveness.

Certain feminine abilities will be superior to certain masculine abilities, and vice versa simply because their natural spheres of application are different. Success in life for both men and women can be attained only if they devote themselves to the particular set of activities which have been preordained for them in God's scheme of things. Here are some verses from the Qur'an and some traditions which elaborate this point such as:

وَ عَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

"Live with them on a footing of kindness and equity. If you take a dislike to them, it may well be that you dislike a thing which God has meant for your own abundant good."

(Qur'an, 04:19)

### **1.2.Freedom of Expression in Islamic Shari'ah:**

There were other examples of Muslim women's intervention in religious matters, one of which occurred in the time of 'Umar bin al-Khattab (RA), the second Caliph. It concerned the amount of money or goods which had to be given as dower (given by the husband to the wife at the time of marriage as a determination that he will meet all her expenses in future). In the Prophet's lifetime this had been a very nominal amount, but with the increase in resources after the conquest of other countries, people had begun to apportion more substantial dowers. Feeling that this was an unhealthy trend, Hazrat Umar (RA) once addressed an assembly of his people from the pulpit, saying that he did not know who had increased the amount of dower to more than 400 dirhams. 'The Prophet and his companions handed over 400 dirhams or even less. Nobody should fix a dower of more than 400 dirhams. If it comes to my knowledge that anyone has exceeded this amount, I will confiscate the excess amount for the State Treasury.'" When he had his say, a woman got up from one corner of the gathering and said;

“O Chief of the Faithful, is the Book of God (Qur'an) to be followed or what you have to say?”

Hazrat Umar (RA) replied that it was certainly the Book of God that was to be followed. The woman then retorted, “You have just forbidden people to increase the amount of dower, whereas God says in His book: O believers, it is unlawful for you to force them to give up a part of what you have given them”. (Qur'an, 04:20)

The woman had actually misquoted the text, but Umar did not choose to assert himself and simply said, “Everyone knows more than ‘Umar.” (Al-Baihaqi, (2012) ,7/533)

With these words he relented on the question of the dower here was a common woman criticizing the ruler of an empire, and the latter one was withdrawing his words.

The right of absolute freedom of expression as we find in this incident, is a clear indication that woman has been granted her full rights in Islamic society. Throughout the history of Islam, the caliphs have played significant roles and, by their feats, have demonstrated not only the vast arena which Islam affords them for the performance of noble and heroic deeds, but also the exaltedness of the position accorded to women in Islamic society. Within the sphere of Islam, Hazrat Aishah (RA), stands out as a woman of notable intelligence, whose intellectual gifts were fittingly utilized in the service of Islam. Very young in comparison with the Prophet, she survived him by almost half a century, during which period she became a great and authentic source of religious learning for the ummah (community). This was largely due to the accuracy with which she had preserved in her memory the speeches, conversations and sayings of the Prophet. In all, she related about 2210 of his sayings and was extraordinarily gifted in being able to formulate laws from them. It is said that no less than one quarter of the shari'ah injunctions have been derived from her narrations. Her knowledge and deep perception in religious matters was so established that whenever the companions of the Prophet found themselves in disagreement over any religious matter, they would come to her to seek her assistance. According to Hazrat Abu Musa 'Ashari (RA), whenever they were in any doubt as to the meaning of any part of the hadith, they would turn to Hazrat Aishah (RA). It was seldom that she was unable to solve their problems. (Al-Tirmidhi, , 13/257)

### 1.3. Inheritance in Islamic Shari'ah:

Islam favors proper proportion of inheritance in property to all men and women, depending upon the nature of relation. Women are endowed with blissful and sufficient share which is contradictory to other religions.

The Holy Quran reveals the inheritance and its proportion in these words:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبُوهُ فَلِلْأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

“Concerning (the inheritance of) your children, God enjoins (this) upon you. The male shall have the equal of two females’ share: But if there are more than two females, they shall have two – thirds of what (their parents) leave behind, and if there is only one, she shall have one – half thereof. And as for the parents of (the deceased) each of them shall have one – sixth of what he leaves behind, in the event of his having (left) a child; but if he has left no child and his parents are his (only) heirs, then his mother shall have one – third; and if he has brothers and sisters, then his mother shall have one – sixth after (the

deduction of) any bequest he may have made, or any debt (he may have incurred).” (Qur'an, 4:11)

## **2. IMPORTANCE OF CONSENT IN MARRIAGE:**

Islam has emphasized the importance of consent and consultation with the woman who is to be married to a man. It is evident from the examples of the Holy Prophet (P.B.U.H.) and His companions. Narrated Abu Huraira that the Prophet (P.B.U.H.) said a matron as well as a virgin should be consulted before marriage. But women most of the times feel shy, depending on their culture and traditions and cannot express their views regarding their would-be husbands. Hence, her silence is considered her consent.

(Al-Bukhari,.Vol.7, Book 62, Number 1148)

Hazrat Aisha (RA), once asked the Prophet that a virgin feels shy. The Prophet (P.B.U.H.) said that her consent is (expressed) by her silence. The Prophet (P.B.U.H.) declared the marriage of a matron invalid when she reported to the Prophet (P.B.U.H.) that she did not like her marriage.( Al-Bukhari, Muhammad bin Ismail (2001),1149)

When the daughter of each other and their lives will be full of miseries and troubles, and when there is lack of love between them, they are more vulnerable to illicit relations with other people because in most cases their faith is not so strong that they will not incline to illegal affairs. This problem has been solved by Islam which ordains the consent of both partners before marriage. It is specifically stressed for women because they naturally feel shy and cannot express their feelings as freely as men can do. So she is to be consulted about her would-be husband. The seeking of consent from women depends upon and differs in various cultures. Some cultures (even in the Muslim world) have snatched this right from women, where her honor becomes at risk when she demands her consent in marriage. Al-Jaun was brought to the Prophet (P.B.U.H) as His bride and she sought His refuge and said that she did not want to marry Him. Then the Prophet allowed her to return to her family. (Al-Bukhari, ,1177)

It indicates that consent of and consultation with a would-be bride is very important in Islam. The married couple has to live together for their entire life and it is very important that they like each other so that they will be better adjusted. If they do not like each other, they will be a burden on each other and their life will be full of miseries and troubles. When there will be lack of love between them, they would be more vulnerable to illicit relations with other people because in most cases their faith is not so strong that they will not incline to illegal affairs.

## **3. STATUS OF WOMEN IN FATA SOCIETY**

The subservient role assigned to women in tribal culture is not solely because of Pakhtunwali; rather, it has been reinforced in the face of indifference shown by government in social, political and economic spheres towards all issues of FATA in general and women issues in particular. Although women have great respect and honor in Pakhtun society, yet she is denied some of the basic rights and legal status which Islam has given her. Tribal areas are considered stricter in the norms and customary laws of the region. Hence, the situation of women is not good than the women living in the settled areas of the Khyber Pakhtunkhwa. Men are the noblest and the cruelest regarding the status, rights and respect of women. Even men confess in their private life as “khazayao

ajiz qam day, be wasa de” i.e. “women are miserable, they are helpless”. (Ahmed, Akbar S..30)

She has been deprived of several activities in day-to- day life which are also allowed by Islam i.e., their consent is not sought for marriage; they cannot claim divorce compensation; inheritance in land and other is denied to them. There is a proverb in Pashtu about women as, “khazza ya da kor da, ya da gorda” – which literally means that “woman should stay either at the house or the grave”.( Ahmed, Akbar S. (1988), *Discovering Islam*, p.188)

It states that women face great restrictions and hardships in her life. She is considered as weak, inferior and a threat to the honor of society if not properly looked after. Islam has given woman a proper status and legal rights but some of such rights are denied in Pakhtunwali. The rights will be discussed which are given as well as denied to women in Pakhtunwali as compared to Islam.

Inheritance in property and money is completely denied to women in FATA. She is denied inheritance in land and other property before marriage and after marriage i.e. both by the father and husband. As FATA is semi-autonomous region based on tribalism – where everyone is free to carry, keep and use weapons freely and they are not legally banned. As male members are the ones who are confident and fit for using weapons and women can't use weapons to protect the family from opponents and enemies. It results in the greater role of male to safeguard the family from enemies; hence male has a vital role in the protection and even the survival of the family. Males are the bread-winners of the family and women do house-hold works so she plays a little role in earning money.

The much-criticized custom of Swara is still a living reality in FATA whereas in the rest of settled Pakhtun areas of Khyber Pakhtunkhwa (KP), it has gradually become a rarity. Under the practice of the profoundly-abhorred custom, girls of the killer(s) family, clan or even tribe are given as ‘compensation’ to settle blood feuds. A girl-most often the killer’s sister- is given in ‘marriage’ to the victim family by the tribe of aggressor or his/her family members. If the killer does not have unmarried sisters or if the Jirga decides to give more than one girl to the aggrieved family, the female cousins or even some distant girl relative(s) of the killer are handed over to the victim's family or tribe. Thus, Swara is violation of human and women rights as well as provisions of Quran and Sunnah. For a moment if it is accepted that Swara ensures peace and order among fiercely violent tribesmen, it cannot be warranted as it benefits only the tribesmen while the women are just used as scapegoats for the wrongs that the former committed.

Although tribal Pakhtun men take great pride in their valour, Swara proves their self - portrayal of bravery as wrong because they hand over their women to their enemies only to save themselves. The custom of Swara also exposes the so-called respect of the tribal Pakhtun man towards women. The issue of unceasing tribal and family feuds in FATA further proves the tribesmen’s violent behavior towards women. The inter-tribal violence would have reduced had these men possessed respect and possessiveness for their women. However, empirically the violence in FATA has increased as new forms like militancy in the name of Islam. As large-scale violence continues to occur in the tribal areas, the Sword of Damocles in the form of Swara continues to hang on the head of every girl of FATA.

Tor is another custom prevailing in the Pakhtun tribal areas of Pakistan. Tor can be described as a worst example of honor killing due to which innumerable tribeswomen have lost their lives. Literally the term means black in Pashto and applies to 'adulterous' women. In tribal areas it has continually happened that a woman has been adjudged to be killed on a slightest suspicion of being involved with a man, not necessarily sexually. The punishment of death may not be specified for actual adultery but even mostly on many instances girls have been killed for having developed and even an implicitly expressed likeness for a man. In this regard a woman does not have any legal resort and her punishment does not have any legal sanction. "Under FCR, no case of adultery has ever been registered against a woman. The tribesmen consider it against their honor to settle such cases outside the family and boundary walls of the house"

According to observers and experts of tribal areas, on most of the occasions Tor has been used to punish one's enemies by falsely associating the females of one's own family or tribe with the men of enemies of tribal rivals as this is considered as one of the instrumental ways for punishing the rival(s) and foreclosing any way of revenge. In other words, among the Pakhtun tribes of FATA killing of a man or men is socially sanctioned if he/they have been found to have developed relationship with a woman of one's family or tribe and for which revenge cannot be taken, provided the female(s) who is alleged to have been involved is also killed by her male family members. Thus the custom has been exploited on many occasions to punish one's rivals which otherwise can result in heavy reprisals. With the crude justice system rather the arbitration procedures of Jirgas, the man and the woman, who have been alleged of having committed adultery and thus have become Tor are mostly executed.

### **3.1. The economic status of women in FATA:**

The economic status of women of FATA is no better than their social, political and educational status. Women work in the agriculture fields and look after the livestock which is the main source of livelihood of residents of FATA, but they have no direct share in the income generated from these sectors. Whereas, keeping in view the social values of Pakistan and Pakhtuns in particular, tribeswomen do not engage in any kind of business activities. Even women-specific chores like tailoring women clothes is not a practice in FATA.

Importance of someone's economic status can be gauged from his/horizon's share in inheritance. As women in FATA do not inherit or own any property, therefore, they have a very low economic status.

The right to property, one of the fundamental human rights, has been totally denied to women amongst Pakhtun tribes residing in FATA. Traditional land distribution amongst Pakhtun entitles men only to be the owners of property. In FATA, with the exception of Kurram Agency, land settlement has not been documented. Individual landownership in the tribe is oral but well known to succeeding generations. Pakhtunwali does not allow a woman to own land independently and be known to the people on her own.

## **4. LEGITIMATE (SHARIAH) RIGHTS OF WOMEN**

In the era of ignorance, women had no rights of inheritance, but it is Islam who conferred the rights of inheritance to women. Likewise, opinion of woman was not considered; but Islam declares it obligatory to seek woman's consent in marriage. Unlike the laws framed



by the people, Islam equalizes the punishment of adultery between women and men, putting the difference in the crime of adultery. In the same manners, the rights of man and woman are equal. Consequently, men were given the right to divorce and women were also bestowed to take the right of divorce.

#### **4.1. Financial and Economic Rights of Women**

Islam has bestowed a Muslim woman such financial and economic rights, which no other society, culture or religion has given to women. Islam has given equal rights to Muslim male and female to possess, mortgage and perform all types of contracts. She has sole right of her possession and men in any relation or in any form cannot interfere her rights. Therefore, a Muslim woman can perform her financial and economic affairs without any hindrance and restriction. She can dispose of her funds with full discretion. She has the right to sell, purchase, lease and entre premiership, speculation and other financial contracts as well as donation, charity, devotion and dedication which are performed to seek the will of Almighty Allah.

Most prominent financial rights recognized by Islam for Women are outlined as under Guaranty to the right to work according to Islamic guidelines:

- Economic eligibility
- Right to alimony, dowry
- Right to inheritance
- Right to buy and sell
- Right to dispose of
- Right to own property

In addition, there are various other rights of woman given by Islam. All these rights cannot be elaborated here. But today, the so called torchbearer of modern civilization wants to take woman to the pre-Islamic condition and culture which were the society of stagnation and deprivation. These are intellectually deviated or unaware of the vision of Islam; they consider a woman just a commodity and used them for showcasing their business. They reduce the role and importance of women given by Islam and interpret and present the wrong picture of the rights of women given by Islam. ( Rida, Muhammad Rashid , The Rights of Women in Islam, Dar Al Turas, p.76 & Husayn, Ahmad, Challenges for Muslim Women, p.87)

#### **5. Conclusion**

With the dawn of Islam, the position of women was considerably enhanced. The ill-treated and degraded member of society was raised to a higher status. Islam does not differentiate between man and woman in religious and legal matters. No doubt man and women have different roles to play in society for which they are physically well equipped. Women have played an important role in Muslim society where they trained their children as true Muslim. They trained their children to enjoin virtue and to forbid from doing evil. Women played an important role in defending the Shariah and taking part in the way of life. Women have proved to be remarkable teachers of Shariah and working for the welfare of downtrodden.

In short, we conclude that the above mentioned rules are the only basic source of solutions for the women living in FATA, in particular, and in the world, in general. The need of the hour is to create awareness of real Islamic knowledge in the public according

to the sayings of holy prophet (SAW): seeking of knowledge is obligatory to every man and woman.

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