

# PalArch's Journal of Archaeology of Egypt / Egyptology

## COMPARATIVE STUDY OF ARTICLE 13(a), & 16, CONVENTION ON ELIMINATION OF ALL FORM OF DISCRIMINATION AGAINST WOMEN 1979, ISLAM & PRACTICES IN PAKISTAN

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**Javed et., al. Comparative Study of Article 13(A), & 16, Convention on  
Elimination of All Form of Discrimination Against Women 1979, Islam &  
Practices in Pakistan-- Palarch's Journal of Archaeology of  
Egypt/Egyptology 17(8), 779-792. ISSN 1567-214x  
Keywords: Women rights, Equality, CEDAW, Islamic Injunctions, Pakistan**

### ABSTRACT:

The instant study generally analyzes the concept of equality between men & women, and it also discusses the substantive provisions of Convention on Elimination of All forms of Discrimination against Women (CEDAW). The focus of the study is on Article 13(a) and 16 of CEDAW which demands equal rights and duties between men and women in the domain of family matters especially marriage, divorce and right of inheritance in comparison with Islamic principles and with reference to socio-legal practices in Pakistan. The study finds that both above mentioned provisions of CEDAW are at variance despite slight similarities with Islamic rules and values. It may also be said that Pakistani women rights' prevailing conditions have been improving, but in practice, women still not only are treated unequally in terms of Article 13(a) and 16 of CEDAW, but also many of their rights are being abused even as against the Islamic values.

## INTRODUCTION

The CEDAW, 1979 is the most significant international human rights legal instrument bestowing gender equality a clear international mandate. The concept of non-discrimination envisages both men and women have equal rights in all spheres of their lives (Islam, 2017). Article 1 of Universal Declaration of Human Rights (UDHR), 1948 states; “*all humans are born free and equal in dignity and rights.*” The concept of equality of CEDAW has its inherent attributes of UDHR. These rights are universal in nature.

CEDAW clearly has universal acceptance by majority of the states except a few Muslim states like Somalia, Iran, and others (United Nations Treaty Collection, 2020). Many Muslim states ratified CEDAW while keeping reservations on its various provisions, considering them as against Islamic laws. Despite criticism, it may be established that Islam provides equal rights to men or women. To an extent, it may be said that Islam emphasizes on proportionate equality rather chance equality. Men or women are given rights and corresponding responsibilities. At times, men are burdened with higher responsibilities as compare to women. To proportionally dispense equality, at occasions, it provides superior rights to men than woman and *vice versa*.

Following Islamic injunctions, many Muslim countries have put reservations on Articles 2, 9, 13(a), and 16 of CEDAW including Pakistan (United Nations Treaty Collection, 2020).

In Pakistan, no law can be enacted against Islam, and if any law is against Islamic principles, it shall be declared null under Article 227 and 203-D of her Constitution, respectively. While Article 4 & 25 of its Constitution recognizes equality between men or women. The nexus of these provisions provides construction that matters pertaining to family and equality between both must not contradict Islamic injunctions. In Islam, equality may be considered as proportionate equality, rather as chance one, differing from universal equality principle of human rights regime.

Practically in Pakistan, women may not be treated equally rather their rights are being abused even against the Islamic values. As far women status on ground, despite improvement in human rights, women are still deprived of their rights of inheritance in property, right to marry with free will and choice, and right to divorce etc. They have been facing physical and mental violence and abuses. Acid attacks, and domestic violence cases, despite penal protection, are rampant. Honour killing is still in practice (Patel, 2010). Qandeel Baloach honour killing by her own brother is a classic instance of how such menace is in practice in Pakistan (Gabol, & Subhani, 2016) apart numerous other cases. However, the focus of the instant study would be on equality of rights and responsibilities enunciated in Article 13(a) and 16 of CEDAW between men or women pertaining to marriage, divorce, and rights as to property. To properly understand the study in hand, it is pertinent to discuss the concept of equality envisaged in CEDAW.

The opening clauses of CEDAW 1979 enunciate the concept of equality between men or women. It reiterates its commitment in fundamental human rights, in the dignity of and worth of human person and in the equal rights of men and women with any distinction in all the spheres including economic, social, cultural, and political affairs. These rights are universal in nature, and available to all women regardless to their identity.

The term discrimination may be incidentally has been defined, in Article 1 of CEDAW, same as it was defined in the Convention against All of Forms of Racial Discrimination, it enunciates as;

*For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

The Convention requires that states parties be under obligation to take all the measures to enforce the provisions of the covenant in all the areas of lives, only then it may be said that there is complete equality between men and women under its Article 3 and 24. Meanwhile, there are total ten articles in the CEDAW envisaging substantive provisions in Article 7 to 16. However, the focus of the study is on Article 13(a) and 16 of it.

Residue in nature's aspects has also been envisaged in the covenant. Article 13(a) of CEDAW states; *"States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits..."*

In addition to this, it also entails for equal rights of men and women in marriage and family life. These matters include marriage, divorce, adoption, or rights as to parents irrespective of their marital status, profession, and occupation. It also calls for equal rights as to property, its title and acquisition. Article 16 of it enunciates;

*[1] States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage. (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as*

*husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration. 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*

Generally, there is no difference between Islam and majority of the provisions of CEDAW. However, there are certain provisions pertaining to personal affairs of it which are against Islamic principles. These personal matters include marriage, divorce, adoption, inheritance, other aspects. Article 13(a) and 16 of CEDAW are relating to these family matters. However, we shall only focus on rights relating to marriage, divorce, or property in comparison with Muslim Personal Laws and historical context of women rights situation in pre-Islamic era or Common Law while analyzing the legal aspects and practices in Pakistan.

### **Objectives of the Study**

The principal aims of the study were:

- i) To discuss the form of equality in CEDAW between men or women.
- ii) To examine rights pertaining to family matters especially marriage, inheritance, divorce provided in CEDAW in comparison with Islamic Injunctions, some historical contexts, and socio-legal practices in Pakistan.

### **METHODS**

The nature of the research work is qualitative i.e., descriptive, comparative, and critical under doctrinal legal research method. It examines Article 13(a) and 16 of CEDAW, in special context to marriage, divorce or inheritance rights of women, in comparison with Islamic Injunctions available in Quran and Sunnah, various socio-Lego practices in Pakistan while examining the Pakistan's statutes, and views of the scholars or jurists provided in various books, research articles or papers and reports of significance.

### **DISCUSSION**

#### **1. Family Benefits and Rights as To Property**

CEDAW, as earlier mentioned, in Article 13(a) recognizes equal family benefits, and Article 16 (1) (h) protects equal rights as to property for men and women on universal basis. Whereas in Islam, women have equal rights to own and enjoy their properties. However, as far as inheritance rights are concerned, Islam believes in equity (Chiroma et., al., 2014). The Concept of 'Proportionate equality' preferred over the chance equality in law of equity (Snell, et., al., 1982). It may resemble the Islamic concept of equality which proportionately enforce rights and duties for everyone. Islam generally gives half of what a man in

comparable situation inherits to a woman. Quran in Surah Nisa V. 11 ordains; *“Allah thus commands you concerning your children: the share of the male is like that of two females...”*

The logic of this Quranic rule can be justified in two ways. However, it is not justified to say in all cases women get half of men. There are numerous instances where men or women inherit equal property rights (Elbalti, 2018).

### **Pre-Islamic Situation of Women**

First, if Islamic law of inheritance is compared with other religions and the era of *Jahila*, ignorance, in pre-Islamic Arabs, when women were not considered as humans rather as servants or slaves (Sulamani, 1986). Islam introduced inheritance rights to women with dignity and respect. Women was for the first time in the history was given social, cultural, and property rights (Sulamani, 1986; Saleh, 1972). Secondly, Western women, under common law, were not having any property rights, even in the recent past.

### **Women’ Property Rights in Common Law Before 20<sup>th</sup> Century**

Women and husband were considered as one person according to Common Law. A woman could only sue for her property’s interests through her husband. Before marriage, property which was owned by a woman, it was used to come under the control of her husband after marriage. To counter, the husband selling wife’s property without her consent, this rule was later amended to the extent that it could not be sold out without consent of the wife. However, still under the amended rule, such property remained under possession and control of the husband who used to manage it and gain any money attained from the property (Badawai, 1972; Willaims, 1947). This was a rule until passing of the Married Women’s Property Act, 1870. This Act changed the position of married women as to her rights to her to some of her properties, but not for all. Through this amendment, women got the rights to possess and claim her property in her own name. She could enjoy the fruits of her property without muddling of her husband, and he then could not interfere into her some kinds of properties. Later, Married Women’s Property Act, 1882 was enacted. It extended the scope of women entitlement to all types of properties which could be owned or possessed by a married woman (Willaims, 1947). So, in England, full ownership rights pertaining to all kind properties were given to married women in 1882; whereas Islam gave such rights to women back in fourteen hundred years ago.

### **Nexus Between Law of Equity and Islamic Law of Inheritance**

Secondly, in nexus to English law of equity, Islamic law of inheritance recognizes proportionate equality which is preferred over the chance equality. Proportionate equality is something to give due to someone according to the needs of the one (Béligh, 2018). In comparison to equality, Islamic law of inheritance as earlier

mentioned is grounded upon equity rather equality. It necessitates to dispense proportionate equality over the chance equality (Chiroma et., al., 2014). The proportionate equality may be justified to give woman “half “of share to man for the following reasons;

### **Obligation to Maintain Family**

Under the Islamic Law, women are not under obligation to provide maintenance to men or children; whereas men have been put under duty to provide the maintenance of his spouse (Mohd & Ibrahim, 2010) and children. This duty does not extinguish even if the wife is working, and she is earning handsome amount of salary (Mohd & Ibrahim, 2010). In this context, family financial burden only lies upon the men, and women are free from any such obligation. Allah ordains in *Surah Baqarah* verse 233 of Quran as; “...and on the child’s father (the husband) is their food and clothing...” Thus, father is duty bound to maintain his children and wife by providing all kind of necessities of life, in accordance with financial capacity.

### **Wife Is Not Bound to Share Her Property**

Additionally, Sharia does not require woman as a wife to share her property or resources with her husband or family and to spend it for any household expenses without her free consent. Islam has not given any right to husband to be maintained by her wife even though she is wealthy. While a wife may donate out of property belonging to her husband, without damaging it, but a husband has no such right (Al Khayat, 2003).

### **Husband’s Duty to Provide Dower**

Further, a husband under the Islamic injunctions must pay dower for Nikah to his wife. It is one of the essential elements of Nikah under Islamic law. In this regard *Surah Nisa* V. 4 states; “Give woman the agreed dower.” Similarly, in verse No. 24 of same *Surah* it was revealed; “And lawful to you are [all others] beyond these, [provided] that you seek them [in marriage] with [gifts from] your property, desiring chastity, not unlawful sexual intercourse.”

According to Sharia, there is no limit as to maximum amount of dower. Once Hazrat Umar (RA) called for limiting the amount of dower, this move of Hazrat was objected by a Muslim woman. She argued how could the amount of dower be limited by Khalifa e Waqt, Hazrat Umar RA when it was not fixed by Holy Prophet PBUH. Listening this argument, Hazrat Umar RA reviewed his decision (Siddique & Rao, 2019). This hadith implies that it is a sole prerogative of the women to agree or disagree upon the amount of dower and to fix it with her own free will. These all steps may create huge financial burden upon a man in comparison with a woman (Siddique & Rao, 2019).

## Equality between Men or Women and Cultural Practices in Pakistan

Constitution of Pakistan 1973, under Article 4 & 25 envisages that men or women are considered as equal, and there can be no difference between them. It is a supreme human right in her Constitution.

Conversely, women status on ground, despite improvement in human rights, they are still deprived of their rights provided in its Constitution, and CEDAW. These rights include right to inheritance, employment equal rights as to marriage, and divorce. Meanwhile, they are facing physical and mental violence & abuses. Acid attacks, and domestic violence cases against women, despite punitive protection, are rampant. Drastically, killings of women in the name of family honour are still in practice (Patel, 2010). Qandeel Baloach, a social media celebrity, honour killing by her own brother is a classic instance of how such menace is in practice in Pakistan (Gabol, & Subhani, 2016), despite punishable under penal laws.

Another significant aspect her constitution, no law or enactment can be made against the injunctions of Quran and Sunnah in Pakistan under its Article 227. In case any law which is against Islamic injunctions, it shall be declared as null and void by Federal Shariat Court as mentioned in Article 203-D of the Constitution.

Pakistan has maintained a declaration placing reservation on CEDAW that any provision of CEDAW against the Islamic injunctions shall not be binding upon her (United Nations Treaty Collection, 2020). This reservation has been placed to protect the Islamic nature of its Constitution and Muslim Family Laws in Pakistan. Regardless to CEDAW or Islamic principles conflict, Pakistani women even face inequality as against the Islamic injunctions. As the focus of the study is on Article 13(a) and 16 of CEDAW which deals with equal rights and responsibilities of men and women pertaining to marriage, divorce, rights as to property. So, we shall discuss equality in nexus with practices about these rights and responsibilities within the domain of these family affairs.

### Dower or Dowry

In Pakistan, generally, in Muslim marriages, *mahr* (dower) has not been given as credence as it has been recognized in Islam. Most of the people are misconceived about the value of the dower. As a tradition and cultural practice, in most of the marriages meagre amount of dower is symbolically fixed just to fulfil the requirement of Nikah. In majority of marriages, females have no say in setting its value as against the Islamic values (Afzal, 2007). While as to value of dower, it is used to be set according to minimum value standard, and it is fixed by the *Walis* themselves without asking about the opinion of the bride.

Rather brides and their families are asked for huge amount of *Jahaz* (dowry) contrary to Islamic practices and anti-dowry laws in Pakistan (Gulzair et., al., 2012). One of the reasons for existence of dowry in Pakistan may be the greed

that may lead to other forms of violence against woman including killings or burning. It is more widespread in middle class in comparison with lower class. Recognizing adverse effects of this menace, the Government of Pakistan in 1970s enacted a law against dowry and fixed a limit that amount of dowry shall not exceed fifty thousand rupees. Despite it is a good law banning the curse of dowry, it is still extensively in practice. The reason may lie into the lack of civil and social sense among the people and deeply entrenched cultural practice of dowry among them. To uproot it from the society, there is dire necessity to recognize it and to work against this ill at personal level (Gulzair et., al., 2012; Sarfaraz, 2008).

### **Inheritance Rights of Women and Practices in Pakistan**

Coming to inheritance, women rights have been gravely infringed under the garb of traditions and customs of not giving any share to women, even against Islamic sharia. This custom is still rampant in many families. Females are pressurized to relinquish their share by their brothers or other family members (Holden & Chaudhary, 2013; Malik, 2020). In realization of women's such deprivation, an amendment was introduced through Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011 which added Section 498-A Pakistan Penal Code (PPC), 1860 against such menace. It states;

*Whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or with a fine of one million rupees or both.*

This amendment may be a great milestone for improving women's property rights in Pakistan. Nevertheless, the language used in the provision is not as stronger as it must be. The words 'deceitful' or 'illegal' may not encompass emotional blackmailing or family pressure. To enhance effectiveness of the provision, perhaps, the wordings of the provision would have to be like; "a woman is not to be deprived of her inheritance by any means whatsoever" (Lari, 2011 p.2). Apart from weak legislative provision, Pakistan's access to justice is too fragile that it does not provide speedy and efficacious justice to women (Zaman & Zia, 2013). This all may further deteriorate the women's rights situation in Pakistan. Despite Pakistan enforces sharia-based law of inheritance, such right in property is exploited. Consequently, such provision was introduced to condemn any such violation in strict terms.

## **2. Rights Pertaining to Marriage**

### **Marriage of Choice**

CEDAW recognizes equal rights as to marriage. It includes equal rights and responsibilities during marriage and for dissolution of marriage. In Islam, a woman cannot be forced to marry anyone without her free consent. According to

a tradition, a woman came to Holy Prophet PBUH and enquired about her marriage status which was forcefully solemnized without her consent by her father. Prophet PBUH gave her the option either to accept the marriage or invalidate it. She opted to accept the marriage, but she wanted to let women know about their rights.

Ibn Majah in Hadith No. 1874 states; “*It was narrated from Ibn Buraidah that his father said: “A girl came to Prophet PBUH and said: “My father married me to his Brother’s son so that he might raise his status thereby.” The Prophet PBUH gave her the choice and she said, “I approve what my father did but I wanted women know that their father have no right to do so.”* Another Sahi Hadith No. 1873 of Ibn Majah states;

*Abdur-RM bin Yazid, Al-Ansari and Mujamma' bin al Yazid Al-Ans said that a man among them who was called Khadim arranged a marriage for his daughter, and she did not like the marriage arranged by her father. She went to the Messenger, and told him about that, and he annulled the marriage arranged by her father. Then she married Abu Lubhah bin 'Abdul-Mundhir.*

In Hafiz Abdul Wahid Khan v. Mst. Asma Jahangir (2004), Supreme Court of Pakistan decided that a *sui juris* Muslim woman can validly marry with her own free will and without the permission of her *Wali*. Similar decisions were held by higher courts (Mst Hajra Khatoon v. SHO Fetah Jhang and others, 2005) and Federal Shariat Court (Muhammad Imtiaz v. The State, 1981; Muhammad Yaqoob v. The State, 1985). These rights have been ignored, and women are deprived of right to choose their spouse.

Pertaining to matter of marrying someone from other religion, no such distinction has been made under CEDAW; it allows both men and women to marry anyone with different religious faith without any discrimination. However, in Islam, a Muslim woman cannot marry with a non-Muslim. Muslim man cannot also marry with a non-Muslim woman worshipping idles, *none kitabia*. However, he can marry a non-Muslim woman among the *Alh-e-kitab*. The rule is flexible for men. Likewise, another relaxation that is given to Muslim man is polygamy.

### **Polygamy in Islam**

Polygamy means to have more than one wife simultaneously. Polygamy is permissible under Islam. In comparison, polyandry is strictly prohibited. Polyandry means a woman to have more than one husband at the same time. The permission to have more than one wife is given in the Holy Quran in Surah Nisa verse 3. It states;

*And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].*

What is significant here is that one may have more than one wife as it is permissible in Quran, but at the same time Allah directs Muslims to have more than one wife when you are able to do justice among them.

In another verse 129 of Surah Nisa, Allah ordains that it is not possible to do justice among wives. It states; “*And you do not have the ability to do justice between the wives, even though you may wish (to do so)...*”. In the opinion of Egyptian scholar Imam Abdou view these two verses when read and interpreted in nexus to each other, it makes it clear that Islam conditionalizes more than one marriage with justice and equality between them. Quran itself clarifies that to do justice is not possible for us. It states if you cannot do justice, having only one wife is better for you as a matter of rule. Whereas, to marry more than one marriage is an exception. Imam Shafi (RA) also opined that these verses of Quran restrict polygamy (Mashhour, 2005).

Whereas Al-Madudi (1991) interprets both verses that they do not bar the second or more marriages. The main purpose is to ensure equality between the wives. Equality between wives shall extend to every material aspect, but it does not include all *fitari* aspect. The second verse basically clarifies that it is not possible that the equality is done between wives; one wife may be young and other is old; one is more beautiful than the other; one is ill and other is healthy; one is ill mannered and other is good mannered. It is not possible for these reasons to have equal love and affection while dealing with them. Nevertheless, equality demands that you must not be involved with one wife that other is left to live like a woman without her husband is living.

Islam allows more than one wife to avoid adultery and extra marital affairs which may otherwise be increasing in a society. However, this relaxation has also been abused by men as they do not take permission from the prior wife or wives. At times, it may also result into hidden (another marriage concealed from prior wife or wives) or fraudulent (another marriage solemnized with any woman without disclosure of prior marriage) marriages.

### **Permission of Second Marriage Under Muslim Family Law Ordinance (Mflo), 1961**

In Pakistan, it is therefore, taking permission from the first wife in case of second marriage by husband is indispensable. If the husband does not take permission from his wife for second marriage or doing second marriage in secret, he may not be able to do justice and equity. Muslim Family Law Ordinance (MFLO) requires taking the permission from the first wife, and Chairman of Arbitration Council. Violation of it imposes penal punishment. Previously, the standard of punishment set in Section 5 of MFLO was very less i.e., “*imprisonment which might extend to three months or fine up to Rs. 3000/- or both*”.

It was one of the reasons that husbands were not used to bother about taking permission to solemnize another marriage. Due to it, women were also reluctant to file complaints against their such husbands considering it wastage of their time (Patel, 2010).

To change this trend in Punjab, amendment was brought in MFLO under Section 6 of The Punjab Muslim Family Laws (Amendment) Act, 2016. It states if a husband marries without such permission, his act is “*punishable with imprisonment which may extend to one year and fine which may extend to five lac rupees*”. The standard of punishment has been enhanced under the amendment, but any such violation of MFLO or amendment does not invalidate second or more marriages.

A husband contracting second marriage without consent is required to pay all full amount of dower to his first wife as envisaged in Section 6(5) MFLO and according to Islamic Injunctions. In these cases, non-payment of dower is recoverable as arrears of land revenue (Muhammad Jamil & other v. Mst. Sajjida Bibi, 2018; Dr. Sabira Sultana v. Maqsood Sulhari, 2000; Muhammad Shabir v. Rehana Kausar, 2013).

### 3. Rights Pertaining to Dissolution of Marriage

Article 16 of CEDAW also requires state parties to ensure equal rights and responsibilities as to dissolution of marriage. It means it seeks to enforce equal rights as to separation or divorce between the spouses.

It is against the Islamic principles. Islam provides right of divorce only to husband; whereas a woman can have this right if it is provided by the marriage contract i.e., *Nikahnama* (Badawai, 1972). This is called *Tafweez* of *talak* by husband to his wife. Meanwhile, woman have the right to be dissolved through *Khula*.

Such separation can be taken through court or *Qazi* on the ground of hatred against husband, and when she avers relationship with husband is impossible to sustain under commands of Almighty Allah. Operating as a stringent condition on such wife, she must return her dower in lieu of *Khula*. This condition for khula may not operate as an obstacle in Pakistan because of meagre dower fixation practices; thus, it is easy for a woman to exercise this remedy for dissolution of marriage. It is a quick remedy without lethargy procedure (Patel, 2010) of recording evidence to pass decrees of dissolution of marriage under Section 10 of Family Court Act, 1964.

The province of Punjab has amended the provision MFLO provision entailing return of dower for taking *khula*. New law, Section 10 Punjab Family Courts (Amendment) Act, 2015, allows wife to retain 50% of deferred dower or 25% of prompt for *Khula*, but other provinces are still lagging in these aspects.

## CONCLUSION

CEDAW and Islamic injunctions may have many similar aspects; however, Article 13 (a) and 16 of CEDAW are different from Islamic injunctions pertaining to family affairs i.e., equal rights and obligations as to marriage, and divorce. Islam recognizes the principle of proportionate equality. At times, it gives more rights, but rights may proportionate to duties for both men and women. Constitution of Pakistan 1973, and its laws recognizes the principles of equality between both. However, situation of abuses and violations of women rights are still in rife. Meanwhile, Pakistan also follows Islamic laws particularly in the Muslims' Personal matters. Therefore, Pakistan has made indirect reservation to Article 16 and 13(a) of CEDAW which requires equal rights as to marriage, divorce, and rights as to property.

In relation to right of marriage with own will, Islam also recognizes that woman has right to choose her husband, and her consent cannot be ignored. Similar laws have been recognized by the Pakistani Courts including Federal Shariat Court in various *supra* cases. However, this right has been infringed in Pakistan. Violation of it may be impeded with efficient new law making, and its enforcement. Meanwhile, in Islam, a Muslim woman is not allowed to marry any non-Muslim; whereas, a Muslim man is allowed to marry with a non-Muslim woman from *Ahl-e-Kitab*. Similar is the law in Pakistan.

Further, men are permitted to exercise polygamy in Islam, but women are not allowed to exercise polyandry. Such permission is available for a man who can do justice among his wives. However, many classic Islamic jurists believe, it is not a bar on marriage rather a directive to be just among them.

Pakistani laws allow polygamy, but MFLO requires the husband to seek permission from first wife and to pay her complete dower of any kind. Only the province of Punjab has introduced more stringent penal punishments for not seeking permission from either wife or Arbitration Council. Strict implementation of these laws may reduce more than one marriage especially the hidden or fraudulent marriages. Nevertheless, any such law in no way invalidates more than one marriage.

As far divorce is concerned, contrary to CEDAW, only men got this right in Islam and Pakistan. Women can only have right of divorce in case of *Talaq-i-Tafweez*. Nevertheless, right of *khula* is granted to her for dissolution of marriage after return of dower in Islam as well as in Pakistan. However, in the province Punjab, new amendment requires 75% return of prompt and 50% return of deferred

dower. According to Patel (2010), this remedy is very useful because dower amount in majority cases in Pakistan is so less like a pinch of salt, and there is a speedy procedure provided in Family Court laws of Pakistan.

In so far as right of property of woman is concerned, under Islamic injunctions, women can own or manage property under her control, but they have been given half of share what a man gets in inheritance, subject to certain exceptions. The reason may lay in Islamic concept of proportionate equality which implement rights keeping in view of the corresponding duties between men or women. In comparison to pre-Islamic conditions when women were considered as a mere object, Islam provided dignity and respect along with other human rights to women way back fourteen hundred years ago. While even in Common law, married women properties rights were recently recognized at the end of 19th century.

In Pakistan, Muslim personal law is followed to deal with the inheritance issues. This is quite unfortunate that even rights of inheritance of women under Islam are being abused due to patriarchal nature of the society (Holden & Chaudhary, 2013; Malik, 2020). Pakistan has introduced new penal amendments in PPC against any violation of women's right of inheritance. Despite imposition of recent punitive provision in statutes against women's deprivation of inheritance rights, practically, there these rights have been under exploitation even against Islamic injunctions. According to Lari (2011), it may be due to weak language of the legislation which may not counter any deprivation arising from family pressure or emotional blackmailing.

Thus, requisite amendment may be brought in the law to include all forms of acts creating any form of pressure on women to leave her share in inheritance. Simultaneously, strengthening the access to justice system for women or stringent execution of these penal provisions may also provide women their due rights.

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