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A STUDY OF THE STATUS OF WOMEN IN ISLAMIC LAW AND SOCIETY WITH SPECIAL REFERENCE TO PAKISTAN

By

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Thesis submitted to the Faculty of Arts (School of Oriental Studies) in the University of Durham for the Degree of Doctor of Philosophy.

September, 1980.

16. MAY 1984

TO MY MOTHER (ANWAR JAHAN)

"The Paradise lies at the feet of the mother"

(The Prophet Muḥammad)

ABSTRACT

This thesis, designed to explore the status of Muslim women on a broad basis, consists of three parts. In the first part attempt is made to explore, primarily through Muslim sources, the Muslim ideology of the sexes in the institution of the family and in the society as a whole. The second part gives a critical analysis of the traditional way of life of Muslim women, exemplified by the lives of Pakistani Muslim women. In addition, the modernizing trends influencing the male-female relations within and outside the family are discussed. Part three considers the clashes and confusion between the Islamic orthodox system and modern values and then looks into the future of Muslim women in general.

The study has been organized into seven Chapters. In Chapter one the background and objectives of the study are laid down. Chapter two attempts to explore the condition of women in the remote past, even before the historical period and provides a useful background for analyzing the status of women in Islam. Chapter three, written in a historical perspective, tries to analyze the Quranic and the Prophetic attitude towards women. Attempt is made to show to what extent the status of women was affected at that time by the Qur'ān and the Prophet. In Chapter four the attitude of Islamic jurisprudence towards women, which is mainly derived from the Qur'ān and the Ḥadīth, has been discussed at length. Chapter five looks at the family life in a traditional setting. It underscores the differences which exist, especially in the marriage institution, between Islamic teachings and real practices; and analyzes how subtly, through marriage customs, the patriarchal interest is maintained. In addition, in view of the close link between law and society, a study of Muslim family law reforms is made. This provides an insight into the social progress through legislation which has given rise to Islamic modernism in the Muslim world. Chapter six deals with the aims, activities and influence of the women's groups, particularly in Pakistan. The final Chapter presenting the overall conclusion describes how the impact of the modern world has caused a considerable threat to the traditional patriarchal structure of Islam. It opens with a resumé of women's emancipation in the West and takes into account its impact on traditional Muslim values, focusing attention on the tension present in the Muslim world regarding the terosexual relations.

ACKNOWLEDGEMENT

For the completion of this thesis, my initial debt is to my supervisor, Dr. R.W.J. Austin for being extremely kind and sympathetic in solving all problems confronted during the course of this investigation. His criticism and provocative discussions enabled me to fulfil my task objectively. In the second place I wish to acknowledge my indebtedness to Masaud A. Mian of the Durham University Geography Department. His unflagging help, encouragement and academic discussions gave me enough confidence to pursue my work with high spirit.

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TABLE OF CONTENTS

	Page
Abstract	i
Acknowledgement	ii
Table of Centents	iii
Table of Transliteration	vii
Glossary of Urdu terms	viii
Explanatory Note	ix
PART ONE	
CHAPTER 1. INTRODUCTION	1
CHAPTER 2. A BRIEF STUDY OF WOMEN'S STATUS IN THE MIDDLE EAST AND THE INDIAN SUB-CONTINENT BEFORE THE ADVENT OF ISLAM.	15
I. A BRIEF ACCOUNT OF THE POSITION OF WOMEN IN PRE-HISTORIAL SOCIETY	15
II. THE POSITION OF WOMEN IN ANTIQUITY	21
1. Egypt :	24
2. Babylon :	26
3. Greece :	28
4. Rome :	31
5. Persia :	36
6. Arabia :	38
7. India :	40
III. THE POSITION OF WOMEN IN JUDAISM AND CHRISTIANITY	44
IV. CONCLUDING REMARKS	52
CHAPTER 3. NATURE OF THE QURANIC AND THE PROPHETIC ATTITUDE TOWARDS WOMEN	60
I. MAIN CHARACTERISTICS OF PATRIARCHY AND ITS RELATION WITH ISLAM	60
II. THE ATTITUDE OF THE QUR'ĀN AND THE PROPHET TOWARDS WOMEN	69
III. CONCLUDING REMARKS	89

		Page
CHAPTER 4.	WOMEN ACCORDING TO ISLAMIC LAW	96
I.	PRIVATE STATUS	96
	1. As Child :	96
	2. As Mother :	100
	3. As Wife :	103
	(a) Marriage	103
	(b) Marriage Consent and Option of Puberty	104
	(c) Mahr (Dower)	111
	(d) Polygamy and Concubinage	115
	(e) The Wife at Home and the Family	122
	(f) Divorce	125
	(i) Ṭalāq	127
	(ii) ʾIlā	130
	(iii) Ẓihār	130
	(iv) Mubārah	132
	(v) Ṭalāq al-tafwīḍ	132
	(vi) Khulʿ	133
	(vii) Judicial Process	134
	(viii) Effects of Marriage Dissolution	140
II.	PUBLIC STATUS	141
III.	CONCLUDING REMARKS	149

PART TWO

		Page
CHAPTER 5.	A BRIEF SURVEY OF THE SOCIAL CONDITION OF WOMEN IN PAKISTAN	157
I.	THE ORIGIN OF PAKISTANI SOCIETY : A HISTORICAL REVIEW	157
	1. The Influence Of Hindu Culture :	159
	2. The Condition Of Muslim Women In India Under Muslim And British Rule :	163
II.	A BRIEF ACCOUNT OF PAKISTAN AND ITS PEOPLE	168
III.	STATUS OF WOMEN IN PAKISTAN	171
	1. Women In Customary Law :	171
	(a) Marriage and Marriage Consent	172
	(b) Marriage Rituals	176
	(c) The Dominant Role of the Mother-in-Law	192
	(d) Dowry and Dower	196
	(e) Polygamy, Concubinage and Prostitution	202
	(f) The Wife at Home and the Family	206
	(g) Divorce	213
	(h) Segregation and Socio-Economic Status	215
	2. Women Under The Law Of Pakistan :	226
	(a) The Changing Status of Women in Contemporary Muslim Society	226
	(b) Women Under the Constitution of Pakistan	229
	(c) Muslim Family Laws Ordinance, 1961	234
	(d) Some Other Important Measures Taken by the Government	244
IV.	CONCLUDING REMARKS	250

		Page
CHAPTER 6.	WOMEN'S MOVEMENTS IN PAKISTAN	259
I.	THE DEVELOPMENT OF WOMEN'S MOVEMENTS IN THE MUSLIM WORLD	259
II.	WOMEN'S MOVEMENTS IN PAKISTAN	265
	1. Historical Background :	265
	2. Women's Organizations And Their Activities :	272
	(a) The All-Pakistan Women's Association	274
	(b) The Business and Professional Women's Club	277
	(c) Activities During the International Women's Year, 1975	279
III.	CONCLUDING REMARKS	284
	PART THREE	
CHAPTER 7.	THE FUTURE OF MUSLIM WOMEN IN RELATION TO STRICT ISLAMIC LAW AND THE DEMANDS IMPOSED BY MODERN WESTERN CIVILIZATION	289
I.	MODERNIZATION AND WOMEN IN THE MODERN WORLD	290
	1. The Development Of Women's Movements : A Historical Review:	290
	2. The Main Aims Of The Feminist In Europe And America :	303
	3. The Improved Status Of Women:	306
II.	CLASHES BETWEEN THE ISLAMIC ORTHODOX SYSTEM AND MODERN VALUES	311
	1. The Development Of Westernization And Its Influence In The Muslim World :	311
	2. Resistance To Modern Values :	319
III.	CONCLUDING REMARKS	323
BIBLIOGRAPHY		336

TABLE OF TRANSLITERATION

Consonants

hamzah;

not shown when initial, otherwise ʾ

ب =	b	ض =	ḍ
بھ =	bh	ط =	ṭ
پ =	p	ظ =	ẓ
ت =	t	ع =	ʿ
ٹ =	th	غ =	gh
ج =	j	ف =	f
جھ =	jh	ق =	q
ح =	ḥ	ک =	k
خ =	kh	گ =	g
د =	d	ل =	l
ذ =	dh	م =	m
ر =	r	ن =	n
ز =	z	ھ =	h
س =	s	و =	w
ش =	sh	ی =	y
ص =	ṣ		

Long Vowels

ـَا = ā

ـُو = ū

ـِی = ī

Diphthongs

ـَو = aw

ـَی = ay

ـِیـ = iyy

ـُوّ = uww

Short Vowels

ـَ = a

ـُ = u

ـِ = i

The above system of transliteration has been followed.

G L O S S A R Y

Afshān	Strips of tinsel.
Arsī maṣḥaf	The mirror and the Qur'ān.
Bārāt	Marriage Procession.
Barī	Wedding gifts.
Burqa'	A head-to-toe covering and the veil for the face.
Chauthī	A ceremony on the fourth day of marriage.
Jahīz	Dowry.
Jahīz Khānah	A stock room where confiscated property is kept.
Jahīz numa'ī	Exhibition of dowry.
Loung	A small nose ring.
Mangnī	Betrothal.
Mānjā	The period of isolation for a girl who is going to be married.
Mehindī	Henna.
Nath	A large nose ring.
Nikāḥ	Marriage contract.
Nikāḥ namah	Papers of the marriage contract.
Rukhṣati	Departure of bride from her parents' house to the house of her husband.
Salāmī	Presents to bridegroom.
Sehrā	Chaplet of flowers.
Sendūr	Red lead or minium.
Strī-achār	Women's customs.
Strīdahn	Trousseau.
Suhāgan	Married.
Tīkā	An ornament of gold or silver worn on the forehead.
Tilak	A mark with coloured earth on the forehead and between the eye-brows.
Ubtan	A kind of complexion cream prepared with turmeric, saffron and oily perfumes.
Walīmah	Marriage feast.
Walwar	Bride money.
Watta-Satta	Marriage by exchange.
Zenānah	Separate quarter for women.

EXPLANATORY NOTE

1. The English version of the Qur'ān used in the thesis is from Arberry's The Koran Interpreted.

2. Although in the matter of the Ḥadīth recourse has been made to original sources, for the English version most of the quoted Ḥadīths are from Robson's Mishkat al-Masabih and Siddiqi's Sahih Muslim. However, some Ḥadīths have been translated by the author from the original sources.

Part One

C H A P T E R 1

INTRODUCTION

The present research on the topic of women is mainly due to my own interest and need to understand why, in many parts of the world, women are debarred from their rights and why they stand as inferior to men in several fields? Being born in a very traditional society, that of Pakistan, and being a member of an upper middle class and quite religious family, I had never questioned the secondary and subjective role of women in society. I took it, as nearly all Eastern women take it, as my destiny and fate and was quite satisfied with the way we women live, a very leisurely life with plenty of dresses and jewellery. However, having come to a Western country, England, where in the twentieth century many of the miseries and injustices experienced by women have been eradicated, I saw the other side of the coin. The outline plan of my research was arranged before I left Pakistan. However, a few days after my arrival in Durham, a question put by my supervisor, Dr. Austin, made me change the objectives of the research completely. The context of the question was familiar to me except that no one had asked me before. The question was "Tell me why Muslim women are not allowed to go to the mosque for prayers"? At that moment I could not answer because I had never bothered to go into the reasons. For me it was natural for women not to go to the mosque.However , a week later,

a topic which had had a secondary place in the research plan came to the forefront and it was decided to do research into the status of women in Islam.

As an issue, the status of women has always been in the lime light. In the past, the issue mainly emphasized the genetic differences between male and female and attempted to assert the inferiority of femalekind. It is not an exaggeration but a fact that most of the books written on mankind have devoted much attention to the topic of woman and have mostly been concerned with her body structure, her mind, her soul and her nature. Such books, written mainly by men, have examined women in the minutest detail and sifted through their personalities as if they were creatures of a different nature and characteristics to men. The reason for this biased attitude in writings is not only that they have been written by men, but also because of many other factors. The recorded history of mankind began only from the historical period, a period in which the man proclaimed his power and represented the entire universe. He was the deity and was supreme and the owner of whatever the universe had to offer. The supremacy of men over all spheres of life gave them a sense of pride which they maintained by emphasizing the subjective and inferior position of the other sex, the female. In primitive historical society where every group was face to face with the question of survival

of the fittest and life was nomadic, which required a lot of physical strength, men were able to acquire a dominance over women. Thus, the subordinate position of women in society was assumed to be just and natural for centuries. For a long time the mental abilities of women were denied and if women attempted to learn and to show their mental capability in a manner similar to men, they were branded as "blue stockings". (1) Women were not the intellectual companions of their husbands. In religion, they were made to give comfort and help to men and be their companions in their loneliness. Thus they made every sacrifice to fulfil their "divine duties" and please their "lords".

At present the issues are the same, but the attitudes of dealing with them have changed. Psychologists, anthropologists, sociologists, historians and philosophers have been trying to probe into the real causes which have given women a secondary position. Some of these people have questioned whether all the differences between men and women are natural, as previously emphasized, or whether they are due to environmental and cultural factors. Due to the positive attitude of such people, together with such events as the Renaissance, the Reformation, the French Revolution, the Industrial Revolution, World Wars and women's movements, the position of Western women has undergone a great change in the twentieth century and they have been granted many rights denied to them for centuries.

Nevertheless, a few decades ago, there was no conflict between the Muslim ideology and reality and life was, for the most part, smooth and quiet. At present, however, there is found great confusion, especially stemming from the sixties when Western women gained more or less equality with men in many spheres. It has become a routine, or a fashion, particularly in the West, to compare Western women with Eastern women, especially Muslim women, and to emphasize their plight. The image which has prevailed in Western minds of Muslim women is a very dark picture. To a certain extent they are right, because Muslim women do have, generally, a secondary position in society and men often take advantage of their dominant and superior position. Yet one must not overlook the fact that the same plight was the destiny of Western women hardly a century ago. Muslim women do observe many restrictions and their life is focussed mainly on the household and children, however, they, generally, do not regard themselves as unlucky and oppressed as the Western mind thinks of them. In fact they are quite happy and content with the way they live. Except for a handful of women, who have been highly educated and have been abroad, the majority of Muslim women do not know what has been happening on the other side of the world and how much women have advanced there.

Nevertheless, the advancement in technology, transportation and communications in the west during

the twentieth century has made it impossible to isolate the East and the West from each other. Western values and influences have been penetrating continuously into the Eastern world for several decades. Not only are Western equipment and goods accepted readily in most Eastern countries, but also the ideas, philosophy and attitudes have found certain loopholes through which they have penetrated into the age old traditional Muslim culture. The World Wars which shook the European pride and power and divided Europe, however, gave the Eastern people encouragement to restore their confidence and resist Western encroachment. The prestige the West acquired in the eyes of Easterners was certainly reduced after the two great World Wars. At present the East, especially the Muslim world, seems to be recovering its self-respect and self-consciousness. For political equality with the West many intellectuals in the East consider it inevitable to harmonize the social system of the East with the modern ideas of the West. Social reforms, which automatically must involve women and their status, have created a lot of debate and controversy among intellectuals and religious leaders. The modernists demand a radical change in the status of women. They believe that Islam approves of the liberation of women and desegregation in traditional society. Thus they consider polygamy, loose divorce and veiling as contrary to the spirit of Islamic law. On the other hand, the traditionalists are quite confident in

the way they treat women and accord them a secondary position in and also outside the family. They believe that Islam does not allow any change in the roles played by the two sexes. Although both groups have put forward strong arguments for their claims, it seemed, until recently, that the traditionalists have not held a great influence either on the people or on the policy making institutions. Several Muslim governments, impressed by the modern way of life, have tried to change the traditional role of Muslim women through legislation. In introducing modernization some governments, for example those of Iran, Turkey and Tunisia went so far as to ban polygamy and force women by law to discard veiling and traditional dress. They also took away the right of husbands to divorce their wives on their own.

However, in spite of such bold steps and overall modernization in Muslim countries, there have been forces at play which always looked upon Western encroachment and influence as dangerous and against the principles of Muslim ideology. Such elements which are seemingly gaining strength and popularity at the present have in fact increased the gravity of the problem and there is found more confusion in the Muslim mind as how to react to Western innovations and whether to accept them or not.

By analysing the spirit and requirements of Islamic law regarding woman and her role in the family and society, I intend to unravel the dilemma with which the

Muslim mind has been confronted since the Western intrusion into the East. In the first place Muslims must understand thoroughly the Quranic scheme of social, economic and political life, especially the philosophy of the social system. Once they have understood the Islamic social system with all its implications and meanings they would be able to compare it with Western values and see where they and their system stand. There exists a fundamental contradiction between the Islamic policy for regulating sexual behaviour and the modern concept of sexuality. The Muslim social order makes marriage, polygamy, divorce and the family the base for granting men dominance over women. Not only are women kept under the authority of their fathers, brothers and husbands in the family, but there are other social institutions, such as purdah, which are created to restrain women's power and sexuality. The universal area which defines and confirms women's oppression and inferiority to men is the family within which socialization of women is carried out. It is within the family that her ideological femineity and socio-economic role as wife and mother is developed. Thus any move to liberate her must start from within the family, the institution which is at the heart of Islamic patriarchal policies and is greatly bolstered by socio-religious norms.

Islam, a patriarchal religion like its predecessors

Judaism and Christianity, has maintained the supremacy of men over women by several devices. As the supremacy and dominant position of men is inevitable for maintaining patriarchal values, the Qur'ān openly proclaims the inequality of men and women. Not only in marriage, polygamy, concubinage and divorce have women been treated with inequality, but also in matters of inheritance and witness they have been regarded as "the half" of men. Also in controlling sexuality and freedom of movement outside the family, women as compared to men, have been required to follow several extra restrictions which in a way stop women from going outside the family. The inequality of the two sexes in the aforesaid institutions is so obvious that a compromise between Islamic and modern values seems unlikely.

The conditions outlined above call for a thorough investigation into the problem. The main objectives of the present study are:- Firstly, to attempt to describe in a historical perspective the status of women in different ancient societies and also in two great religions of the world, Judaism and Christianity. Secondly, it aims to understand the Islamic attitude towards women. Thirdly, it tries to describe and analyse the foreign influences which later were integrated and absorbed into the Muslim culture so thoroughly that they undeniably became part of the Islamic system. Fourthly, it attempts to understand and analyse the complications with which the Muslim world of today is confronted in

determining the new sexual roles of the two sexes. In this attempt the effects of modernization on the male-female relations within and outside the family will also be explored. Lastly, the study tries to forecast the future of Muslim women in relation to strict Islamic law and the demands imposed by modern Western civilization.

Throughout the thesis it has been pointed out that ever since the historical period all societies, systems and religions, including Islam, of the world have been overwhelmingly patriarchal in nature. To control women's social, economic, political and sexual freedom almost everywhere in the world several taboos and physical devices have been invented by men. Irrespective of the East or West, women have always lived under the control of men. The family institution, the most important unit for maintaining male dominance in and outside the family, accorded man absolute rights over his dependents. It was he who exercised great power as a husband and a father. However, at the present time and especially in the West, the patriarchal authority and power has been greatly reduced with the growth of liberal ideas, nationalism, individualism, secularism, education and women's movements. In many Western countries, the state or government has become almost a "big mother", who not only takes the responsibility for those children who are born in wedlock, but also embrace those "illegitimate" scions whose paternity is unknown and provides for them food, shelter, clothing

and education on the same footing. Such an indifferent attitude towards paternity and the increasing sexual freedom of women in the Western world seems to indicate the quick decline of patriarchy and male dominance.

Muslim societies which are predominantly patriarchal and maintain the male dominance effectively through the social system of Islam, which itself is patriarchal, can not afford such changes in attitudes. Before they get to the stage reached by the Western societies today, and, as in the West, their patriarchal system begins to suffer misfortunes, they must appreciate the dangers and act accordingly. In the circumstances through which the Muslim countries are passing at present, there are several countries which can be taken as examples. In this particular inquiry, however, Pakistan has been taken as the case study although other Muslim countries will not be entirely overlooked. There are several reasons for choosing the status of Pakistani Muslim women for a case study, but the author's first-hand knowledge of traditional Pakistani Muslim culture is the most important one.

Although, as said earlier, nearly all Muslim countries are facing the challenge of modernization, Pakistan due to her historical background has some extra peculiar problems and complications. Her culture has not only Persian, Arab and Byzantium influences, but also the great influence of Hindu culture. Islam

succeeded in maintaining its identity as a significant religion in the Indian environment where Hinduism was so powerful and influential that no other religion could easily prosper. In fact both the religions and cultures influenced each other in many ways. This is especially true in the Muslim marriage institution and family where several Hindu customs were taken over by the Muslim community so thoroughly that they are still a part of Pakistani culture, for example, the dowry system, strong disapproval of divorced women and several marriage rituals. (2) There is also some influence of British culture, although this is not great.

The other dilemma which is peculiar to Pakistani society is the ideological background within which Pakistan was created in 1947. Besides political reasons, religion was the most motivating force for the emergence of a separate homeland for Muslims. (3) Naturally after the birth of Pakistan most people dreamt of it becoming a truely Islamic state. Since then, there is found an obscurity of ideology and people are of different minds. On one side there are the traditionalists, or 'ulemā', who have always opposed any changes which tend towards modernization whether they are social, economic or political. On the other hand there is the government which has always adopted a moderate or a modern attitude in its policies. This is especially true in the case of women's status and

their rights. Then there are also some women's groups who have, since the birth of Pakistan, been fighting for women's rights, their freedom and equality with men in the economic, social and political spheres. Finally, there are the ordinary masses who, though they wish to see Pakistan as an Islamic state, are not at all clear of the meaning of an Islamic state, nor do they have sufficient knowledge of the modern world and, therefore, are undecided as to which group to support. Their high degree of commitment and devotion to Islam, however, has often been abused by the wily politicians who have never hesitated, for their own ends, to exploit this "weak point" of this generally illiterate group.

Under such circumstances, there is an acute need for a thorough investigation into the condition of women in Pakistan so that an analysis of their status may be made in the light of the Islamic teachings and the modern trends. It is in this context that the present study has been undertaken. A few points which should be born in mind while reading this thesis are -

1. The inquiry has been conducted in the wider context of Pakistan which includes the post-independence period.

2. Although the present research deals primarily with Islamic law and the Muslim world, it is also

concerned directly or indirectly with the modern world whose influence upon the Muslim world is immense.

3. It has been impossible to include all the Muslim countries in this study. Nevertheless, the countries which have been particularly included do give a general picture of Muslim culture.

4. Although the Pakistani society has been taken for the case study, the present study does try to portray Islamic culture in a wider cultural context.

5. Finally, the aim of the thesis is not to prove the superiority of one culture over another, or to criticize the patriarchal nature of Judaism, Christianity or Islam. However, a sincere attempt has been made to highlight the patriarchal policies of Islam, especially regarding women, so that the contrasting values of the modern culture and the Islamic system can be appreciated by the Muslim world.

1. PARSONS, BENJAMIN, The Mental and Moral Dignity of Woman, 2nd ed., London 1849, p.4.

2. (a) ROTHFELD, OTTO, Women of India, Bombay 1928, p.24.

(b) TITUS, M., Indian Islam, London 1930, p.168.

3. STEPHENS, I. Pakistan, London 1963, p.13.

C H A P T E R 2

A BRIEF STUDY OF WOMEN'S STATUS IN THE MIDDLE EAST AND THE INDIAN SUBCONTINENT BEFORE THE ADVENT OF ISLAM

I. A BRIEF ACCOUNT OF THE POSITION OF WOMEN IN PRE-HISTORICAL SOCIETY

Our societies, like all other historical civilizations, are patriarchal where every means of power, including the supernatural authority, the Deity, is in male hands. Of course the severity of patriarchy varies from country to country and there are, at present, many countries like America and several European countries where patriarchy seems to be losing its previous power and authority. However, domination, in general, is by man in several fields, such as defence, politics, law etc. Evidence of his domination is the fact that very few women have wielded power within modern democracies.

It is interesting to note that due to the recent excavations of the ancient sites in Anatolia, Mesopotamia, Greece and Persia there has developed a strong school of thought which believes that patriarchy is not of prime origin. Rather, it was preceded by some other social system which may be called 'matriarchal system', a hypothetical social system in which familial and political authority is exercised by women. Although, at present, no matriarchal societies are known to exist, yet if one tries to look as far back as the Palaeolithic and Neolithic periods, and even at the more civilized Bronze age of historical time, it seems that there did exist a system, certainly not a patriarchal one, which granted women

a certain dominance over men. Furthermore women ruled human society in the sense that they were the chief producers of wealth, worshipped as goddesses and creators of the Universe, were givers of life, and children belonged to them, kinship was recognized through them and property transmitted through the female line. (1) It is assumed that fatherhood and the idea of permanent mating were of rather late occurrence in human history. Men did not feel any obligation to protect and support their offspring simply because they were unaware of their fatherhood. Naturally, children belonged to women who alone were their creators and begetters. Men, who did not understand the complicated system of birth, accorded women a very high position in all spheres of life. They were universally revered as the givers of life and in the social, political and economic spheres they were the only source of refuge and security for the people, and provided food and the other necessities of life. There is much archaeological evidence which bears out the existence of women's religion in the Near and the Middle East for thousands of years. Example of this are Ninlil and Ishtar, the goddesses of Mesopotamia; Celtic Cerridwen, the goddess of Ireland; Demeter, the goddess of Greece and Isis and Maat, the goddesses of Egypt.

Keeping in view this new trend of thought regarding the position of women in the remote past, it seems appropriate to scrutinize briefly their position in the pre-patriarchal era before it is considered in the recorded patriarchal history of mankind viz, in different ancient civilizations and cultural complexes - compact or tribal.

In Egypt there existed a strong matriarchal system in which much stress was on the maternal side in family descent and the devolution of permanent property was in the female line. Such an emphasis on the maternal side brought into vogue the marriage between brother and sister which combined the matriarchal property with the paternal inheritance. (2)

In pre-historic and early historic times femineity was associated with divinity, sharing the honour with the gods of that time. If on the one hand, Horus, an Egyptian sky god in the form of a falcon with eyes as the sun and the moon, was the most prominent god of pre-historic time, then the Valture, the goddess of South Egypt, and the Cobra (uazit) the goddess of lower Egypt, both held great positions as the two supreme deities on the other. Besides these two goddesses there were numerous other local deities whose worship was quite common at that time, such as, Hathor, the creator of existence; Maat, the order of the Universe and Nut. In historical times, about 2425 BC, when Osiris emerged as the god of fertility, Isis also emerged as a wife of Osiris and the goddess of agriculture, great healer and physician and establisher of the law of justice. She shared the authority and power with Osiris and became a source of inspiration for his authority. (3)

In Mesopotamia during the earliest days of Sumerian society, about 5000 BC, women enjoyed a very high position in all spheres of life and were regarded almost as goddesses. Ishtar was the most prominent goddess of that time and was regarded as the counsellor of rulers and kings. (4)

However, in the time of the Assyrians (1600-746 BC) and

the Babylonian Empire (636 BC) women seemed to lose their dignity and status in society and the prominent position occupied by the goddesses in Sumerian religion disappeared with the one exception of Ishtar.

In pre-historic Greece, women were associated with the goddesses and enjoyed a respectable position in society. A famous goddess of that time was Hera whose worship appeared to last for a long time. Another goddess of Crete was called the Nature goddess who was worshipped with complicated rites and was adorned with snakes. In early historical Greece significant traces of the worship of women as goddesses were not rare phenomena. Athena, the virgin goddess of Athens; Artemis, the mother of wild things; Aphrodite, the goddess of love and, Demeter, the mother of earth, all enjoyed great veneration and respect in the Greek society of the time. (5) In fact, Greek women did not lose their prestige and power until after the Dorian conquest in 1100 BC and even in the Homeric world, 850 BC, they played a dignified and important part in daily life and enjoyed near parity with men. For example, they had the right to divorce their husbands and could own and administer their property. (6) However, after the Homeric period until the fifth century AD, when the eastern Roman Empire succeeded in Christianising Greece, there was a steady decline of women's position in society. They were regarded as the sole source of all the trials, miseries and tribulations caused to human beings. As a result, women as a whole, whatsoever their status, either as wives, sisters or mothers were practically and deliberately ignored by male

society and the state. (7)

As far as Rome is concerned, women did not seem to have enjoyed a better position in ancient Roman culture. Instead, they were dominated by their males not only in the matters of daily life, in family and society, but also in matters of life and death. However, during the later Republican and Imperial periods, women especially of the high-classes, obtained a position of extreme independence.

The oldest cultural life in Persia began from 539 BC when the Achaemenian Empire was established. This empire, in fact, was founded by Achaemenes who lived early in the seventh century BC. But the golden age of this empire started from Cyrus II and ended with the death of Darius III in 330 BC. After the fall of the Achaemenian Empire there emerged the Parthian Empire in 247 BC which lasted till 224 AD. This was followed by the Sassanian Empire which was terminated by the Muslims in 651 AD. Before these empires, in pre-historic times, here too femineity was associated with divinity. Some figurines of a naked goddess, which have been found and discovered on Iranian sites, prove that worship of women as goddesses was common in pre-historic times. (8) Owing to the worship of women as goddesses, they held a very high position in primitive Iranian society. They took an active part in everyday life. They were the guardians of fire, inventors of pottery, directors of tribal affairs, guardians of their children and propagators of the human race. They were raised to the priesthood and were considered as transmitting, in its purest form, the lifeblood of the tribe.

The family succession was also through the female line.(9) In the historic period, however, under the Achaemenian, Parthian and Sassanian Empires women lost most of their value and dignity, and were made subordinate to men.

In primitive Arabia women enjoyed greater freedom. They were free to choose their sexual partners and could have more than one man in their life. In fact the Arabs did not recognize marriage as an institution or a legal contract in primitive times. For their sexual gratification, therefore, they visited women in their own tents, and it was up to women to receive or refuse them. If a woman received a man and with the result she bore children, they were regarded not as the man's children but as belonging to the members of her own tribe and kinship was recognized through her. This union was named Ṣādiqa marriage.(10) In Ṣādiqa marriage the prospective husband gave a gift to the bride which was called Ṣadaq. The wife was also entitled to dissolve the union by dismissing her husband whenever she pleased to do so.(11) Fatherhood was not recognized by the principle of physical paternity, but by the rule that the husband was father of all the children born on his bed. Therefore, the conjugal fidelity of the wife was not very important and a husband could send his wife to cohabit with another man to get himself a goodly seed.(12) However, with the passage of time, when the Arabs settled and there came into vogue ba'al marriage or the marriage of dominion in which women left their tribes after marriage and children were regarded as of the father's blood, women lost most of their rights and freedoms.

During most of the early period in Indian society, nature was, generally, represented by the mother-goddess. There appeared many prominent goddesses whose worship was common, for example, Aditi, the common mother of gods and men; Aurora, the daughter of heaven; and Sarasvati, goddess of water. (13) Under the influence of the worship of the goddesses, Indian culture imparted several concessions and privileges to women until 1000 BC. Women were allowed to choose their husbands by a ritual ceremony called '<u>svayamvara</u>', and in the family they appeared as the worthy companions of their husbands. It was believed by men that in the intimacy of a virtuous marriage a man could purify himself of his faults and make a new life. (14) Outside the family, women were free in their movements and attended public assemblies and social entertainments in mixed gatherings. As they were engaged in many outdoor professions and took an active part in economic and industrial life, they did not wear veils. (15) Women as prostitutes had such a position of fame and honour that they were praised and honoured by kings and learned people and were protected and supervised by the state. Several women of high class also attached themselves to the temples for the service of the gods and their ministers. (16)

II. THE POSITION OF WOMEN IN ANTIQUITY

Coming to the patriarchal era it might not be irrelevant to throw some light on the origin of patriarchy. It is impossible to trace back precisely the origin of patriarchy in history since it is obscure. It is assumed, however, that there had been an evolution of patterns of descent and

family control. Children were at first the common property of the promiscuous group. This was followed by the development of a matriarchal and matrilineal system, which in turn was transformed into the patriarchal system. (17) Such a big transformation was not abrupt, and it took several centuries when the reckoning of descent in the female line and the matriarchal law of inheritance were overthrown. With the start of pairing marriage, things seem to have changed when more importance was attached to the natural and attested father rather than to the natural mother of the child. At that time, the division of labour, which took place within the family, gave to men the responsibility to obtain food and the instruments of labour. Once he became the provider of food and protector of the instruments, he started behaving dominantly. Later on, when the monogamony family developed out of the pairing family nearly three thousand years ago, it was based on the supremacy of the man and the undisputed recognition of male paternity. As it was important in the monogamous family to know who was the father, women's sexual freedom was strictly controlled by various devices. It is interesting to notice that until recently it had been the characteristic of the monogamous family that the presence of young and beautiful female slaves had been recognized happily. This means, the monogamy was just for women simply because men did not like to have any doubt about the paternity of the child. That is why adultery, especially by women, has been an unavoidable social institution of patriarchy - denounced and severely punished.

The reasons for the emergence of patriarchy can be

manifold, but two of them may be treated as major. First, physical strength which enabled men to dominate women at the time when life was full of struggle, turmoil and savagery, and every group was face to face with the question of the survival of the fittest in its most brutal form; and the second, that man realized that it is, in fact, he who impregnates a woman and that he is the physical father of the child she bears. In spite of the physical weakness of woman, man accorded all importance to her due to her role as childbearer and considered her as the 'giver of life', but when he realized his part in the reproduction process, he began to consider himself as the 'creator' and degraded and reduced woman to servitude. (18) At this stage all things changed; the predominant position in production passed to man; children were attributed and recognized through him and property transmitted in the male line. That means, woman was dislodged from her proud position in the family and society and the matriarchal era came to an end. Instead, the patriarchal age was ushered in, in which man was the father, the protector, the sustainer of the family and its sole and unquestioned ruler. So strict was the patriarchy that in nearly all primitive families, the wives and children were not allowed even to eat with the 'head' of the family. When the man returned from hunting, he was served with the whole amount of food which he ate without considering what was left for the wife and children. (19)

The position of women in primitive patriarchal society may be discussed.

1. Egypt :

(a) The Private Status of Egyptian Women

There existed many forms of marriage in Egypt, some based entirely on paternal negotiation, others contracted by the mutual consent of the two persons involved, while some were brought about by purchase. On the whole marriage was a respectable state and a true partnership of the two persons involved. (20) Although the marriage bond was durable and long lasting, both the husband and the wife were allowed to divorce each other. Women were entitled to seek separation from their husbands only on the basis of cruelty and adultery, while men could divorce their wives for any reason. In most cases the father was expected to give a dowry (an enormous amount of money or gifts given by the parents to their daughter on the occasion of her marriage) to his daughter at the time of the wedding. The dowry which was about twenty to thirty pounds (in 1923) belonged to the woman. Therefore, when she decided to return to her father or was divorced by her husband, she was allowed to take back her dowry with her. (21)

Generally society was monogamous, but no ban as such was imposed on men for having more than one legal wife. Especially in royal families polygamy was quite common. Kings had spacious harems which were filled, not only with beautiful native maidens, but foreign princesses as well who later became their wives. Ministers and those who had enough wealth were also at liberty to marry as many women as they wished. (22) Besides having legal wives, men were

allowed to keep numerous prostitutes and concubines. The Pharaohs of Egypt, besides the royal consorts, had harems where they kept foreign slave maidens and women from good Egyptian families under the supervision of an old matron or any other old custodian. (23) However, these prostitutes did not enjoy many rights and did not have any adverse effect on the wives' position in the home. A wife, though a subordinate and dependent and required to share her position in the home with other wives, was the mistress of the house and was considered essential for the future life and betterment of the family.

(b) The Public Status of Egyptian Women

Egypt was a land where traces of the primitive matriarchal system survived for a long time in the manners of the people towards women. Thus under the influence of the past, women enjoyed much freedom and they took an active part in agricultural work, in public life and in religious practices. They often bore the title of prophetess and held significant offices and employments connected with religion in the temple. They also attended religious processions and the funeral of a deceased relation. (24) They spent much of their time out of doors and worked in many sectors of the economy. They went to the market place to buy and sell, transacted affairs and occupied themselves with many matters. Also they were not excluded from political affairs, and the wives and daughters of kings succeeded to the throne like the male members of the royal family. (25) They spent their spare time in music and dance and attended banquets where servants, slave girls and professional women performed their art. (26)

2. Babylon :

(a) The Private Status of Babylonian Women

Marriage as a contract was recognized and was necessary for normal life, and women through their marriage had an honourable social status in society. Usually there was no fixed age for marriage, but the code and tablets prove that, in most cases, a girl as a bride attained puberty in her father-in-law's house and was brought up under the custody of her in-laws. Similarly, daughters were not supposed to choose their husbands themselves. On the contrary, they were at their father's disposal who alone was responsible for the matter. (27) The dowry was a major matter in marriage rituals and ceremonies and the father of the bride was supposed to give her a dowry.In the case of the husband's death the dowry had to be returned to the bride and her children. Also, if a widow made up her mind to remarry, she was allowed to take her dowry with her. (28)In the case of divorce, it was a simple matter; but only for men. They could divorce their wives on any minor pretext, even on a trifle such as ordinary shortcomings and carelessness in household matters. According to Assyrian law, if a man divorced his wife, it was not obligatory for him to pay any compensation. This code remained in vogue in the society throughout, except when, during a later period, Hammurabi's law accorded women the right to take back their dowry if they got divorced by their husbands' will. (29) On the contrary, for a wife to divorce her husband, or to seek separation from the husband, was a far more serious and difficult matter. If she repudiated or hated her husband, her act was considered

as adultery which made her liable to death by drowning in the river or by being thrown from a tower. (30) In the case of maltreatment by their husbands, women were entitled to go back with their dowry to their fathers' house. However, if after leaving the husbands' house their allegation of ill-treatment by the husbands was proved not true, they incurred the risk of drowning. Similarly, if a woman's husband was captured by the enemy in war time or was reported missing, she was bound to remain faithful to her husband if he had left behind a sufficient amount to subsist on. But she could remarry if he did not leave anything for maintenance. However, in cases where he had left behind sufficient amount to live on and she remarried, she was considered an adulteress and was liable to be put to death. (31)

Throughout the whole of the Sumerian and Babylonian period, marriage was generally monogamous and men were not supposed to have more than one legal wife. Nonetheless in the case of the prolonged illness of a wife, men were allowed to have another wife. (32) Besides having a legal wife, men could have sexual relations with prostitutes and no stigma was attached to relations with temple prostitutes or concubines. In the harems, there were kept slave girls as concubines who had an entirely different position from that of the wives. They were not wives and their children were not free. (33)

As the family was patriarchal, the authority of the father had more weight than that of the wife. A man, being husband and father -

> "could treat his child like a slave as a chattel to be pledged for debts, to work off the debt for three years, but in this he had the same rights even over a wife." (34)

In the treatment of his daughters the father had full authority over them, even the right to make all his daughters sacred prostitutes and sell them at auction. (35)

(b) The Public Status of Babylonian Women

In the time of the Assyrians, women were secluded and were not allowed to appear in public, therefore, they did not take part actively in public life. However, during the first dynasty, Babylonian law recognized in the free women a great capacity in legal matters. For example, they could be a witness and could rent property. Those women, who were married to the god and were attached to the temple, were very rich and had immense dignity in the eyes of the people and had a great capacity for business and trade. (36) In ordinary life women were classed in two categories in society. First, those who were married by law; and second, those who were not married but were slave girls and concubines. For married women, there were strict rules and they were asked to wear the veil, while harlots and others were not required to veil themselves. On the contrary they were asked to uncover their heads all the time and a default by the harlots in this regard was taken strict cognizance of and they were severely punished. They were beaten fifty times with the rod and a black tarry substance was poured on their heads. (37)

3. Greece :

(a) The Private Status of Greek Women

Marriage was entirely a matter of household economy and of business, for which the participation of the parents or their substitutes was absolutely necessary, and the question

of a dowry was made largely the crux of the whole affair. It was quite difficult for the parents to marry their daughters without spending much on gifts, which were supposed to be given to the daughters at their weddings. (38) Usually parents preferred to marry their daughters as soon as possible and, therefore, marriage at an early age was quite common. As the arrangement of a marriage was a matter for the parents, they did not bother to seek the consent of their daughters and, therefore, the opinion of the daughters in the matter did not have the slightest weight. Similarly after the marriage, it was only the husband who could divorce or repudiate his wife and this right of his was unrestricted. (39)

In ordinary circumstances men were not supposed to have more than one legal wife, but it is proved by several classical accounts of Sparta that polygamy and polyandry both prevailed in Greece, especially in Sparta. An Athenian was free to keep as many wives at home as he wished. The first wife was supposed to take care of and look after the subsidiary wives of her husband. (40) Concubinage was a recognised social institution in society and the harlots and prostitutes had great influence over males and, in fact, had the masculine world at their feet. Besides concubinage, there also existed homosexuality, not only in Sparta, but in every other part of Greece as well. These relations were not considered shameful and secret, but were approved of and accepted by the most high-minded of intellectual Athenians as a normal instinct of mankind. (41) The family was strictly patriarchal, in which the status of a wife was further degraded by the existence of concubines and the presence of domestic female slaves who had great influence over men. A girl who was married at an

early age, and had never seen her husband before marriage, was actually a prisoner in her husband's house where her dignity and respect was measured by her silence. She was supposed not to speak, even a single word either in praise or blame. The sole function and responsibility of a wife was to keep and manage the house, to bear and to look after the male and his children. She did not have any rights, even over her children; if the husband resolved to dispose of or expose his newborn child, he did not even have to ask the opinion of his wife. (42)

(b) The Public Status of Greek Women

In Greek society, except in Sparta where for some military reasons women had liberty to some extent and shared in education as well as in vocations, women were generally secluded and never mixed at all with men neither in sports and professions, nor at dinner parties and dances. Men were to work outdoors, while the sphere of women was the home and they had to remain indoors and take care of the household and bring up the children. (43) Often women were kept under lock and key and were confined within the gynaikeion (women's chamber). Young girls and upper class women, especially, were guarded very rigidly and no stranger was allowed to enter the house in the absence of a male member of the household. (44)

Since they were not allowed to appear in public at all, they did not play any part in the recorded public life of Athens and no respectable woman was ever seen in public except on certain special occasions.

4. Rome :

In the annals of history the Roman period is usually subdivided into two periods, that is the Republican period and the Imperial period. However, while discussing the position of women in Roman patriarchy, a minor alteration and readjustment to this usual subdivision of time is necessary. Based on the status that women then enjoyed, it is appropriate to regroup the different parts of these two periods in the following way -

(1) Pre-Republican and Early Republican periods

(2) Later-Republican and Imperial periods

This re-adjustment is important because the position of women during the pre-Republican period had resembled that in the early Republican era, while it differed from the status women enjoyed during the later Republican and Imperial periods.

(a) <u>The Pre-Republican and Early Republican Periods</u>

In ancient Roman culture women were dominated by their males, not only in the matters of daily life, in family and society, but also in matters of life and death. In fact, the patriarchal family was one of the distinctive social institutions of old Rome, and it seems unique in its extreme claim of patriarchal power and right, when compared with the modern family or with those in other ancient societies. The father possessed, throughout his life, an absolute authority over the family members and the goods of his wife. Theoretically he could pronounce the death penalty upon any member of his family.

> "He had control of the family property and his patriapotestas gave him powers of life and death over its members." (45)

Women's motherhood was not recognized by the law and they had no right over their children. It was up to the father to let his newborn child live and be reared. When a child was born, he was laid at the father's feet, and if the father raised him up it was a sign that the life of the newborn child was safe and he would live and would be reared. (46) Roman law gave, in fact, absolute power to the father over his son during his whole life. He could imprison him, scourge him, put him in chains and keep him at work in the field, and even put him to death whenever he wanted. (47) On the other hand, women's position in the family was one of complete subordination. First under the power of her father and brothers and later of her husband, who held paternal power over his wife. Women, by marrying, lost all rights over their property. As soon as they married, all property passed to the husbands who had full authority to dispose of it. (48) If wives committed adultery or drank wine, husbands were allowed to put them to death as a punishment by law. (49) Roman husbands continued, for a long time, to punish their wives on the basis of the two aforesaid offences with merciless severity and cruelty. Outside the family, she was unfit to sign any contract and was not supposed to act as a witness. She did not have the right to vote or to seek any employment in public or private places. (50) In fact, ancient Roman law had no room for women's rights whatsoever and gave no concession to women in any sphere of life. They were throughout their lives subjects of men. Later Roman

literature itself proves that the earlier law gave nothing to women, except a secluded and subordinate position.

(b) The later Republican and Imperial Periods

(i) The Private Status of Roman Women : During these periods there was a constant process of change and the unity of the family largely dissolved by the modification of the marriage institution. There came into practice a marriage called 'usus' which recognized the consent of the parties. Therefore, the 'Potestas', as being the only absolute power in the family, lost its value. Between the first and second Punic wars, marriage, by which women's property was passed to their husbands, also became unusual and women retained their property which gave them a new confidence in life. In fact, marriage, which was simply a contract between the persons involved, came to have a lower degree of respect. It came to be regarded as just a mutual consent of the parties, whether it was witnessed by the people or it was expressed in writing or not. Living under the same roof was the only proof of their marriage. (51) Truly the dissolution of the legal marriage left no distinction between the married and unmarried, and anyone could live with a woman without having any responsibility whatsoever. After attaining the age of puberty, girls were induced to marry as soon as possible and the lowest age for marriage was considered between twelve and thirteen, while the reasonable upper age limit for marriage was nineteen. A girl of twenty years, who did not get married and had not been a mother, was looked down upon by the common people. (52) Though in the upper classes women did not even recognize the marriage institution and preferred to be more liberated, in

general, in the middle and lower classes, women were still under the patriarchal system and they were married at an early age by their parents' will. The principal question for the parents at the time of betrothal, as well as on the eve of a marriage, was a dowry. They were supposed to give to their daughter an enormous amount of money in the shape of a multitude of gifts and presents. (53) Augustus, when he modified the law, tried to restrict the luxury of these customs and feasts, but seemed not to have been successful.

Divorce, which was rare in early times, began to be so common a practice in daily life as to be almost inevitable. Both husband and wife were free to divorce each other at any time for any cause or even for no cause. (54) In order to validate a divorce there was no need to go before the court and temple, or to satisfy the queries of the court and the people. Women, especially from the upper classes, who had full authority over their property, and were economically independent and much richer than their husbands, divorced their husbands so frequently that, according to Seneca, some women estimated their ages not by years but by the number of husbands they had had. (55) During the days of the second Punic war, even in the noblest families, divorce was so common and frequently practised that it was a great honour for a woman that she had only one husband. On the grave stone of a deceased wife it was mentioned as an honourable circumstance. (56)

Normally, society was monogamous but loose sexual relations and extra-marital connections, whether casual or permanent, were not rare and were regarded as natural. These

types of relations were most common among the upper classes and the women of higher classes enjoyed great respect among the people and great influence over men, including the rulers of the time. Augustus regulated concubinage by law and recognized it as a kind of marriage. (57) After the reduction of the power of patriapotestas in the family, women as wives enjoyed great freedom and authority in family matters. The wife was greeted by her husband with the honourable title 'domina'. Being the dominae (mistresses) of the house, they had entire and absolute control over the household. They had such an influence over their husbands that it was said by a Roman Statesman that "we rule the world and our wives rule us." (58) It is a fact that, in this age, women, as wives, enjoyed much more rights and freedom than they did in an earlier age. However, it is also true that too much independence of wives in the family undermined, not only the marriage institution and increased the frequency of divorce, but also destroyed patriarchal values.

(ii) The Public Status of Roman Women : Even in early Rome, when women lived under strict patriarchal control, they had not been secluded. Wives, therefore, were allowed to appear in public and at public festivals. They attended banquets, theatres and circuses very frequently. The temptation of the spectacles, the excitement of the banquets and the passion of the circus enabled men and women to meet freely and spend much time in these activities. Music, dancing and other higher accomplishments were important parts of a girl's education. Those husbands who forbade or tried to stop their wives from exhibiting themselves, were considered as ill-mannered,

boorish and tyrants. (59) Women had absolute power over their property and had their own businesses which made them very rich. So much capital came into their hands that,about the middle of the second century BC, a law called the 'Voconian Law' was passed according to which women could not be the principal heir of a large estate. (60) Though women could neither vote nor sit on a jury, they had undoubtedly great influence in politics. This was especially true of the high-class women who were so influential in matters of laws, politics and the military that often the fate of the Roman world was decided by them.

5. Persia :

(a) <u>The Private Status of Persian Women</u>

Marriage was contracted basically for the purpose of the propagation of the human race. The Persians, in relation to the sexes recognized no fixed law and they could marry their nearest kindred, even their sisters. This type of marriage was not rare in Iranian society, especially in royal families where, sometimes, to retain power and the throne, these marriages were absolute and indispensable. (61) Though the parents' will was an important consideration in choosing husbands for their daughters, yet the daughters could not be compelled to marry against their will. Similarly after the marriage, they had the chance to seek and demand separation on having proper grounds. (62)

As polygamy was the established law and encouraged by the law, it was widely practised in ancient Iran. One of the most prominent and broadminded Achaemenian monarchs of

Persia married fifty wives. (63) Besides plurality of wives, the Persians indulged in a multitude of regular extra-marital connections. Every Persian was allowed, besides his principal wife or wives, to have as many concubines as he wished. (64) The emperors usually had scores of concubines. Khusru Parviz, a Sassanian monarch of Persia, had the largest harem where he kept, according to Tabari, 12,000 women. Under the Parthian Empire also, all the monarchs, besides having their chief wives, had numerous concubines. (65) However, these concubines never enjoyed great influence, in any period, over their masters, the monarch, his courtiers and others, unless they gained their special attention.

(b) The Public Status of Persian Women

Due to strict seclusion, Persian women did not enjoy public freedom. Both wives and concubines were kept in seclusion in separate apartments. (66) The custom of employing eunuchs over the women to guard them existed in Persia from the very beginning. In the Achaemenian empire the women of the upper class, who were kept secluded and guarded by eunuchs, were not even allowed to meet their fathers or brothers at their own will. Whenever they undertook journeys from one part of the country to another, heavy curtains were drawn over the vehicle they travelled in. (67) Under the Parthian empire, this strict seclusion was continued but in the Sassanian period, as compared to the old dynasties, some concessions were granted and women were not as strictly secluded as in the old empires. However, rural women were not under very strict seclusion and their position in their own society was much better than that of high class women.

6. Arabia :

Besides a host of distinguished civilizations of antiquity - Egyptians, Babylonian, Greek, Roman, Persian and Indian, there was a rather small cultural complex - that of the Arabs, who were really unaware of any settled civilization and were instead living in the form of various clans and tribes. These wild nomads, confronted with hardships and engulfed by troubles and pressed by hunger, developed qualities of aggression, cruelty and brutality, especially towards their womenfolk. They considered a woman an economic and social burden who would certainly increase their problems and would incur disgrace by being made a prisoner of war. (68) Arabs had incessant wars with other tribes, in which women were captured so frequently by the victorious tribe that a marriage called 'marriage by capture' came into vogue. As a result, the Arabs dreaded the very birth of females and preferred to have more sons than daughters. All the tribes had an interest in having more sons so that they would prove themselves good helpers in the economic field and good warriors on the battlefield against the other tribes. This maniacal tendency for male offspring created a general aversion towards females and the birth of a female baby came to be considered as a source of immense humiliation. They carried this aversion so far that they destroyed them by burying alive many of their female children.

> "This revolting custom prevailed extensively until it was suppressed by Muhammad." (69)

(a) <u>The Private Status of Arabian Women</u>

In the marriage of dominion, which was mostly practised by capture or sometimes by contract, women did not have any

right to choose their life partners. It was the duty of a father, brother, cousin or any other male relative to choose the husbands for them, whether they were virgins or widows. Similarly after the marriage only the husband had the right to dissolve the marriage contract. The power of divorce possessed by the husbands was unlimited and they could use it at any time at their own will without showing any mercy or justice. Out of many kinds of divorce, ṭalāq and Khul' were most common in the society. Ṭalāq entirely belonged to the husband, while Khul' was a mutual arrangement between husband and his wife's father, according to which father repaid the mahr to the husband and received back his daughter. (70) Mahr was basically the same as ṣadaq, but it was paid by the bridegroom not to the bride but to the bride's parents on the eve of marriage. Muṭa', in which man and woman contracted marriage for a certain time, and polyandry in which a group of kinsmen or several brothers had a common wife, were also quite familiar to the Arabs. An Arab could also marry his half sister, his step mother and even his son's widow. On the death of a man, his brother had the full right to treat his sisters-in-law as his wives, as if they were chattels. (71) In fact, husbands' lordship over their wives made women's position worse and they were looked upon as property and were regarded as chattels.

The polygamous union with one husband who was the lord over his wives was prevalent at that time, and Arabia, like all other ancient cultures, was polygamous and did not recognise any legal, social and religious limit on having more than one wife. A man, if he had enough money to support

them, was allowed to have as many wives as he wished. (72) Prostitution in Arabia did not exist in an established form. However, there existed conditional and temporary contracts between man and woman by which they established extra-marital relations. There was a class of women called quiyān, who were from the lowest class and were professional dancers and singers. Although the immorality and impudency of these women was widely known and they enjoyed considerable sexual freedom, they held a very significant position in the eyes of the people. (73)

(b) The Public Status of Arabian Women

As the majority of the Arabs were tribal nomads who dwelled in tents, the question of the veil and complete seclusion of women had no place. Nomadic life made strict seclusion impossible. The women, who were habituated to perils owing to their nomadic life and who knew the use of weapons and war techniques, often helped their males in wars. However, after the marriage, women were completely under the control of their husbands and they did not move freely without the permission of their husbands. (74) Economically, Arab women were not well-off, as they did not get any share of the inheritance on the principle that none can be heirs who do not take part in battle, derive booty and protect property.

7. India :

(a) The Private Status of Indian Women

Soon after the Vedic period, there appeared a general aversion in the Samhita period towards women as a class, and

there was a steady but remarkable decline in women's position in the family and society. Marriage, which was not obligatory in the Vedic time, came to be regarded as an obligation in the patriarchal age which includes Samhita, Brahman, Upanishad, Dharma - sutra and the Smritis periods. There existed eight different forms of marriage of which the first four were generally common in Indian society and were all religious and indissoluble. Marriage before puberty was the most common rule of society. The general view for the ideal marriage was that the bride should be one third the age of the groom which means, a man of twenty four years should get married to a girl of eight. And, in fact, marriage at eight was strongly recommended by legislators who believed that a girl must be married before puberty, even if no suitable husband was available. (75) Obviously, due to the early marriages at the age of ten or twelve, girls had hardly any sense of choosing their own husbands. Marriage was a religious, sacred contract with complicated and strict ceremonies. The expenses of those ceremonies fell upon the bride's father. Besides these expenses the father had to provide for his daughter an enormous amount of money or gifts in the form of a dowry at her marriage. This dowry system degraded the value of daughters in the eyes of the parents because if they did not have enough, they were compelled to procure a dowry by borrowing money from others. (76) As marriage was a religious, sacred contract, it was completely indissoluble, even if not consummated. According to Manu, after the death of a husband, the wife should be faithful to his memory and should not think of any other person. For a widow Manu imposed such

rigid restrictions that she preferred to die on her deceased husband's pyre. Thus the custom of satī (the custom by which an Indian widow burnt herself on her dead husband's pyre) gradually came into existence. (77) In the view of the common people, the widow was sinister, therefore, she was not allowed to attend any festival lest she brought bad luck to all participants, especially to the bride. She was supposed to spend all her life in the family of her deceased husband where she slept on the ground, ate only one simple meal a day without any meat and salt, and wore no ornaments and coloured garments. The only thing for her was to spend all her time till death in praying and performing other rituals on behalf of her late husband.(78)

The family was patriarchal, the father being head and administrator of the joint property. The wife did not possess co-ordinate authority and equal partnership with her husband in the management of household affairs; instead, her status resembled that of an obedient servant to her lord. The only religion imposed upon her was the service of the husband and the affection of the family. (79) Manu asked wives to worship their husbands constantly, even if they were of bad character and were enjoying extra-marital relations elsewhere.

> "Her first duty was to wait on her husband, fetching and carrying for him, rubbing his feet when he was weary, rising before him, and eating and sleeping after him." (80)

If wives committed faults, their husbands were allowed to beat them with a split bamboo. (81) Although, in ordinary circumstances polygamy was not encouraged, it was fairly common that the husbands, if they could afford it, brought a second wife into the family. (82)

(b) The Public Status of Indian Women

Women were not productive members of the society but the subjects of their lords, whether they were fathers, brothers, husbands or other male relatives. Manu believed in the perpetual and incessant tutelage of women. According to him, day and night, they must be kept in subjection and dependent on males. He regarded women by nature so depraved and of bad character that if they were not kept under rigid control, they would surely go astray. (83) This was the general attitude towards all women, but the women of the upper classes and from the royal families were more strictly kept away from the opposite sex and their harems were closely guarded. They were not allowed to leave their home for any purposes. If a high class woman, sometimes due to some catastrophy or urgency was compelled to earn her livelihood, then strict precautions were laid down so that her chastity should not be sullied.

> "She was to go to the weaving shop in the dim light of dawn, when she would not be easily seen. The official who received her work should only use a lamp to examine its workmanship, if he looked her in the face, or spoke to her about anything other than her work, he incurred the fine known as 'the first amercement' from forty-eight to ninety panas. (84)

As a result of the complete segregation, the purdah or veil custom began to appear and though strict purdah only came into vogue at the time of the Muslims, it is evident that it had its origin in the pre-Islamic Hindu period when the women, especially those of the upper class, were not normally seen in public without their men folk.

III. THE POSITION OF WOMEN IN JUDAISM AND CHRISTIANITY

1. General :

So far, we have dealt with the position of women in various ancient civilizations and socio-cultural complexes without having been concerned with any religion in whatsoever shape it was prevalent in the societies. However, it is appropriate now to deal with two prominent religions which had their temporal as well as spiritual jurisdiction during one period or the other over an extensive part of the human population and made a great impact on the position of women among other aspects of human life. The two religions about which a brief appraisal is made in the following lines are Judaism and Christianity.

As far as the origin and basic structure is concerned, both these religions were similar as both came through the prophets who descended from the family of Abraham. Moreover both had the same concept of 'creation'. Judaism and Christianity while putting the whole blame on Eve regarding the first sin of Adam, have played a very vehement role in proclaiming and maintaining women's inferior position. The Bible says clearly that as a result of woman's sin committed against the male deity, her husband was awarded the divine right to dominate her and to rule over her.

> "I will greatly multiply your pain in childbearing; in pain you shall bring forth children, yet your desire shall be for your husband, and he shall rule over you." (85)

Another concept, which again was common in both religions, was the concept of 'helpmate' which made women inferior to men.

> "Then the Lord God said, "It is not good that the man should be alone; I will make him a helper fit for him"." (86)

According to the Old and New Testaments, Eve was formed out of Adam's rib and was presented to Adam as a gift and helper to keep him from being lonely. Under the influence of the two aforementioned concepts, Judaism and Christianity both considered women as temptresses, inferior to men, and wholly responsible for the fall of Adam. According to Judaic and Christian theology, woman's judgement had led to disaster for the whole human species. To preserve and spread the idea of women's inferiority, several early Christian Fathers, such as Tertullian, Clement of Alexandria, Gregory Thaumaturgus, St. Bernard, St. Anthony, St. Cyprian, St. Bonaventure, St. Jerome, St. John Chrysostom, and St. Gregory the Great, did their utmost to denouce women openly and considered them as a 'necessary evil'. Tertullian, for example, considered sexual love to be the essence of sin and woman to be "the gate of hell". Clement of Alexandria went further and claimed that every woman should be overwhelmed with shame at the thought that she is a woman. (87) Thus, for centuries the Christian world systematically taught women's inferiority and subjection through the Church.

2. The Private And Public Status Of Jewish Women :

(a) <u>Marriage and the Concept of Virginity</u>

In Jewish society marriage was a private affair in which sanction by the State and religion was not required. It was in fact, a matter or business in which the question of dower paid by the bridegroom had great significance. (88)

The main purpose of marriage was procreation. Therefore, if the marriage union lasted ten years without the birth of any offspring, it could be either dissolved by the husband or he could obtain a second wife. There existed various types of marriage practised by the Jews and all, except a few, were dissoluble. (89) The virginity of a woman before marriage and conjugal fidelity after the marriage, were the two most important factors of the marriage institution. Hebrew women were asked to guard their virginity till their wedding and if, at the time of the marriage, a bride could not prove to be virgin, she was to be stoned to death by the elders of the city.

> "They shall bring out the young woman to the door of her father's house, and the men of her city shall stone her to death with stones." (90)

If a woman already betrothed or married was raped by a stranger and she did not cry for help at that moment, she lost the right to life and was entitled to be stoned. But in the case of being a virgin, she had no choice but to marry the rapist. (91)

(b) Marriage Consent

Although women were not supposed to be coerced by the parents in the matter of choosing their life partners, the civil law did not recognise this privilege and gave power to the father to give his daughters into marriage bond or sell them to whosoever he liked. (92)

(c) The Dowry and Dower

In ordinary circumstances, when marriage was arranged

by the mutual consent of groom and bride's guardian, the groom was expected to give some money called mahr (dower) to the bride's father, brothers or any other cousin or male relative. (93) The bride was also expected to bring some gifts or money called dowry to the groom's house given by her parents. Those brides who brought a dowry held a much better and prestigious position in the husbands' family. They were not supposed to cook, wash or to do any other strenuous household job. (94)

(d) Polygamy and Concubinage

Polygamy was legalized and a man, in spite of having a wife, could acquire any number of other wives. (95) Besides polygamy, a husband was also allowed to have as many concubines as he wished and not only that, he was also entitled to have sexual relations with slave girls and bond women, even if they were married, and was not thereby considered a fornicator. (96)

(e) Divorce and Re-marriage

Under the Hebraic law, divorce was exclusively for the husband and only he was entitled to divorce his wife. To bring divorce into effect he was required to give his wife a bill of dismissal in the form of a written document. (97) In the case of accusing the wife of adultery on false grounds, the husband lost his right to divorce his wife forever. (98) Women were allowed to remarry after being widowed or divorced; however, they were not allowed to remarry their first husband after their second marriage. If the widow happened to be childless, she was obliged to marry her late husband's brother. (99)

(f) The Wife at Home and Her Public Status

Paternal authority and power was the dominant factor in Hebrew society. A father, who in the family was called ba'al, could sell his sons and daughters. He considered his wife as his property and treated her, in many respects, as if she was a slave to her lord. (100) A vow and pledge made by a wife needed the consent of her husband in order to be valid. If the husband listened to the vow and kept quiet, the vow was valid, but if he expressed his disapproval, all vows and pledges were null and void. (101) The wife did not inherit anything from her husband, nor daughters from their fathers, except when there was no male heir. (102) Since a woman's vow was invalid, unless it is approved by men, they could not engage themselves in business and were deprived of economic opportunities. The only true aim they had was love and respect for their husbands and to fulfil their marital obligations. (103) As they did not have anything to do outside, they usually stayed at home. The harem system was quite common, especially among the upper classes, and the Kings kept their women in seclusion. (104)

3. The Private And Public Status of Christian Women :

(a) Marriage

Generally, Christian marriage was a contract between the two persons involved into which the idea of 'lasting spiritual union' was absolute and indispensable. According to the Roman Catholic church a valid marriage was sacred and permanent and should last till the death of one

spouse dissolved it. (105) However a great apostle and the premier Saint of Christendom St. Paul, who was in fact the builder of Christianity, did not recognise marriage as a spiritual and social partnership between a man and woman and did not believe in normal and respectable family life and its enjoyment. (106) He permitted marriage as a necessary evil. In the Bible he stated -

> "It is well for a man not to touch a woman. It is well for a person to remain as he is. Do not seek marriage. But if you marry, you do not sin, and if a girl marries she does not sin. Yet those who marry will have worldly troubles. I want you to be free from anxieties. The unmarried man is anxious about the affairs of the Lord, how to please the Lord, but the married man is anxious about worldly affairs, how to please his wife. I say this for your own benefit, not to lay any restraint upon you, but to promote good order and to secure your undivided devotion to the Lord."(107)

(b) Divorce and Re-marriage

According to the real spirit of Christianity divorce was entirely disapproved of.

> "...that the wife should not separate from her husband and that the husband should not divorce his wife." (108)

According to Mark, one of the most prominent apostles, Jesus expressed hatred towards divorce in the following words -

> "Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery." (109)

In fact, what was the real intention of Jesus in the matter of divorce has been a controversial problem among the scholars of Christianity. Different apostles had different views about this matter. Josephus gave the right of divorce only to the husband, while Mark entirely disapproved

of divorce either by husband or by wife. For him, it was against the real teachings of Christianity. Nonetheless, on the whole, the institution of divorce was not rejected by the fathers of the Church, who had in fact a great influence over the Church and society. However, they did not accept any divorce which was based on mutual agreement of the spouses, or a divorce given by a wife to her husband. It meant that, on certain grounds, like adultery, they allowed husbands to divorce their wives, but disagreed about giving any legal right to the wives by which they could seek separation from their husbands. (110) Generally a Christian widow was allowed to remarry whom she liked.

> "A wife is bound to her husband as long as he lives. If the husband dies she is free to be married to whom she wishes, only in the Lord." (111)

But if she could exercise self control and remained as widow throughout the rest of her life, she was appreciated not only by society, but by the Church as well.

> "She is happier if she remains as she is, and I think that I have the spirit of God." (112)

(c) <u>The Wife at Home and Her Public Status</u>

As stated before, the myth of creation had brought about a great influence on the position of women. Their whole achievement in life was the love and care for the family and submission and docility to their husbands. They were demanded to prove themselves as subordinate and inferior to the husbands. "The head of every man is Christ, the head of a woman is her husband." (113) They were excluded from the society and were required to be submissive

and quiet before men -

> "Let a woman learn in silence with all submissiveness. I permit no woman to teach or to have authority over men; she is to keep silent. For Adam was formed first, then Eve; and Adam was not deceived, but the woman was deceived and became a transgressor." (114)

They were supposed to remain in seclusion and to apply themselves to weaving, spinning and cooking; but if they ever went out, then they were required to veil themselves.

> "Let her wear a veil. For a man ought not to cover his head, since he is the image and glory of God; but woman is the glory of man. For man was not made from woman, but woman from man. Neither was man created for woman, but woman for man. That is why a woman ought to have a veil." (115)

Under the influence of St. Paul's teachings, the orthodox church excluded women from most religious functions and they were not supposed to go to the Church. St. Paul considered women clamcrous, silly and imbeciles and did not allow them to preach or to express their opinion in the matter of religion.

> "The women should keep silence in the churches. For they are not permitted to speak, but should be subordinate, as even the law says. If there is anything they desire to know, let them ask their husbands at home. For it is shameful for a woman to speak in Church."(116)

IV. CONCLUDING REMARKS

Having examined briefly the condition of women in ancient patriarchy as well as in Judaism and Christianity, it becomes quite obvious that, over all, women suffered a great deal by patriarchs. Men used every device to suppress the female sex and ultimately did succeed in making women subjective, inferior and dependent.

With the advent of Islam in the sixth century AD, which became the second largest religion of the world, things did not seem to improve much. Although Islam did not believe in the inherent inferiority of the female sex and regarded women as the equal of men in religious matters and also when considering mankind in general. However, being patriarchal in nature, like its predecessors Judaism and Christianity, Islam did not oppose the idea of women as helpmates, a view held also in Judaism and Christianity, which ultimately did give them a secondary position. To protect their patriarchal interest, it was impossible for these religions to grant women sex equality and emancipation in the Western sense. Thus women were controlled and granted an inferior position as compared to men so that the male dominance could be maintained.

The patriarchal nature of Islam and its attitude towards women will be discussed in detail in the next two chapters. In order to discuss thoroughly, the Qur'ān and the Ḥadīth can be treated separately from Islamic law and hence the matter is discussed in two separate chapters : the first dealing with the Quranic and the Prophetic attitude

to women, and the second covering Islamic jurisprudence. The Quranic and the Prophetic attitude will be discussed in an historical perspective to show how they affected women's position at that particular time. Therefore, it will be found necessary to treat the Qur'ān and also the Bible as a scripture of the past, but it must be realized that in fact they exist today in very much the same form.

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112. Ibid, 1 Corinthians 7:40.

113. Ibid, 1 Corinthians 11:3.

114. Ibid, 1 Timothy 2:11-14.

115. Ibid, 1 Corinthians 11:6-9.

116. (a) Ibid, 1 Corinthians 14:34-35.

    (b) KLAUSNER, J., op.cit., pp.569-570.

C H A P T E R 3

NATURE OF THE QURANIC AND THE PROPHETIC ATTITUDE TOWARDS WOMEN

I. MAIN CHARACTERISTICS OF PATRIARCHY AND ITS RELATION WITH ISLAM

Before dealing with the Quranic and the Prophetic attitude towards women, which, on the whole, is based on patriarchal principles, it will be relevant to discuss briefly the main characteristics of patriarchy and its relation with Islam.

Patriarchy is a social system which is based on the absolute authority of the father, or an elderly male over the family. It is contrary to matriarchy, a social system in which familial and political authority is controlled by women, characterised mainly by:-

1. The basic and vital role which is played by women in production and reproduction,
2. The absence of the concept of patriarchal morality regarding sex, resulting in a wide sexual freedom enjoyed by women,
3. The lack or absence of emphasis on paternity and legitimacy meaning that, if, the father is unknown, it does not degrade the woman and her child in the eyes of the society,
4. The matrilineal recognition of children and their being brought up by the mother's tribe on the grounds that they belong to her, since maternity is obvious and easy to prove, and finally
5. The transmission of property in the female line.

The basis of the patriarchal system is, perhaps, the in-born desire of man to attain some degree of immortality in this world, a desire which man has not been able to fulfil despite numerous achievements in science and technology. Therefore, one of the devices which man has adopted for this purpose is the establishment of a system in which it becomes possible for him to retain at least his name and property after his death by considering children as his own and passing on his wealth through his line. The establishment of such a system, commonly called patriarchal, is not as easy and natural as that of the matriarchal system where there is no doubt regarding the maternity of the child, and it is very easy to know who is the mother. In the case of paternity, on the other hand, it is altogether invisible and it may be very difficult to know who is the father. Paternity, therefore, is established only when the man accepts it. A little doubt in paternity would not only cause a perpetual anxiety and discomfort in the mind of man, but would also destroy the very base of the patriarchal structure. This means that the assurance of paternity is the most important and fundamental factor for maintaining the patriarchal system, and in order to get this assurance, some basic principles are followed. These are, in fact, the pillars on which is built the edifice of the patriarchal system. If one of these pillars is or starts becoming weak, there appears the danger of a total collapse. These basic principles are:-

1. The emphasis upon the principle of legitimacy, that is, no child should be brought into the

world without a father,

2. The control of women by giving men the right to dominate the family members including the wife and children,

3. The economic hold of man over his female subjects in the sense that man is regarded as the only breadwinner, and woman is considered as a non-person without legal standing,

4. The institutionalization of force through legal systems, for example, flogging and death sentence for adultery and rape,

5. A certain concept of morality, especially for women, by introducing numerous sexual taboos in the society, for example, menstruation, virginity and defloration, and conjugal fidelity etc,

6. The prevalence of sexual segregation,

7. The emphasis on and respect for motherhood, and recognition of the household as the main sphere of woman's life,

8. Recognizing submission and modesty as the only signs of acceptable feminity, and

9. The existence of a male god who favours men more than women.

For a better comprehension, some of the principles may be elaborated. Men can not control women unless women are taught to be submissive, humble, and inferior to men, and men are given the authority to dominate women in

general. Therefore, in a patriarchal society, male dominance is maintained at all costs and the father is granted the final and absolute power which he can use whenever he deems it necessary. This domination is also maintained by putting the whole responsibility of maintenance on man. The man, who wins the bread for his wife and children, automatically gains much importance and value in the family, and the dependants always try to compromise with the sole breadwinner, ultimately giving him an extremely strong position.

The existence of women in a patriarchal society is regarded as a source of danger for men, and it is believed that women by their natural beauty, attraction and cunning can exploit men's weakness. (1) And of course once men are exploited, due to their natural lust, it is certainly a diminution of their potential power. This is why sex, a basic desire in human beings, has been regarded in general as negative in the patriarchal atmosphere and women as the "Devil's gate" for the ultimate downfall of mankind.

> "Patriarchal religion and ethics tend to lump the female and sex together as if the whole burden of the onus and stigma it attaches to sex were the fault of the female alone. Thereby sex, which is known to be unclean, sinful, and debilitating, pertains to the female, and the male identity is preserved as a human, rather than a sexual one." (2)

Another belief which has considerable support in patriarchal society is that women are sexually insatiable, therefore, if they are not restrained by modesty and

shame, the human race would perish through the very source which, in fact, has been ordained for its continuity. (3) This is the reason for an old conviction that a man should abstain from sexual intercourse in order to conserve his strength. All these fears of man regarding his strength, power, supremacy and fatherhood result, in a patriarchal society, in controlling women to the extent that they appear in the society like a 'musk' which, despite every attempt to suppress its perfume, does not lose its aroma.

This control is maintained primarily by enforcing complex and subtle sexual taboos in society, for example, menstruation, the concept of adultery and fornication, virginity and defloration, modesty and conjugal fidelity particularly of women. A great stigma is attached to menstruation, which is largely considered an impure and clandestine affair. The "curse" of menstruation was so widely accepted in primitive patriarchy that the practice of isolating "bloody women" in huts at the edge of the village or town was a common phenomenon. Even at present, in reformed patriarchy, menstrual taboo is attested through religion, culture and anthropological literature. In many cultures, especially Indian and those of the Near and Far East, menstruating women are generally segregated and are not permitted to touch or eat food with men.

> "In many cultures the woman is excluded from normal society. She is treated as a walking sickness that turns the milk sour and men's bones to jelly, She has the evil eye, she is a plague. It is a menstrual epidemic." (4)

Also in all patriarchies, virginity and defloration is a

matter of male prestige and honour. On the one hand, defloration is good in that it provides man with the great satisfaction that the "property" he received was intact and pure; while on the other hand, it causes an unknown fear in man about the alien sexuality of the female.

All these indirect methods of controlling women obviously appear more efficient and safe because to a certain extent, they control other men as well. On the contrary, direct or physical control is manifested by the system of ḥarīm, purdah, the chastity belt, clitoral incision, suttee execution, and the punishment of adultery by flogging or death.

Keeping in mind the above discussion regarding the general trends of patriarchy, if one looks at Islam, it seems clear that Islam prescribes one of the strongest forms of patriarchy in many ways. Certainly, it is not that type of patriarchy which existed in old Roman times when a husband or father (patriapotestas) could even put to death his wife and children, and no law of the state could challenge his right. However, Islam expressly accepts the idea of male supremacy and regards the wife and children as his possesions, his decision as final and his power in the family as certain. The following are some verses of the Qur'ān which establish male supremacy over women

> "Do not covet that whereby God in bounty has preferred one of you above another... men are the managers of the affairs of women for that God has preferred in bounty one of them over another, and for that they have expended of their property.

> Righteous women are therefore obedient, guarding the secret for God's guarding. And those you fear may be rebellious admonish; banish them to their couches, and beat them."
>
> "Your women are a tillage for you; so come unto your tillage as you wish. Women have such honourable rights as obligations, but their men have a degree above them." (5)

There might be many reasons why Islam developed as a patriarchal system, however, one of the major reasons is that it originated in the Arabian peninsula where people followed a nomadic life. These bedouins of the peninsula were descendants from an ancient patriarch, Qaḥṭān, and were Semitic people who, long ago, had Jehovah as their male god and had been living under the patriarchal system of Judaism. These Semitic people were not settled and had a pastoral life, thus Arabs maintained old Semitic traditions based on a pastoral nomadic life.

As mentioned earlier, if there is anything which can undermine the existence of patriarchy or destroy the fabric of the patriarchal system, it is the freedom of woman. Once she is awarded freedom in her choice and actions, there would appear enormous chaos in the patriarchal society and many doubts and implications would arise in the matter of the paternity of the child. Islam is very well aware of this fact and, therefore, has used every device to control women. There are many passages in the Qur'ān, where only this matter has been given priority and much elaboration has been laid down for even the appearance and style of talking of women. Islam adopts both ways of controlling women, physical and mental. Physical control is manifested

When husbands are given permission to beat their wives in cases of disobedience or lewdness, and again in cases of committing adultery, when they are flogged or shut up in the houses until their death. Regarding the physical punishment of wives, when permission was granted in the Qur'ān, the Muslims started beating their wives now and then for trifling matters. When Muslim women brought a complaint to the Prophet who was rather a benevolent patriarch, he could not intervene in this clear Quranic injunction and could only advise husbands to beat their wives gently. But the fact is that throughout history Muslims, especially those of the illiterate and poor class, did adopt this direct physical punishment for their wives, frequently and ruthlessly. This direct control is also maintained by the institution of Purdah and ḥarīm, which is adopted mainly by the middle and higher classes. In fact, the whole concept of ḥijāb or purdah in Islam depends on the theory that women should be controlled to an extent where there would be no chance for them to have extra-marital relations. Obviously this would result in the assurance of paternity and there would be no doubt as to the fatherhood of the children.

The indirect control of women in Islam is the concept of morality, modesty, virginity and after marriage conjugal fidelity, which prevents them from mixing and having relations with the opposite sex. They are highly praised and admired if they prove themselves good house-wives and good mothers, to the extent that the Prophet of Islam is reported to have said -

"The Paradise lies at the feet of the mother"(6)

And again -

> "If there would have been allowed prostration to any other besides God, I would have asked wives to prostrate to their husbands" (7)

These types of ideas, in fact, have had a great influence on the conduct of Muslim women and they themselves willingly accept all the restrictions imposed on them.

Islam, after granting men the superiority over women, very carefully maintains this dominant position of men by devolving upon them the responsibility of maintaining the wives and the children. Islam does not like women to do any job outside the home if it is not absolutely necessary. It is very well aware of the fact that once women are totally independant economically, it would become almost impossible for husbands to maintain their dominant position. Muslim women, therefore, have always been discouraged whenever they tried to adopt any profession; and if they happened to do so, they have been looked down upon by the society and have been paid less. Although there is no clear verse in the Qur'ān which stops women from taking professions, yet the emphasis on man as the only maintainer and the discouragement of women if they intended to go out, clearly shows that Islam does not encourage women to earn their livelihood and implies that their main task in life is to look after the household and rear the children. This intention of the Qur'ān has been carried on by the Prophet and, later on, by the jurists and on the whole by the Muslims themselves.

In spite of granting women a subjective position in the family and controlling them in their choice and action,

the Qur'ān and the Prophet, have granted them certain concessions and rights and tried to stop men from taking advantage of their dominant position. But keeping in view the laws of Islamic jurisprudence and the practice of Muslims in general it seems that it has not been possible for the Qur'ān and the Prophet to soften the patriarchal attitude of men at all. Many laws of the Qur'ān, as well as many traditions of the Prophet, have been rather misused for the exploitation of women by men, certainly in the matter of marriage, family, divorce and veiling etc.

The patriarchal attitude of the Qur'ān and the Prophet towards women may be discussed in detail.

II. THE ATTITUDE OF THE QUR'ĀN AND THE PROPHET TOWARDS WOMEN

It is probably impossible for a human being to introduce a new law which could altogether abolish the existing customs and habits of the people too abruptly. Therefore, the Prophet Muḥammad, in many cases, as it would be seen later, contented himself to meet the requirements of the moment and compromised with many existing customs with minor alterations. As far as women were concerned, the Qur'ān neither degraded them altogether nor did it award them an extremely high position which would have been rather contradictory to the patriarchal nature of not only Islam, but also of Judaism and Christianity. In certain aspects the Qur'ān put man and woman on the same footing, for example in spiritual matters, and also when it spoke of both as human beings. However, in numerous other respects, it kept women in a secondary position compared

to man, for instance, in the matter of husband and wife, in the case of testimony, and inheritance etc. The Prophet did not introduce entirely new legislations for women, except in the matter of their legal rights, including the right of inheritance, and some other minor problems related to marriage and divorce. For example, the introduction of 'iddah as a waiting period for divorced women which, though it was known in Judaism, was not known in Arabia or in many other ancient societies; and the right of a divorced woman to remarry her former husband after being divorced from her second husband, which was even unknown in Judaic law. In many other cases, the Prophet made alterations without changing the nature of the problem completely. For instance, mahr, an old Arab custom, was now attributed to the wife not to her father; 'īlā, a kind of divorce, was restricted by prescribing a certain period for it; polygamy was limited by allowing man to marry no more than four wives; the power possessed by the husband regarding divorce was curtailed by putting certain conditions on him; and women were awarded the right of seeking separation on reasonable grounds. These were rather positive steps regarding the position of women, which certainly imparted to them a better position as compared to their old status. Nonetheless, there were some other regulations in the Qur'ān itself, and in the traditions attributed to the Prophet by his companions, which restricted women in many ways. For example, according to the Qur'ān, they were required to stay at home most of the time, and if they happened to go out they were required to observe many rules

which were not very common in Arabia before. Much more emphasis was laid on the chastity of women, and for that purpose they were debarred from mixed gatherings. Arabs, who were not very much concerned about the paternity of the child and often sent their wives to cohabit with other men to get themselves healthy offspring, were now asked to demand from their wives strict conjugal fidelity. The Qur'ān being very sensitive about the paternity of the child, and being patriarchal in nature like the preceding scriptures of Judaism and Christianity, did not in any case allow women to cohabit with more than one man at a time. Therefore, defiance by women in this respect was severely punished by shutting them in separate rooms until they died.

> "Such of your women as commit indecency, call four of you to witness against them; and if they witness, then detain them in their houses until death takes them".(8)

Some major matters concerning women's status may be elaborated -

With regard to the Eden legend of Adam and Eve, unlike the Old Testament which regarded woman as responsible for the fault of Adam, the Qur'ān emphatically refuted the idea of original sin committed by woman, and to clarify the ambiguity it narrated the whole story. As it stated -

> "Then Satan whispered to him saying, 'Adam, shall I point thee to the Tree of Eternity, and a Kingdom that decays not?' So the two of them ate of it, and their shameful parts revealed to them, and they took to stitching upon themselves leaves of the Garden. And Adam disobeyed his Lord, and so he erred." (9)

The abovementioned verses made it clear that both of

them were seduced by Satan and neither of the two was responsible for seducing the other; therefore, Eve was exonerated from the blemish of seducing Adam which had ultimately resulted in the fall of Adam. In fact, this is the point where the Qur'ān is more positive than the other scriptures and, in turn, it accorded women some concessions which none of the preceding scriptures had granted to them. However, the Qur'ān did not oppose the idea of women as "helpmate", held by the Old and New Testaments, and ultimately did give them a secondary position. There were many verses written in the Qur'ān which indicated that women were made to give comfort and pleasure to men. As it stated -

> "And of His signs is that He created for you, of yourselves, spouses, that you might repose in them."
>
> "It is He who created out of one living soul, and made of him his spouse that he might rest in her."(10)

In another verse men were told that women were a tilth for their husbands. If on the one hand, the verse showed that the relations of men and women, being husbands and wives, were very intimate and long lasting just like the relation of farmers with their tilth, it also indicated, on the other, that women were the property of their husbands and could be used, at least in sexual relations, as men pleased. The Prophet is reported to have said that when a man calls his wife to satisfy his desire and she refuses, the angels curse her until the morning. (11)

Islam, like Judaism and Christianity, was characterised by a masculine identity, that is, the 'god' not

the goddess. Therefore the Qur'ān, in denouncing the polytheists, stated that they were those who worshipped women as goddesses -

> "In stead of Him, they pray not except to female beings." (12)

Also all the Prophets including the last, who represented God, were men not women. However, this state of affairs did not make any difference for women as far as spiritual matters were concerned. According to the Qur'ān, both man and woman were regarded as responsible for duties towards God, and both were promised reward just on the basis of their own action.

> "And whosoever does deeds of righteousness, be it male or female, believing - they shall enter Paradise, and not be wronged a single date-spot." (13)

Women could also, unlike in Christianity, be the equal of men in piety, religious knowledge, as well as moral and spiritual progress. As the Qur'ān stated -

> "Men and women who have surrendered, believing men and believing women, obedient men and obedient women, truthful men and truthful women, enduring men and enduring women, humble men and humble women, men and women who give in charity, men who fast and women who fast, men and women who guard their private parts, men and women who remember God oft - for them God has prepared forgiveness and a mighty wage." (14)

The Qur'ān also insisted in many passages that, by birth, all human beings, whether men or women were equal and were from the same source and branches of the same tree. As it stated -

> "Who created you of a single Soul, and from it created its mate, and from the pair of them scattered abroad many men and women."

> "Was he not a sperm-drop spilled? Then he was a blood-clot, and He created and formed, and He made of him two kinds, male and female." (15)

Thus the Qur'ān condemned those who thought women were dishonourable creatures and who tried to bury them alive. It declared that offspring, whether male or female, were the gifts of God, therefore, discrimination on the basis of sex had no ground.

> "He creates what He will; He gives to whom He will females, and He gives to whom He will males or He couples them, both males and females." (16)

Menstrual discharge of women has always been considered unclean in patriarchal religions. For example, in the Old Testament menstruation was looked upon as a pollution to the extent that Jews segregated for seven days their women who had their courses. Their bodies were considered so polluted that whatever they wore, whatever they touched, wherever they sat and whoever touched them, was considered unclean due to the impurity of women's bodies.

> "When a woman has a discharge of blood which is her regular discharge from her body, she shall be in her impurity for seven days, and whoever touches her shall be unclean until the evening. And everything upon which she lies during her impurity shall be unclean; everything also upon which she sits shall be unclean. And whoever touches her bed shall wash his clothes, and bathe himself in water, and be unclean until the evening." (17)

And not only that, if a woman, due to some other reason, had a blood discharge permanently, she was considered unclean and was segregated in the same way as menstrual woman until it stopped. Moreover, husbands were forbidden to have sexual intercourse while women were in their menstrual uncleanness. (18)

The Qur'ān also, being patriarchal in nature, looked upon menses as an impurity, and made certain things unlawful during this period, such as intercourse, prayer, and fasting etc. However, the Qur'ān did not consider the whole body of the woman polluted. Unlike the Old Testament, it did not segregate women from the family and it permitted them to have contacts with other members of the household and also to participate in all the household activities. They were also allowed to share the bed with their husbands.(19) The Qur'ān did not agree with the Biblical idea regarding the woman who had prolonged menstruation. It considered her to be as clean as any other woman, and allowed her to perform all obligations pertaining to God and the husband, for example, recitation of the Qur'ān and sexual relations with her husband. (20) Furthermore, the Prophet also allowed women, while menstruating, to perform the pilgrimage except that they were prohibited from circumambulating the K'abah. (21)

Sex, according to the Qur'ān, was a positive urge in man and woman, therefore, it did not believe in the absolute suppression of the sensual side of human nature. It prescribed certain ways to satisfy this natural urge. However, the Qur'ān did not leave permission unrestricted, and regarded the sexual act as highly immoral whenever it tended to give any doubt about the paternity of the child. Naturally women were restricted more than were men in this regard and the Qur'ān did not allow women to have sexual relations with more than one man at a time, as it must lead to uncertainty regarding fatherhood. Women, as wives, were

entitled to be treated well by their husbands as long as they were obedient to their husbands, and did not try to break the conjugal fidelity which means that they did not dare to have sexual relations other than with their husbands. If they tried so to do there was a harsh treatment for them in the Qur'ān, and the husbands were permitted to admonish and beat them until they abstained from debauchery. This strict sexual control of women was very much contrary to matriarchal principles where women enjoyed a considerable sexual freedom and had complete control over their bodies.

If wives did commit adultery, or their husbands accused them of it, the Qur'ān did not take any further harsh steps unless it was proved by four witnesses. It is noteworthy here that in all other cases, only two witnesses were enough. In normal circumstances, it was practically impossible to obtain four witnesses, however, if the witnesses were produced the Qur'ān in surah 4 verse 15 allowed men to confine women to the houses until they died. About the punishment of adultery, there are, in fact, two different views about what this should be. According to another verse in the Qur'ān, the punishment for both the adulterer and the adulteress was a hundred strokes each in front of a party of believers who would witness their punishment.

> "The fornicatress and the fornicator - scourge each one of them a hundred stripes, and in the matter of God's religion let no tenderness for them seize you if you believe in God and the Last Day; and let a party of the believers witness their chastisement." (22)

On the other hand according to Ḥadīth, not only women (as may be derived from the verse 4:15) but also men were to be put to death by stoning.(23) The fact is that, as mentioned in

the earlier chapter, by all ancient patriarchal laws, adultery was most severely punished. When Islam emerged, therefore, it did not grant any concession in this regard. Although in the Qur'ān, unlike in the Bible, there was no mention of the death punishment for adulterer and adulteress by stoning and the verses 4:25, 33:30, in which the punishment was reduced in the case of female slaves and was doubled in the case of the wives of the Prophet, negated the idea of the death punishment for adultery. Nonetheless verse 4:15 did indicate for the adulteress the punishment of death which showed that Islam did not tolerate, like Judaism, the conjugal infidelity of wives.

On the contrary, the Qur'ān allowed men to marry up to four wives at a time, and have sexual relations with the female slaves captured during war. As already discussed, polygamy was common among the people including the Jews and the Arabs, it was rather difficult for the Prophet to abolish the custom entirely. Therefore, in allowing polygamy the Prophet followed the then prevalent custom, but did restrict it, and enacted that no man should marry more wives than he could adequately provide for. There is, in fact, only one verse in the Qur'an which spoke for polygamy, but even that verse is not very clear. As the Qur'ān stated -

> "If you fear that you will not act justly towards the orphans, marry such women as seem good to you, two, three, four; but if you fear you will not be equitable, then only one. (24)

Therefore, there are two schools of thought, the one which allows men to marry up to four women, if they wish and

have capacity to deal with them justly; while the second school limits this permission to special circumstances, that is, when there is the problem of widows and orphans to be dealt with. However, whatever was the intention of the aforementioned verse, it is clear that the Prophet and most of his companions and, later on, during the time of the Umayyads and the Abbasids, Muslims did practise polygamy and, in general, Islamic law permitted Muslims to marry up to four women.

Like the institution of polygamy, slavery was also an old custom which the Prophet found in existence. The Qur'ān was reluctant to accept slavery as such and brought about some changes in the position of slaves which accorded them certain facilities by which they were able to free themselves. For example, the Qur'ān made it obligatory that prisoners were to be set free either by granting them free liberty or by ransoming them after the war; the liberation of slaves was declared to be a work of piety; a duty was imposed upon the state to spend a part of zakāh for securing freedom of slaves; and slaves were to be freed as an expiation of certain wrong doings, such as using an objectionable method while pronouncing divorce, and taking an oath etc. (25) The Qur'ān did not like debt-slavery, that is, the custom of making those persons slaves who could not pay their debts due to poverty. It used the phrase mā malakat aimānukum for slaves, which meant the prisoners of war who were obtained by superior power in war whether males or females. Repeated references were made in the Qur'ān about the female slaves and their status and relation

to their masters; and the Qur'ān accepted concubinage, an old established institution, with the one exception that the concubines must be the captives of war not free women. The Qur'ān allowed masters of the female slaves to take them either as wives or as concubines -

> "...and guard their private parts save from their wives and what their right hands own then being not blameworthy." (26)

In another verse the Qur'ān stated -

> "And wedded women (are forbidden) save what your right hands own." (27)

This verse indicated that even those captive females who were already married were allowed to be taken as concubines. However, the Qur'ān did not allow masters to use their female slaves as a source of income, and rather persuaded them to marry their female slaves after making them free, or to allow them to get married with other persons, whether slaves or free.

> "And constrain not your slavegirls to prostitution, if they desire to live in chastity, that you may seek the chance goods of the present life."
>
> "And one of you who has not the affluence to be able to marry believing freewomen in wedlock, let him take believing handmaids that your right hands own." (28)

The Prophet himself set an example by marrying Safīyah, the daughter of a Jewish Chief, who was captured in the battle of Khaybar. (29)

The fact is that the way in which the Qur'ān dealt with the institutions of polygamy and concubinage did not prove itself very favourable to women, and, after the Prophet until recently, women were exploited ruthlessly

by the existence of these two institutions. However, there were some other legislations in the institution of marriage which, to a certain extent, did ameliorate the position of women. As set out in the code of the Old Testament (30), the Qur'ān also forbade marriage with persons coming within the prohibited degree of Kinship, for instance, daughter, sister, aunt, niece, foster-mother and sister, mother and daughter-in-law, step-daughter and two sisters at the same time. (31) It particularly denounced the existing practice in Arabia in which a man could inherit his father's widows to either marry them himself, or give them in marriage to others.

> "And do not marry women that your fathers married, unless it be a thing of the past; surely that is indecent and hateful, an evil way." (32)

Furthermore the Prophet did not approve *muṭā'*, a marriage contract for a fixed period. But, as it was one of the old, deep rooted customs of Arabia, it was not possible to abolish it at once. Therefore, temporary relaxations were made on some occasions until it was abolished on the eve of the conquest of *Khaybar*, and then on the occasion of the Farewell Pilgrimage in order to give wide publicity. (33) It is, however, a rather controversial matter as, according to the Shiites, it is still permitted to contract *muṭā'* on a temporary basis.

Before the Prophet, *mahr* was an amount which was paid by the suitor to the father or nearest kinsman of the girl he wished to marry. The Prophet kept up the institution of *mahr* but changed its nature altogether. He

regarded mahr as a gift from the groom to the bride only and not to the father or any other kinsman of the bride. The Qur'ān stated

> "Such wives as you enjoy thereby, give them their wages apportionate." (34)

Since the Prophet considered mahr a right of women, he forbade shigar, a conditional marriage which deprived women of their dower. This kind of marriage was quite prevalent in Arabia according to which a father exchanged his daughter in reward of taking the other man's daughter without paying any mahr. (35) For the validity of the marriage contract, the Prophet made it obligatory to acquire the consent of both parties, that is, the bride and the groom. He clearly declared that no woman, whether married or unmarried, be given in marriage without her express consent and in no case she could be married by force. (36) The Prophet also gave the right to those who were married by their guardians before having attained puberty to repudiate the contract after attaining their majority, if they wished. Ibn 'Abbās is reported to have said that a virgin came to the Prophet and told him that her father married her against her will. The Prophet gave her the right to repudiate the contract.(37)

Dealing with the matter of divorce, the Qur'ān again kept up its patriarchal approach and allowed husbands, as in the Old Testament, to keep the right of divorce in their hands. However, before resorting to divorce, the Qur'ān insisted upon Muslims exerting all possible means to avoid divorce. It declared

> "And if you fear a breach between the two, bring

> forth an arbiter from his people and from her people
> an arbiter, if they desire to set things right;
> God will compose their differences." (38)

The Prophet said that never did God allow anything more hateful to Him than divorce. (39) The Qur'ān also laid down certain conditions for husbands when they intended to divorce. Some of the conditions which were to be observed by them were as follows -

1. The husband was asked to pay the dower of his wife in full, if he had not paid it before.

> "It is not lawful for you to take of what you have given them." (40)

2. The declaration of divorce had not to be given all at once. There should be two or three divorces each separated by a long interval of time i.e. one month

> "Divorce is twice; then honourable retention or setting free kindly." (41)

Once when the Prophet was informed of a man who had divorced his wife with a triple divorce, all at once without any interval between them he arose in anger saying that "is sport being made of the Book of God while I am among you?" (42) Perhaps the idea in laying down this condition was to stop the husband from a hasty decision. Therefore, after the first divorce, husband and wife were required to live together as before so that if the husband felt repentant of his hasty decision he may take back his wife.

3. The third condition prescribed for a husband was that he will not divorce his wife during the period of her menstruation.

> "O Prophet, when you divorce women, divorce them

> when they have reached their period. Count the period." (43)

'Abd Allāh b.'Umar divorced his wife when she was passing through her monthly period. His father reported the matter to the Prophet who became irate and ordered that 'Abd Allāh should withdraw his words until she became clean again.(44) This condition might have been laid down due to the fact that during this period, according to the Qur'ān, husband and wife are not supposed to have sexual love which may cause temporary indifference between the two.

However, although the Qur'ān, in many passages, speaks against showing an inconsiderate haste in the case of divorcing a wife, as well as against any harsh treatment of her when a man finally decided to divorce, there was still great freedom for a husband to use his power rather unjustly. The reason for that being that in the Qur'ān, as in the Old Testament (45), no mention was given as far as the grounds of divorce were concerned. There were clear verses in the Qur'ān when a man was allowed to divorce his wife just on the mere desire to exchange one wife for another. For instance in surah 4:20 when there is a mention of <u>mahr</u> it was stated that -

> "And if you desire to exchange a wife in place of another, and you have given to one a hundredweight, take of it nothing."

Keeping the right of divorce in men's hands, the Qur'ān did favour women in the sense that it granted them the right to seek separation by ransoming themselves from their husbands. As it stated -

> "It is not lawful for you to take of what you have

> given them unless the couple fear they may not maintain God's bounds; if you fear they may not maintain God's bounds, it is no fault in them for her to redeem herself." (46)

In the time of the Prophet, there were cases when women sought separation by giving up their mahr. The wife of Thābit ibn Qais got released from her husband just on the basis that she did not like his unattractive personality. When she came to the Prophet and explained the case, the Prophet asked her to return the orchard which was given to her by Thābit as mahr. When she agreed to return the orchard, the Prophet asked Thābit to release her.(47)

The Qur'ān prohibited ẓihār, a kind of divorce in which a husband uttered some specific words for his wife which implied that his wife was his real mother and to approach her, therefore, as a wife, was considered unnatural. As the Qur'an stated -

> "Those of you who say, regarding their wives, 'Be as my mother's back, they are not truly their mothers; their mothers are only those who gave them birth, and they are surely saying a dishonourable saying, and a falsehood." (48)

The Qur'ān also, being patriarchal in nature, prescribed a law called 'iddah according to which divorced women were required to wait for three menstrual cycles before they could remarry, and widows for four months and ten days.

> "Divorced women shall wait by themselves for three periods; and it is not lawful for them to hide what God has created in their wombs... and those of you who die, leaving wives, they shall wait by themselves for four months and ten nights." (49)

The main wisdom behind such a legislation, as in the Old Testament, was to make sure about the pregnancy of the divorced woman so that there would have been no doubt as

to the physical paternity of the child born of such a woman. That is why in another passage in the Qur'ān, it was clearly stated that there was no 'iddah for those women who were divorced before the consummation of marriage.

> "O believers, when you marry believing women and then divorce them before you touch them, you have no period to reckon against them." (50)

As far as the public status of women was concerned, the Qur'ān did not grant them unlimited freedom. Being patriarchal in nature, the Qur'ān did not allow women to move in public as freely as men. There are verses in the Qur'ān in which men and women were asked to lower their gaze if they happened to meet and talk to one another. Nonetheless, much more emphasis was on women's behaviour and their dress, and they were demanded to be as simple as possible in their gestures.

> "Say to the believers, that they cast down their eyes and guard their private parts. And say to the believing women, that they cast down their eyes and guard their private parts, and reveal not their adornment save such as is outward; and let them cast their veils over their bosoms, and not reveal their adornment save to their husbands, or their fathers, or their husbands' fathers, or their sons, or their husbands' sons, or their brothers, or their brothers' sons, or their sisters' sons, or their women, or what their right hands own, or such men as attend them, not having sexual desire, or children who have not yet attained knowledge of women's private parts; nor let them stamp their feet, so that their hidden ornament may be known."(51)

If, on the one hand, the above verse asked women to hide their beauty, whether natural or artificial, from strangers, then on the other, it also indicated that women were allowed to go out without covering their faces. Otherwise there

was no need to ask men and women to lower their gaze if they happened to meet each other. There is a Ḥadīth which also proves that women were not demanded to cover their bodies from head to feet. Asm'ā, the daughter of Abū Bakr, came to the Prophet while she was wearing very thin clothes through which her body was visible. The Prophet turned his face away from her and said, 'O Asma when the woman attains her majority, it is not proper that any part of her body should be seen except this and this pointing to his face and his hands'. (52) There was another occasion in the time of the Prophet when Saudah bint Zum'a, the wife of the Prophet, came out of her house at night for some reason. 'Umar, after recognizing her, said, 'Saudah you can not hide from us'. Next morning Saudah came to the Prophet and mentioned it to him. God revealed His Command while the Prophet was having his food and Saudah was still there. When the process of revelation was over, the Prophet said, 'permission has been granted to you that you may go out for your needs'. (53) The Ḥadīth shows that when Saudah happened to go out she did not cover her face, if it was so, it would have been impossible for 'Umar to recognize her.

In another verse in the Qur'ān women were asked to use cloaks when they intended to go out -

> "O Prophet, say to thy wives and daughters and the believing women, that they draw their veils close to them; so it is likelier they will be known, and not hurt." (54)

The verse clearly establishes that women were allowed to go out for their needs otherwise where was the occasion for them to be troubled and molested by strangers. The fact

is that, as stated earlier, being a patriarchal religion, Islam is highly sensitive about the sexual behaviour of women. The Qur'ān, therefore, tried to stop all the opportunities by which women could be attractive to the opposite sex, or could have any chance for having illicit relations with someone other than their husbands. The Qur'ān stopped all the earlier practices when women used to go out freely with all their charm and beauty exposed, and demanded from Muslim women to wear distinguishing clothes and not to go out with their charm exposed.

> "Remain in your houses; and display not your finery, as did the pagans of old." (55)

The Prophet did not like stranger males to visit women alone and said that no man should go near any woman in the absence of her husband because Satan is circulating as blood in the veins of humans. (56) He also forbade women to travel alone if they intended to go for a night journey and asked them to take along one of the maḥrams. (57) The allowance for maḥram was simply to show that they were those persons with whom marital relations were forbidden.

Another device by which the Qur'ān could stop women from going out frequently was that it exempted women from all the anxieties of daily life, that is, earning a livelihood and supporting and protecting family members. It regarded men as responsible for the maintenance of women -

> "Men are the managers of the affairs of women for that God has preferred in bounty one of them over another, and for that they have expended of their property."

> "Lodge them where you are lodging, according to your means." (58)

The Qur'ān was so careful about the behaviour of women towards men that it demanded from them to speak in a straight forward manner rather 'cynically' without showing a sign of tenderness with men, so that such men would not be tempted to desirous thoughts about them.

> "Be not abject in your speech, so that he in whose heart is sickness may be lustful." (59)

Women were allowed to take part in the religious activities and the Prophet demanded husbands not to prevent their wives if they wished to go to the mosque for prayers.(60) Therefore, during the time of the Prophet it was an established practice that women came frequently into the mosque for prayers. However, several precautionary measures were prescribed for women if they intended to go to the mosque. For example, they were asked to stand in separate rows behind men and also they were forbidden to use any perfume or other decoration lest they attract the men. (61) The fact being that if the Qur'ān and Ḥadīth aimed at building a patriarchal society, as was the case, then it was not possible for them to grant women unrestricted freedom of movement. Therefore, whenever women were granted certain concessions in their movement, many rigid restrictions were imposed on their dress and behaviour. According to one Ḥadīth, women who remained 'naked' even after wearing dress, drew others into temptation, or moved in an alluring manner, were not entitled to enter paradise, nor to get even its fragrance.(62)

Regarding the political rights of women, there are no clear verses in the Qur'ān. However, according to a Ḥadīth, the Prophet is reported to have said that a nation would not prosper if it would be ruled by a woman. (63)

There was one point in which the Qur'ān was more positive than the other Scriptures and granted women a definite legal status. It negated the strong tradition of the Arabs according to which women had no right to inheritance as they were not able to fight in defence of their tribe.

> "To the men a share of what parents and kinsmen leave, and to the women a share of what parents and kinsmen leave, whether it be little or much, a share apportioned... to the male the like of the portion of two females." (64)

It was true that a woman was counted as half of a man again because of the patriarchal nature of the Qur'ān, and she received half of the inheritance compared with what the male received. However, she was better off than a Jewish woman who did not get any share if there happened to be a male in the family.(65) Furthermore, contrary to the Biblical Code which did not allow women even to make a pledge on their own whatsoever,(66) the Qur'ān vested in women all the rights that belong to them as an independent person. For example, it allowed women to retain the mahr as their wedding portion and their exclusive possession of which they had complete control to dispose of it as they wished. They were able to keep it as their own property, or, if they wished, they could transfer it or give it away as a gift to someone else.

III. CONCLUDING REMARKS

The foregoing discussion makes it clear that although the Qur'ān and the Prophet did try to ameliorate the position of women in certain matters, yet they did not give up their patriarchal character and hence discriminated between men and women by restricting women in many ways whenever it deemed necessary. It is worth considering that the Qur'ān and Ḥadīth do not propose women's inherent inferiority and

rather affirm the basic potential equality of the two sexes. This is obvious from many verses of the Qur'ān which discuss the creation of mankind, males and females as human beings and spiritual matters. However, in all sexual institutions such as marriage, polygamy and divorce, the bare inequality between the two sexes is due to the patriarchal structure of Islam. To restrain and limit women's power in and outside the family they have to be made subordinate to men legally, socially and politically. Inequality in such institutions can not be justified, especially within the Quranic framework which believes in the basic equality of the sexes and does not rest women's social and legal inequality on an ideological or biological basis. Therefore, whenever the Qur'ān or Ḥadīth accords men superior position to women no justification is given. For example, in the marriage institution where husbands are granted permission to have four wives and concubines no reference is made to the rights of women. Similarly when men are permitted to marry Jews or Christians the Qur'ān keeps quiet when it comes to women's right. Again in the matter of divorce, a husband's reason for divorcing his wife is not demanded; and also in the matter of witness and inheritance when women are counted as half of men, no clear justification is proposed. Even in the hereafter when both men and women have been promised the same reward for their deeds, only the men in surah 55:70-72 have been promised houries in the heaven. This shows how in a patriarchal policy women's sexual instinct is underestimated. The straight forward attitude of the Qur'ān regarding women's secondary position in social, legal and political institutions shows

the strong belief of the Qur'ān in the patriarchal system. The Prophet well understood the Quranic scheme and considered the family institution as most suitable for maintaining the patriarchal policies of the Qur'ān. Due to his kind nature, the Prophet enjoyed a very good reputation among women and they frequently came to seek his advice on different matters. He often safeguarded women's rights and gave verdicts, if he could within the framework of the Qur'ān, in favour of them. However, he did not violate the Quranic principles in any way. Once when women came to him complaining about the excessive beating of their husbands, he could not stop men from beating their wives and simply advised them not to beat their wives hard or on the face. (67) The reason of this attitude of the Prophet is simple and obvious namely that physical control of women is one of the main devices of the patriarchal system.

This patriarchal attitude of the Qur'ān and Ḥadīth was later well maintained by Islamic jurisprudence. Islamic law clearly maintained the male supremacy in and outside the family and in marriage and divorce institutions. Men could have four wives and several concubines to suit their whims. They could also divorce their wives without any reason by simply uttering the words "I divorce you". They were also awarded unlimited rights as legal guardians of their children. The unlimited rights of the father over his children are due to the importance of physical paternity and legitimacy of children emphasized by the Qur'ān and Ḥadīth. To have strict control over paternity, the Qur'ān allows women sexual

relations only with their husbands and also imposes on them a waiting period, ʿiddah. A detailed analysis of Islamic law with regard to male-female relations will be made in the next Chapter.

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C H A P T E R 4

WOMEN ACCORDING TO ISLAMIC LAW

I. PRIVATE STATUS

1. As Child :

As far as the Quranic and the Prophetic attitude with regard to woman as child is concerned, it has already been discussed briefly in the previous chapter in the light of reproaches made by the Qur'ān against the excesses committed towards daughters in pre-Islamic Arabia, and the exortation by the Prophet regarding kind treatment towards daughters. However, according to Islamic law which, in fact, is based on a human attempt to understand and implement the principles of the Qur'ān and the Ḥadīth, a child whether male or female is not regarded as legitimate unless its paternity is established. As Islamic law or sharī'ah is also based on patriarchal principles, the legitimacy of the child is a matter of great importance for his/her very existence in Muslim society. A child whose paternity is unknown is ruthlessly discarded by the Muslim society and the Islamic law does not grant him/her any rights from the father, nor is he or she entitled to get any maintenance and inheritance from the paternal side. (1)

As a general principle, Islamic law recognises only those children as legitimate who are born within the wedlock. The marriage contract is enough for the establishment of paternity without a claim, and the father of a child born

in wedlock is presumed to be the husband of the woman giving birth to it.(2) However, the husband may reject the child by imprecation, that is, to swear before the qaḍī that the child is illegitimate and the fruit of adultery.(3) As concubinage is recognised as an institution by Islamic law, for the establishment of the paternity of the child, born of a slave maiden, according to Islamic law, there is no need for the marriage contract and the child would be legitimate and be presumed as of the master, sometimes without and sometimes after any claim on his part. (4) Another point which is important for the establishment of paternity is the period of gestation. The minimum period, according to the jurists, is six months. Therefore, a child born within six months from the day of marriage is not considered legitimate. The maximum period granted to a woman who is divorced or widowed, for the legitimacy of her child, is two years according to Ḥanafī law and four years according to Mālikī and Shāfi'ī law. (5)

Once paternity is established, the child, whether male or female, is imputed to the father who then has a right to the child. (6) Since the child's descent is imputed to the father, it is the father who is absolutely bound to maintain his infant children of both sexes. If the child is suckling and its mother is married to the father she cannot be forced, according to Islamic law, to suckle it if the child would take the milk of another woman; and in the case of divorce, it is the father who would provide a nurse for his infant child at his own

expense. (7) However, if the father is poor and the child has no property, the mother may be compelled to suckle the child. (8)

The concessions granted to women in this regard are due to the patriarchal system of Islam where the mother gives birth to the child for the father, not for herself. This right of children to maintenance, in the case of female children, continues until they are married, but the father is not obliged to maintain his adult male children unless they are disabled by infirmity or disease. (9) In Islamic law, the father is also obliged to maintain his widowed or divorced daughter without reference to their ability to work. (10) This particular law regarding the maintenance of divorced or widowed daughters manifests quite clearly the patriarchal attitude of Islam where, to maintain male supremacy, it is necessary that women should not be the bread winners. During the period of their minority, children, whether male or female, have no power to dispose of either their persons or their property; they are, therefore, nominally in the charge of an elder person. And it is the father here who has first right to hold the office of guardianship on the basis that he is the head of the family. He keeps in his possession the property of the child and has the right to contract a marriage irrevocably on behalf of a minor of either sex. (11) Although there are verses in the Qur'ān and many traditions of the Prophet where the consent of a girl for the validity of marriage contract has been made necessary, yet regarding

younger girls, Islamic law does not grant this right and accords the father, or the grandfather, absolute power to the extent that, even after attaining their majority, the daughters do not have, according to many jurists, the right to cancel the contract. (12) In spite of the fact that the mother also is capable of acting in the best interest of her daughter, the jurists, in the absence of a father and grandfather, do not vest the matrimonial guardianship in the mother and it devolves instead upon the male paternal relatives or the qāḍī. (13)

Although the amount of inheritance to be taken by a son is not specified in the Qur'ān which, however has fixed definite 'shares' of a deceased person's property to other members of his family including the daughters, yet it is mentioned in the Qur'ān that males should be given the proportion of two females. Islamic law therefore makes a clear distinction between daughter and son when it comes to the question of inheritance, and the daughter receives in the proportion of one to every two received by the son. (14) The justification put forward by the jurists in this regard is that women are not even responsible for supporting themselves let alone anyone else, therefore, they are not entitled to get an equal share. Keeping in view the patriarchal system of Islam, it seems that the attitude of the jurists in this regard may be justified to some extent as they are bound to discriminate if they want to maintain the male supremacy that is important for the very existence of the patriarchal

system of Islam. Nonetheless, whatever the attitude of the Qur'ān, Ḥadīth or Islamic jurisprudence, it is a fact that the birth of a female child in Muslim societies is not welcomed as much as that of a male child and the daughters are regarded rather as a burden on the parents. In many Muslim countries they are even denied the fixed share of their father's estate, leaving aside numerous other social injustices in family matters. (15)

2. As Mother :

As has been discussed already, for the establishment of the patriarchal system, it is necessary that women should be kept segregated as far as possible and that they should be assigned such jobs as do not involve inter-relation with the opposite sex. Therefore, in Islam, great value and importance has been attached to motherhood, and women's main task in life is regarded as bearing and looking after the children. The Qur'ān has made repeated references with regard to the importance and respect of parenthood and has mentioned especially the mother who bears the child with much difficulty. (16) The Prophet has also attached enormous value to motherhood and has, in fact, granted women greater devotion and higher honour as far as her role in respect of the child is concerned. (17) However, in Islamic law, the father and the mother are not on the same footing as far as their rights to the children are concerned. According to Islamic law, the mother gives birth to the child for the father,

so that the children belong, in fact, to the father and not to the mother. And it is the father who is regarded as the natural guardian of the child and has alone the power to possess the property of the child and decide about the future of his children, especially regarding marriage. According to Islamic law, the mother is not entitled to marry off her minor daughter on her own, but it is the father who alone can marry off her minor daughter. (18) If the father be dead, the right devolves on the father's father or on any near or remote male paternal relatives in the same order as for inheritance.(19) Here it is noteworthy that even the most remote paternal relative takes precedence over the mother. This attitude of the jurists shows how they underestimated women's rights as mother for the sake of maintaining male dominance in the family. As long as parents are married and living together there is no ambiguity with regard to the custody of the child. Usually the father provides all the material necessities of the children and the mother cares for their welfare and early training. However, in the case of dispute or divorce though there is no specific period of ḥiḍānat or custody of the child in the Qur'ān, and there is a clear Ḥadīth in which the Prophet gave precedence to the mother with regard to the custody of the child, (20) yet Islamic law sets a term to the mother's care of her children and introduces modifications when there happens to be a dispute or divorce. As stated earlier, in the eyes of Islamic law the mother gives

birth to the child for the father and they, in fact, are recognised through him. The jurists recognise the mother's right of custody only in the period of the child's infancy and even here, there is a considerable difference of opinion among the various schools as to its duration. However, in general, the mother has the custody of a boy until he has completed seven years and that of a girl until puberty.(21) Once the boy or girl has passed this specific period, there remains no option and children henceforth come into the custody of the father and the position of the mother is then reduced to that of a nurse whose presence is indispensable for a limited period in the child's life. The preference of father's rights with regard to the children is due to the patriarchal system of Islam where not only the establishment of paternity is very important, but also the dominant position of the father is maintained at all costs. Unless the father is given final and absolute power over his children, he cannot maintain his dominant position in the family, nor would he be willing to pass his wealth to them unless they are called as his children. Thus, throughout Muslim history, although women, as mothers, have enjoyed much respect and honour, yet whenever it comes to the question of rightsover the children, it is the father who comes first and has claim over them.

3. As Wife :

(a) Marriage

Islam could be classed as a sex-positive religion because it regards sex as a good rather than an evil aspect of life. However, being a patriarchal system, Islam has a certain concept of sex morality and regards sex as immoral whenever it tends to break the limits or taboos prescribed by its laws. One of the methods by which Islam regulates sex is the institution of marriage. There are repeated references in the Qur'ān where marriage is regarded as a divine institution legalizing sexual intercourse for the purpose of creation. (22) The Prophet, too, has confirmed the Quranic injunctions by enjoining every adult Muslim to marry. He regarded marriage as the most powerful shield against wickedness and the protection of the private parts, and advised the man whose heart is fascinated by a strange woman to go to his wife and have intercourse with her so that his lust would be dissipated. (23) The attitude of the Qur'ān and the Ḥadīth regarding marriage rather implies that it is an act of worship, however, according to Islamic law, marriage is, strictly speaking, a civil contract which is not dependent for its due execution upon any religious ceremony. It is a contract between two members of the opposite sexes with a view to the enjoyment of both, the preservation of the human species, the fixing of descent, restraining men from debauchery and the encouragement of chastity in society as a whole. (24) In a patriarchal society, for the

establishment of paternity, the institution of marriage is a major consideration, and it is only, in fact, through marriage that the paternity of children is established and relationship and affinity traced. Therefore, in general, although the institution of marriage in Muslim societies has been regarded as partaking of both the nature of ʿibadat, i.e. religious and devotional act and Muʿāmalāt, i.e. dealings among men, yet much more emphasis is laid, among Muslims, on rituals and ceremonies which make marriage highly sacred, but at the same time a very complicated matter. According to Islamic fiqh, the marriage can be constituted without any ceremonial and special rites. The only essential requisite being the ʿījāb-wa-qubūl, the proposal of the alliance and its acceptance by each party in the presence of two witnesses. It is not necessary that the proposal should come necessarily from a particular side and the acceptance from the other, or that one should precede the other, which means a woman, like a man, can propose for marriage. (25)

(b) Marriage Consent and Option of Puberty

As far as the Qur'ān and the Ḥadīth are concerned, as stated earlier, both recognise the woman's right to marry the man she pleases. There are clear verses in the Qur'ān where the right of woman to give herself in marriage by her own will has been recognised and the guardians have been forbidden to interfere when a woman herself is agreed and satisfied. (26) Also according to one famous Ḥadīth, al-ayyim has greater right to dispose of herself in

marriage than her guardian. (27) Of the various meanings of the Arabic word al-ayyim, one is "the one who does not have a husband", that is, unmarried whether virgin, widow or divorced. This shows that all women, whether virgin or previously married, are entitled to give their approval for the marriage contract.

However, in spite of the clarity in the Qur'ān and the Ḥadīth regarding this right of women, the jurists have considerable differences of opinion in this regard. Abū Ḥanīfah, taking into consideration the Quranic verses and the Ḥadīth, grants woman, whether she be a virgin or divorced, the right to give herself in marriage at her own will without any intervention by the guardian. (28) Concerning the verse 2:30, Abū Ḥanīfah asserts that the paradigm which has been used in the verse is not plural, but for the two, that is, the husband and the wife. Therefore, there is no justification for the presence of a walī or guardian. He also cites verse 2:232, and claims that in this verse only the woman is the actual agent of marriage, and in this case guardians are expressly forbidden to put any hindrance between the two. 'Imām Mālik and Shāfi'ī, however, do not accept this right of women in the case of maidens and believe that the marriage performed only by women without the intervention of guardians are completely null and have no legal basis. (29)

To the author's mind, the view of Abū Ḥanīfah seems to be much more in accordance with the essentials of marriage as expressed by the Qur'ān. It is something

very simple to understand that when a woman has attained the age of majority, she has the right to dispose of her property without reference to her guardian, and this is accepted by all the jurists. Why then can not she be entitled to dispose of her person. Another point which can be made is that Islamic law does give women, after they attain their majority, the right of cancelling the marriage contract, in certain cases, if they were married in their childhood. So, if the views of 'Imām Mālik and Shāfi'ī, who do not allow women to marry by their own will, are accepted, where then does the above mentioned right of women of cancelling marriage contract brought about in their childhood stand? The right to cancel the marriage after attaining the age of majority is called in Islamic law Khiyar-al-bulugh, that is, the option of puberty. To deal with this right of women, it seems appropriate to discuss first whether it is permissible for the guardians to marry off their charges while they are immature and minors. There is no specific age in the Qur'ān when a girl should marry or be given in marriage. Nonetheless, there is one verse in the Qur'ān which does speak of an age for marriage which identifies it with the age of majority. It states -

> "Test well the orphans, until they reach the age of marrying" (30)

The phrase balaghū-al-nikāḥ clearly states that the age for marriage starts from puberty and not before that. However, fiqh recognises the right of the walī to give his

female child in marriage, especially if he be a father or grandfather. Thus it is permissible for the guardians in Muslim societies to marry off their girls while they are minors. (31) The verse which is put forward by the jurists to support this idea reads as follows -

> "As for your women who have despaired of further menstruating, if you are in doubt, their period shall be three months, and those who have not menstruated as yet." (32)

Of the above verse the phrase Wallā'ī lam yaḥiḍna, is attributed to immature girls or minors which is irrelevant as the word nisā' in the Arabic language is used for adults and not for minors. Further, there may be cases in which a woman reaches the age of majority but does not have her course due to anaemia or some other medical reasons. Therefore it might be with such exceptional cases that this verse deals. Sometimes support is sought from the marriage of ʿĀ'ishah, and this marriage is considered as sanctioning the marriage of a minor by her guardian. But there are two points which should not be lost sight of. First, the engagement of ʿĀ'ishah took place after the death of Khadījah in shawwāl 10 A.H. at Mecca, long before the details of Islamic law were revealed to the Prophet and, secondly, there is a considerable difference of opinion regarding the age of ʿĀ'ishah when she was actually married to the Prophet. Therefore this precedence can not be taken as support for allowing guardians to marry their minors.

However, as stated earlier, fiqh does accept the

legality of the consent of a guardian on behalf of his ward and, according to the jurists, the guardians are allowed to marry off their younger daughters. The question arises as to what would happen if the girl, after attaining her majority, does not wish to consummate marriage. According to Ḥanafī law, the girl can use her option of puberty if the marriage was performed by others and not by her father or grandfather. (33) However, if the marriage was solemnized either by her father or grandfather, the girl, according to the jurists, does not have any right to repudiate the marriage, neither as a minor nor when she attains her majority. (34) Nevertheless, in certain cases, a marriage contracted by the father or grandfather can be set aside; for instance, according to Shāfi'ī, if a minor girl is married to a person who is not her equal the marriage can be cancelled. Similarly, according to the Ḥanafites, when it has been confirmed that father or grandfather is a man of bad character or has misused his right, that is, he has already married his previous daughter in one of the three conditions viz, either he married her with an impious man or fixed her dower at less than the mahr mithl or married her into a different caste, the girl has the right to cancel the marriage the moment she sees the first drop of menstrual blood, otherwise she loses it altogether. (35) If she sees the signs of puberty on an occasion when she can not have any witness, she must say to herself that she has cancelled her marriage. And thereafter, when she has the opportunity to find a witness, she should state to the witnesses that

she has seen the sign of puberty just now and that she is going to cancel her marriage. Although it is a lie, it is permissible as it goes to fulfil a requisite of the sharī'ah. (36) Here it is noteworthy that the option of a boy, according to all the jurists, does not come to an end until he declares his consent openly. (37)

Although the Ḥanafites have awarded some concessions regarding the right of a minor to cancel her marriage, yet some points are worth consideration.

Firstly, while allowing women to cancel their marriage, the Ḥanafites laid down the condition that they must use this right the moment they see the signs of puberty. If they do not use this right immediately they will not have any right to repudiate the marriage throughout their life. To limit the time within some seconds or minutes does not seem to be practicable as there may be occasions when a girl does not have any witness. And the answers to this excuse given by the Ḥanafī code also seems to be extreme in that after finding witnessses, she can tell a lie that she has seen the signs "right now".

Secondly, how could it be possible for a girl who is considered just before puberty a helpless, unwise and indecisive person, to attain all the prudence, wisdom and authority at the moment she attains puberty.

Thirdly, how is it possible for every girl to know all the details of fiqh so that she would use her right in such a short time. There may be occasions when a girl is not happy with her marriage, but at the same time she is ignorant of her right. The fourth point arises when

a father or grandfather, being a walī, misuses his right. In this situation, Ḥanafī law gives a concession to the second daughter that she could repudiate the marriage, but it does not give the same right to the first daughter who had already suffered from the same injustice at the hands of her father or grandfather.

In fact, there is no declaration in the Qur'ān about the unlimited rights of the walī over their daughter in connection with marriage; and the Ḥadīth, too, does not recognise the father or any other guardian as the final authority. This is the fiqh which has accepted this unlimited matrimonial right of the father over his minors due to its strict patriarchal approach. The argument put forward by the jurists in favour of the final authority of the father or grandfather, regarding their power to give their daughters into marriage to whom they wish, is that the father and grandfather must be sincere to their daughters and that, therefore, they would not act against their interests. (38) It is, in fact, a very biased attitude of the male jurists that they have ignored, altogether, the sincerity of the mother to her children who, in general, is more loving and sincere than the father regarding the welfare of the children. (It should be born in mind that according to Islamic law, the mother is not entitled to marry off her minor daughter on her own. (39)). There might be cases in the world when a father may be more avaricious of wealth than concerned for his children's future. Even then, if the assumption is accepted that the father and grandfather do not act

against the interest of their children, then the question arises as to why they lose their power over a grown-up girl whose express consent is necessary for a valid marriage.

The fact is that the whole question regarding the marriage consent of the girl has been implicated or confused by the jurists due to the simple reason that Islamic law, especially with regard to the family, is based on patriarchal principles where the freedom of choice and action for women is regarded as dangerous for the dominant position of men. Therefore, although women might be allowed to choose their husbands on their own, like men, and it might be the usual practice in Muslim countries, yet the fact is that throughout the Muslim world, the system of arranged marriages is accepted as the general principle and usually the girls see their husbands only on the night when they become officially their wives.

(c) Mahr (Dower)

According to the Qur'ān, as stated earlier, mahr is a nuptial gift to the wife by her husband at the time of marriage and there are repeated references in the Qur'an where the payment of mahr is regarded as essential. (40) The Prophet, too, regarded mahr as an essential part of the marriage and said that a dower must be given to wives even if it is only a ring of iron.(41) He also regarded mahr as an amount which should be handed over to the wife at marriage. There is a

Ḥadīth which states that when 'Alī, the fourth caliph, married Faṭimah, the daughter of the Prophet, and intended to cohabit with her, the Prophet stopped 'Alī from doing that until he had paid something as a dower. And 'Alī gave his chain-mail armour to her. (42)

However, according to Islamic law, the dower is defined to be property or a sum of money which is an effect of the contract, imposed by the law on the husband as a token of respect for the woman. (43) The jurists divide mahr into two categories which in fact weakenes the real purpose of mahr. One part which is called mu'ajjal is supposed to be paid promptly, but is usually postponed until the wife demands it; the other is ghayr mu'ajjal which is supposed to be paid at a deferred time, but is never paid during the continuance of the marriage and the wife is not entitled to demand it as long as she is living under the marriage bond. (44) As a result, in practice, mahr has been treated in Muslim countries simply as a check upon the power of the husband to divorce his wife. On the marriage occasion an extravagant mahr is settled, either due to ostentation or to stop the husband from divorcing his wife immediately. Even mahr mu'ajjal, which should be handed over to the wife immediately, is usually received by the wife either after the death of her husband or at the time of the dissolution of their marriage; and ghayr mu'ajjal just appears on paper and, in most of the cases, is never paid. (45)

Due to the indispensability of mahr, if the amount

is not fixed beforehand, according to Islamic law, the wife is automatically entitled to the mahr mithl that is, a proper dower, even if the marriage was constructed on the express condition that she should not claim any dower. Mahr mithl or proper dower would be fixed according to the amount paid to female members of her father's family such as, her father's sister etc. which means it is to be fixed with reference to the social position of her father's family. In this case the girl's own beauty, youth, accomplishment and social condition, i.e., virgin, widow or divorced status is also considered. (46) As it is purely a free gift to the wife, all powers of custody, remission etc in respect of mahr lie with the bride. She is entitled to refuse to cohabit with her husband, to obey his orders, or to live in the same house with him so long as the dower remains unpaid. Similarly if the husband dies before having paid her dower, the widow can retain possession of the property of her deceased husband until her dower is paid. (47)

According to the Qur'ān, there is no maximum or minimum amount of mahr. As the Qur'ān states -

> "And if you desire to exchange a wife in place of another, and you have given to one a hundredweight, take of it nothing."(48)

The Ḥadīth, also, does not fix any specific amount of dower and the Prophet himself, although he did not pay more than five hundred dirhams to most of his wives, yet in the case of Umm Ḥabibah the mahr was fixed at four thousand dirhams. (49) This explicitly indicates that

no maximum limit can be laid on the amount of dower. Such was also the case in the minimum amount of dower. ʿAbd al-Raḥmān fixed some gold as dower which was only worth five dirhams in the life time of the Prophet and he did not object to it. (50)

Nonetheless, limitations have been introduced by various legal schools. According to the Shāfites and Shiites, there is no specified minimum, while the Ḥanafites do not regard marriage valid unless the amount of dower is one dīnār or ten dirhams. Malikī law regards three dirhams as the minimum. (51) According to ʿUmar, the second Caliph, the dower should not be fixed at a high rate, for if this had been pleasing to God, the Prophet too would have fixed a high amount of dower. (52) This statement of ʿUmar seems to be contradictory to the verse 4:20, in the Qur'ān, in which it is established that there is no limit for the amount of dower.

For the fixing of the mahr, there is no particular time and it may be fixed either before, at the time of marriage or after the marriage. However, the dower becomes confirmed by the consummation of the marriage or by the death of either the husband or the wife. Therefore, in the case of divorce given by the husband, the wife is entitled to get all the specified amount of the dower. But if the divorce occurs before the consummation of marriage, the wife is entitled to get only half the amount of the dower. Nonetheless, if the separation occurs at the will of the wife in the form of khulʿ she is not entitled to get any mahr. (53) In the case of fixing no

mahr at the time of marriage, if the divorce takes place before the consummation of the marriage, according to the Ḥanafites, a present, consisting of three articles of dress would be rendered to the woman as a tribute. However, in the case of the death of either of the spouses, whether the marriage has been consummated or not, the woman or her heir would be entitled to get all the amount of dower if it was specified, otherwise a proper dower is given. (54)

(d) Polygamy and Concubinage

One important aspect of the institution of marriage in Islam is that of polygamy which, in fact, has been controversial due to the ambiguity of the Quranic wording which gives permission for the plurality of the wives. The only verse in the Qur'ān regarding polygamy reads as follows -

> "If you fear that you will not act justly towards the orphans, marry such women as seem good to you, two, three, four; but if you fear you will not be equitable, then only one." (55)

The above verse is not self-explanatory and involves many doubts, for example, who is being addressed, the guardians of the orphans or the Muslim in general or the leaders of the State etc; and similarly what does it mean by "orphans", are these the children of the women who were widows or the orphan girls who were unmarried and were under the custody of their guardians? However, whatever the explanation of the said verse, according to Islamic law, it is lawful for a man to have as many as four wives

at the same time, but no more; it is not lawful for a woman to have two or more husbands at the same time. (56) In other words, as far as the plurality of the wives is concerned, Islamic law, based on patriarchal principles, puts aside all the different explanations of the verse, and without restricting polygamy to certain conditions, simply allows a man to have four wives; on the contrary, it does not allow a woman, in any circumstance, to have more than one husband at a time. The reason for disapproving of polyandry is clear if one keeps in mind that the family laws of Islam are of a patriarchal nature. The institution of a family in a patriarchal set-up can operate effectively in the case of polygamy, but it would simply disintegrate under polyandry. Polyandrous families can only operate effectively in a matriarchal society where fatherhood is not of much importance. In a patriarchal system, if a woman is allowed to have more than one husband, there would be many doubts about the paternity of the child which is very important for the very existence of patriarchal society.

Although Islamic law has allowed polygamy and does not make it complicated by putting many conditions on its practice, yet the question has been much debated in the past, and is debated at the present time too, due to the ambiguity of the verse in the Qur'ān which deals with polygamy. There is a group of Muslims, who might be called "apologists", "modernists" or "rationalists" which relates the verse to the problem of orphans and widows. That is, the plurality of wives is an exceptional clause

of the Qur'ān which would be acted upon when there is such a problem, viz, the problem of orphans and widows. Some prominent advocates of this group are Ameer 'Alī, Ghulām Aḥmed Parvez, Qasim Amin, Chiragh 'Alī and Muhammad 'Abduh etc. According to the opinion of these Muslim writers, this verse was revealed after the battle of Uḥud, the time when the Muslims were engaged in fighting a long series of battles with the unbelievers. In this battle a number of men who were the supporters and bread-winners of their families lost their lives, leaving behind widows and orphans. These widows were not able to support themselves and their children and were empty handed. Therefore, it was under these conditions that this verse was revealed giving permission to marry more than one wife up to the number of four, so that the widows and orphans might be able to find a home and shelter. This permission too was restricted with a necessary condition that men must do justice to all their wives, and if they fear they cannot do justice among their wives they were commanded to marry only one. To support their idea, these modern writers lay much stress on the fact that in marrying many widows the Prophet, in fact, acted in the spirit and according to the real intention of the Qur'ān. To some extent, their argument is strong enough, as the Prophet really married a number of women, all of whom were widows and old, with the only exception of 'A'ishah, and it seems that it was done just to give them protection and shelter as many Western writers also think -

"Mohammad himself, it is true, married several

> wives, but in most cases he had recourse to polygamy out of a sense of duty towards friends fallen in battle in his cause." (57)

However, there is another school of thought regarding polygamy which can not be overlooked. This group, which consists of orthodox Muslims, does not readily accept the view of the rationalists and believes that the verse only prohibits marrying more than four wives. If, therefore, somebody resorts to polygamy, up to four and not more than that, he does not act against the Qur'ān and the sunnah, and is allowed to do so as far as he would deal justly among his wives. This commonly accepted view of the matter by the jurists, orthodox Muslims and even by some modern Muslim writers like Khuda Bakhsh, is mainly based on the interpretation of 'Ā'ishah regarding the verse of polygamy. According to the interpretation of 'Ā'ishah of the verse 4:3, it means the orphan girl who is under the care of her guardian, and her guardian wishes to marry her because of her property and beauty without being just in regard to her mahr. Thus he was forbidden to marry her unless he would do justice to her and give her dower according to the usage, and, therefore, he was commanded to marry other women up to four who seemed good to him. (58)

Keeping in view the patriarchal structure of Islam, especially regarding the family, the second group seems to be closer to the real intention of the Quranic injunctions whereby a limited polygamy might have been permitted. There is another verse in the same chapter which has been rather overlooked by the "apologists". This verse 127, in

fact, provides further explanation of the third verse. It reads as follows -

> "They will ask thee for a pronouncement concerning women. Say: 'God pronounces to you concerning them, and what is recited to you in the Book concerning the orphan women to whom you give not what is prescribed for them, and yet desire to marry them'." (59)

In this verse the Prophet has been asked to tell the people that it is permissible for them to marry orphan girls. Then referring back to verse 3, it is clear that in this verse only those orphan girls were forbidden to be taken as wives whose guardians, although they were desirous of marrying them owing to their beauty and property, were not, at the same time, willing to pay their dower. If the two forementioned verses are read together, it becomes obvious that the permission for a plurality of wives was not conditional, as argued by the first group, by the problems of orphans and widows whereby the problem of the orphans was to be solved by marrying the widowed mothers. It was rather a simple choice for a Muslim male that if he fears he will not deal fairly with the orphan girls, then he should not marry them; but he can marry other women who seem good to him up to four, of course, with the condition that he would deal justly with them. How this permission was interpreted in the patriarchal set-up of Muslim society will be seen later when we deal with Pakistan. However, on the whole the advantage of such permission is not taken by the generality of Muslims, and especially among the poorer classes where one wife is the rule. (60)

In the question of permitting concubines to Muslims, there is a considerable difference of opinion and practice among Muslims. In the Qur'ān, reference has been made in

several verses concerning sex relations between the slave women and their masters in the words, "aw mā malakat aymānukum", which has been discussed in the earlier chapter. The Prophet, too, clearly recognised the institution of concubinage in Islam. There are many Ḥadīths which prove that the companions of the Prophet did have sexual relations without contracting marriage, with the women, married or unmarried, who were captured in war. According to Abū Sa'id al Khudrī -

> "We took women captives, and we wanted to do 'azl with them. We then asked Allah's Messenger about it, and he said to us: Verily you do it, verily you do it, but the soul which has to be born until the Day of judgement must be born." (61)

On another occasion, the same companion of the Prophet is reported to have said that at the battle of Ḥunayn the Prophet sent an army to Auṭās and encountered the enemy and fought with them. Having overcome them and taken them captives, the companions of the Prophet seemed to refrain from having intercourse with captive women because their husbands were polytheists. Then God sent down the verse 4:24, according to which they were lawful for them when their 'iddah period came to an end. (62)

Keeping in view the verses of the Qur'ān and the attitude of the companions of the Prophet, it seems that both the Qur'ān and the Ḥadīth are not reluctant to allow men to have sexual relations with the women who are captured in war and are thus reduced to slavery.

In Islamic law, therefore, the master of a female slave has a right to enjoy his female slave, and his children by her, if acknowledged, have the same rights and privileges as

his children by his wife. However, if there is no acknowledgement or claim of the child on the part of the master, its descent from him is not established and the child belongs to mother and is considered as a slave. (63) Islamic law, in fact, has treated concubinage like the institutions of marriage and has provided every detail regarding the rights of slave concubines and their children born by their masters. Nonetheless, concubinage is expressly differentiated from marriage in Islamic law by the fact that no free Muslim woman, but only a female slave is, or can be held in concubinage. The second difference is that, in the matter of concubines, there is no limit about the number, and a man can have any number of concubines. However, the law prescribes some restrictions on the full power of the master over his female slaves. For example, they must be Muslim, Jew or Christian women or the master must delay cohabitation with a newly acquired slave for a period so that it may be ascertained if she is pregnant etc. (64) When a slave girl bears a child to her master and it is acknowledged by him, she becomes, according to the law, his umm-wulud and is entitled not to be sold and to be emancipated at his death. As compared to those concubines whose children are not acknowledged by the master although they are his, an umm-wulud enjoys a better position and becomes his firāsh, that means, a concubine who has been set apart for family purposes. (65) However, a concubine is not as respected or treated as a wife, for example, the child of a concubine may lawfully be rejected by a simple denial, whereas that of a wife, can not be rejected except by li'an or imprecation. (66)

(e) The Wife at Home and the Family

As observed in the earlier chapter the family in Islam is patriarchal. The women, therefore, have been placed one degree below their husbands. The Qur'ān establishes very clearly the superiority of the husband over his wife and there is no doubt that in this matter it has adopted very strict patriarchal attitudes to the extent that it even allows the husband to beat his wife if she is not obedient. (67) It also exempts women from being the breadwinners and devolves upon the husbands the duty to earn the livelihood so that they may maintain their superiority over wives without difficulty.(68) In view of the established male dominance the Prophet, who was rather lenient towards women, did try to stop men from being cruel to their wives, for instance, he said "Show fear towards God regarding women, for you have got them under God's security"; and on another occasion, he advised men "None of you must whip his wife as a slave is whipped." (69) However, he too maintained the superiority of men to the extent that he said, "If I were to order anyone to prostrate himself before another, I would order a woman to prostrate herself before her husband." (70)

In Islamic law, the wife is mainly responsible for the care of her home and the welfare of her family. However, this is not her legal responsibility especially if the husband is rich. In this case, if the wife refuses to do household work, the husband is bound to provide a servant for her. (71) After she acquires the status of a wife, a woman is placed in such a condition that she may be prevented from going out and showing

herself in public, and the husband is allowed to control her freedom of movement within certain limits. (72) The wife is also bound to reside in the house of her husband, therefore, a condition that the wife shall, although adult, be at liberty to live in the house of her parents, is void. However, if the husband has not paid the dower or the prompt portion of it, the wife is not only entitled to refuse cohabitation, but also to live in his house and obey his orders. (73)

The wife is obliged to obey the reasonable command of her husband and is demanded to observe strict conjugal fidelity, whether the dower has or has not been paid, and is not allowed to see any stranger without the permission of her husband. If she disobeys or becomes rebellious, the husband is allowed, according to the law, to correct her in which ever way he deems proper; of course not by hurting her cruelly.(74)

The wife who is entitled to be maintained by her husband loses this right if she is rebellious, that means, goes out from her husband's house and denies herself to him. (75) However, in ordinary circumstances, if the husband denies maintenance to his wife, or commits gross violation on his part of the conjugal obligations, or becomes violent in his behaviour, the wife can sue him in a civil court for her rights. (76) She can also leave the house of her husband if he threatens her with such cruelty as to endanger her personal safety. She is entitled to be provided with proper accommodation separate from the husband's relations and also, if the husband has more than one wife, to be treated on terms of strict equality with the others. (77)

She may at any time, with or without notification of reason, be divorced by her husband, and has the right to seek separation by the procedure called khul' from her husband, but with his consent. If he refuses, then she has to go to the court. (78) However, she may stipulate for power to dissolve the marriage. For instance, it can be lawfully stipulated that if the husband marries another woman, the latter will be divorced at the time of such a marriage. (79) By marrying a woman, the husband does not require any right over the property of his wife and whatever property she had at the time of marriage remains absolutely her own and at her disposal. In other words, the legal capacity of a woman is in no way affected by being a wife. (80)

In short, the wife enjoys respect and certain rights when she recognises her husband as responsible for running the family affairs, including maintenance, and thus obeys him, even if his judgement is not acceptable to her. She may be given the chance to express her opinion and make her suggestions in certain matters, but the best role she can play in keeping and strengthening the marital tie is to be obedient to her husband more or less in every matter and faithful to him in the conjugal relations, and to ensure this she is encouraged to seclude herself from the public. The moment she is disobedient, she loses most of her dignity as well as rights and is treated harshly by Islamic law, including the Qur'ān, the Ḥadīth, and the Muslim community. If one notes the mutual rights and responsibilities of husband and wife accorded by Islamic law, it becomes clear

that the husband owes very little moral duties to his wife as compared to the wife who not only is expected to give obedience, but also strict conjugal fidelity. The right, or rather the duty of a husband to command his wife is incorporated in his right to correct her by physical force if necessary. The Qur'ān itself recommends such a measure which later was justified and emphasized by the saying of the Prophet and by social order. Some famous sayings of the Prophet read as follows -

> "When a man calls his wife to satisfy his desire and she refuses, the angels curse her until the morning."
>
> "(The best woman is) the one who pleases (her husband) when he looks at her, obeys him when he gives a command and does not go against his wishes regarding her person or property by doing anything of which he disapproves."
>
> "A man will not be asked about why he beat his wife." (81)

The authenticity of the above mentioned Ḥadīths might be doubted, or they might have been influenced by the prejudice of their collectors towards women. However, such kind of traditions have been exploited by the majority of the Muslims and they have been treating their wives quite impatiently and roughly. Practical examples may be seen while dealing with Pakistani Muslim women.

(f) Divorce

As has been discussed in the earlier chapter, the Qur'ān and the Ḥadīth have, in general, provided abundant details about divorce, and there are express injunctions on

the matter. However, the fact is that the Qur'ān has concentrated more on the actual procedure, and the husband's financial and other responsibilities towards the divorced woman and her children, than on the grounds for divorce. The interpreters of the law have, therefore, profoundly influenced this particular matter. The way the jurists have treated divorce and taken advantage of even the mere slip of the husband's tongue seems ridiculous when the procedure prescribed by the Qur'ān is kept in view, or when one looks at the famous saying of the Prophet that "The lawful thing which God hates most is divorce." (82) Justice Abdur Rahim, the author of the "Principles of Muhammadan Jurisprudence", comments on the attitude of the jurists in the following words -

> "I may remark that the interpretation of the law of divorce by the jurists, especially of the Ḥanafī school, is one flagrant instance where because of their literal adherence to mere words and a certain tendency towards subtleties they have reached a result in direct antagonism to the admitted policy of the law on the subject . . . It may well be said that they have made divorce too easy." (83)

However, for dissolving a marriage contract, Islamic law has provided different methods to be followed by both, the husband and the wife. A husband can repudiate his wife by adopting the method of ṭalāq, 'īla and ẓihār; and the wife can separate herself from her husband by using her right of ṭalāq tafwīḍ, khul' and by judicial process. (84) Besides these methods, there is another kind of divorce called mubārāh which depends on mutual consent of the husband and wife.

(i) Ṭalāq : In the terminology of the jurists, ṭalāq is a release from the marriage tie either immediately or eventually by the use of special words. It is a general name for all divorces, but is especially applied to the repudiation which takes place by or on behalf of the husband. Any Muslim of sound mind who has attained puberty can repudiate his wife whether he be free or slave, willingly or acting under compulsion, and even though it were uttered in jest or by a mere slip of the tongue. (85) A divorce is valid, according to Ḥanafī law, if pronounced under compulsion or in a state of intoxication. (86) According to the jurists, there are two kinds of repudiation. The one which is called sunnī and is agreeable to the sunnah of the Prophet, and the other termed bid'ah which is new or irregular. (87) The sunnī form of repudiation is again of two types, the aḥsan or the best and the ḥasan or good.

Ṭalāq aḥsan consists of a single pronouncement of divorce made during a period of ṭuhr, i.e. when the woman is free from her menstrual course, followed by abstinence from sexual intercourse for the period of 'iddah. (88) It is the procedure which, in fact, has been approved by the Qur'ān and the Prophet when the spouses have a chance to be reconciled during the 'iddah period or remarry if the 'iddah is over. A pronouncement made in the aḥsan form of divorce is revocable during the period of 'iddah and this period is three months from the date of declaration or in case of woman's pregnancy until the delivery. This divorce has no

other effect till the 'iddah expires. The husband can revoke the divorce by resuming conjugal relations. If either spouse dies during their period, the other inherits as a spouse. (89)

Ṭalāq ḥasan consists of three pronouncements made during successive periods between menstruation, no intercourse taking place during any three of them. (90) This mode of ṭalāq becomes irrevocable and complete on the third pronouncement irrespective of the 'iddah. This form of divorce is also an approved form, but less approved than the first one, because in this case it is difficult for the spouses to remarry unless the wife should undergo a procedure called ḥalālah. Nonetheless, it is obvious that in these two forms, there is a chance for the parties to be reconciled by the intervention of their relatives and friends, and thus they maintain the essence of what has been prescribed in a nutshell by the Qur'ān and the Ḥadīth.

Ṭalāq bid'ah consists of three pronouncements made during a single period of ṭuhr either in one sentence, for example, "I divorce thee thrice", or in separate sentences, for instance, "I divorce thee - I divorce thee - I divorce thee." This form is also of two categories. The one when the pronouncement of divorce is in respect of the number, and the other when it is in respect of the time. The first one is when a husband repudiates his wife twice or thrice in one ṭuhr, either in a single sentence or in different sentences. The other is when a man repudiates his wife during the period of her menstruation or during a ṭuhr in

which there has been a sexual intercourse, by a single irrevocable pronouncement. In the first form the repudiation becomes a complete divorce as soon as the number amounts to three and the husband's right over the wife ceases at once and can not be resumed until the wife marries another person and gets a divorce; while in the second form the repudiation does not become valid until the expiration of the ʿiddah. (91) Such a ṭalāq is a new and irregular form of repudiation which came into existence in the time of ʿUmar, the second caliph, and is entirely against the spirit of the Qur'ān. According to one Ḥadīth, the pronouncement of three divorces was treated as one during the life time of the Prophet and that of Abū Bakr and the first two years of the Caliphate of ʿUmar. (92) There is a case during the time of the Prophet when Rakānah ʿAbd-Yazīd divorced his wife thrice in a single sitting. He came to the Prophet and stated that he did not mean to give a final divorce. The Prophet relied on his wording and declared the divorce as one, that is, revocable. (93) However, the majority of the jurists accept this divorce as a final separation, though they hold the view that it is against the spirit of the sharīʿah. In prescribing the two or three pronouncements of divorce separated by fixed intervals of time, it was intended to leave open the opportunity of reconciliation which is not possible if this kind of divorce i.e. bidʿah is accepted as final.

(ii) 'Īlā : According to Islamic jurisprudence, 'īlā which literally means swearing, is a husband's prohibition on himself from having sex with his wife for four months. (94) If he does not approach her during these four months, the wife is entitled to a dissolution of marriage and she becomes irrevocably repudiated by one repudiation. But if he does not keep his vow and revokes the oath by the resumption of marital life, he is liable to a penalty, that is, he may free a slave or feed ten poor people, and if he can not do this then he must fast for three days. (95) By pronouncing an 'īlā, the husband repudiates his wife once irrevocably whether or not it be three times at one meeting. (96) This form of divorce though an accepted and established code of law is hardly practised by Muslims, for example, in India, according to the Sharī'ah Act 1937, it is permissible for a husband to repudiate his wife by 'īlā, but it is very rare and has no practical importance. (97)

(iii) Ẓihār : It is a kind of separation, though temporary, and has its effects in the eyes of Islamic law. A man who pronounces ẓihār i.e. compares his wife to any of his female relations within prohibited degrees of kindred, whether by blood, by fosterage or by marriage as renders marriage with them invariably unlawful, makes matrimonial intercourse illegal until the expiation has been made. (98) If ẓihār is limited by time and the husband approaches her within the

time, expiation is obligatory on him, but if he does not approach her until the expiration of the time, ẓihār itself is cancelled and the expiation lapses. (99) When ẓihār has been taken, the wife is entitled to go to the court and obtain a divorce or if she wishes she can ask her husband to return to his matrimonial duties on expiation. (100) Like divorce, ẓihār takes effect without specific intent. If a man has said to his wife, "Thy back is to me as the back of my mother", he would be considered as muẓāhir whether he intended ẓihār or not. However, to be muẓāhir, it is necessary that the husband should be capable of making expiation, therefore, the ẓihār of an immature boy, a ẓimmī, an insane man and a lunatic is not valid. (101)

In short, whatever would be the mode of repudiation by the husband, it is obvious that, as compared to the wife, the husband has been granted more concessions. Though the Qur'ān has suggested a reconcilatory procedure before a husband divorces his wife, yet in Islamic law it is not an essential part of divorce itself. If a husband desires to divorce his wife, he does not need to justify his act or will and he can divorce her without establishing a reasonable cause of his act. One point which is worth noticing is that, according to Islamic law, except when the divorce is irrevocable, the husband is allowed to restore the conjugal relations even if the wife is not willing to do so. (102) This dominant position of men in sexual matters is again due to the patriarchal policies of the jurists. Although the Qur'ān does not differentiate greatly in sexual matters, Islamic law and norms of

patriarchal Muslim societies have always underestimated the women's need for sexual gratification. Her duty is always to be ready to "comfort" her husband.

(iv) Mubārāh : The contract of marriage may be dissolved by the mutual consent of the husband and wife. This separation is different from Khul' in the sense that in this case the aversion is mutual and both sides desire a separation and, like Khul', the wife does not need to pay any amount of money etc. This separation operates as a single irrevocable divorce, so that, spouses cannot resume their marital life unless a formal marriage has taken place. (103) This kind of separation is extremely rare because in this case the husband does not receive any compensation, as he can get in the case of Khul'.

(v) Ṭalāq al-tafwīḍ : In this kind of repudiation, the husband delegates his power and right to divorce to his wife. The wife has the right to have this power delegated to her at the time of entering into the contract of marriage. Once the husband has confessed such power, he can not afterwards revoke it and it will depend on the wife whether to exercise the power or not. (104) She has also the right to enter into an agreement with her husband, whether before or after marriage, by which it is provided that the wife should be at liberty to divorce herself in specified contingencies; but the conditions should be reasonable and not opposed to the policy of Muslim law. When such an agreement is made, the wife may, at any time, repudiate herself in the exercise of her power and a

divorce will take effect to the same extent as if the ṭalāq has been pronounced by the husband.(105) According to some Muslim scholars, this is a great weapon in the hands of a Muslim wife to protect her rights in the future. But the fact is that although the wife may be vested with the husband's power in certain cases, yet she can not be awarded an unrestricted right, such as the husband possesses, to repudiate herself entirely at her own will. (106)

(vi) Khul' : According to the jurists, khul' signifies an agreement entered into by the husband and the wife for the purpose of dissolving the marriage, in lieu of a compensation paid by the wife to her husband. (107) There are two essential conditions for khul', the one, the common consent of the husband and the wife, and the second, some 'iwaḍ or consideration passing from the wife to the husband for her redemption. (108) Payment usually takes the form of returning or forfeiting the dower, but this is not absolutely necessary. The consideration may be anything which the parties agree upon. According to Ḥanafites, a separation made by khul' may be valid before or after the consummation of marriage and without the payment of compensation by the wife. (109) Failure on the wife's part to pay the consideration agreed upon in a khul' agreement does not invalidate the divorce, though the husband may sue her for that. (110) How much should be paid by the wife as ransom, is the question on which jurists differ. According to Abū Ḥanīfah and Aḥmed Ibn-Ḥanbal, it is permissible for the husband to take back what he has given her as dower but not more than that. While Mālik and Shāfi'ī hold

the view that the man can have more than what he gave to his wife as dower. (111)

The fact is that the whole procedure of khul' depends on the mutual understanding of the spouses and no one else, and not even the court, would be justified in making a presumption one way or the other. But if the conflict arises and is brought to the court, each case should be decided with reference to the facts. However, the attitude of the Prophet in the case of the wife of Thābit Ibn-Qays, proves that he did not approve any extra amount of money to be paid by the wife for her redemption. Khul' operates as a single irrevocable divorce and causes every right to cease which either party has against the other. (112) In such a separation, the wife does not lose her mahr except when she has agreed to pay this as ransom to release herself from her husband. But as far as her right to stay in her husband's house till the 'iddah expires is concerned, it can not be denied even by any mutual agreement. (113)

The difference between khul' and divorce is that, in divorce the husband does not need to ask the permission of his wife nor is he obliged to give any reason for the divorce, while in khul' the wife has to seek the permission of her husband and if he does not agree she has to go to the court where she must convince the court about the legitimacy of her claim. The discrimination between men and women in this regard, is due to the patriarchal system of Islam where the man is superior and the head of the family.

(vii) Judicial Process : The wife can secure divorce along with her dower as well as the maintenance allowance, by the

intervention of the court on the following grounds -

1. If the husband accuses his wife of adultery.
2. If a wife was married while she was an infant and she does not like it after attaining puberty.
3. If the husband fails to provide for the economic needs of his wife.
4. Infectious diseases and impotence in the husband.
5. The disappearance of the husband.
6. A change of religion. (114)

An accusation of adultery : As the Qur'ān is highly sensitive about the sexual attitudes of women and they are commanded not to have sexual relations with any but their husband, Islamic law, therefore, takes a very serious view of slandering a wife. In such a case, the wife is entitled to file a suit for the dissolution of marriage. After filing the suit, if the husband does not have witnesses, he has two alternatives. Firstly, he may formally take back the charge. If it is done before the commencement of the trial, the wife is not entitled to a dissolution. But if he persists in his allegation, the judge would ask him to bear witness four times and then the fifth time he would invoke the curse of God upon him if he was a liar. The woman is then asked to do the same. After these mutual imprecations, the judge would dissolve the marriage. (115) If it is proved that there was some misunderstanding while the imprecations were brought, it is lawful, according to Abū Ḥanīfah, for them to remarry. (116)

When a husband fails to provide economic sustenance : If the wife files a suit charging the husband with neglecting her economic needs, the court has the right to separate spouses after knowing that the husband does not have any real excuse for neglecting his wife's economic needs. (117) If the husband is able to support his wife, but is avoiding it deliberately, the court can press him to look after his wife's economic needs. If he still persists, the court has the right to dissolve the marriage. If he is not able to support her at all, then, according to Aḥmed Ibn-Ḥanbal, the court should dissolve the marriage at once. According to Shāfi'ī, the husband can have three days to prove himself able to maintain his wife; 'Imām Mālik suggests the period of one or two months for the purpose. In short, all the four 'Imams, except Ḥanīfah, hold the view that in the absence of alimony the wife has the right to ask for separation.(118) Abu Ḥanīfah and some Shiites do not agree with this opinion and do not allow a wife to ask for separation in the case of her husband's poverty.

In fact, the answer to the question is entirely dependant on the situation. If a wife proves herself patient and faithful to her husband even if he is destitute, there is no need for separation at all. But if the wife does not want to cope with the situation, she should have the right to ask for separation. It also depends on the court to go into the situation and decide accordingly. If poverty is
a/ temporary and the result of a sudden catastrophy, the husband should be given some time to restore his position or at least to try his best.

Impotence and infectious diseases in the husband : The wife has been given the right to separation through the law court on the grounds of the physical inability of the husband to consummate the marriage. (119) According to all the jurists, impotence rendering the sexual act impossible is a genuine ground for dissolution. Nonetheless, they have laid down certain conditions for the exercise of this right of women. For example,

1. The suit for the dissolution of marriage is not acceptable if the wife knew the impotency of her prospective husband prior to the marriage.

2. If after the marriage, the wife knew that the husband was impotent, but consented to retain her marriage, she is not entitled to ask for separation.

3. If the husband has consummated the marriage even once, the wife loses the right to ask for separation. That is, the husband must be proved to have been impotent at the time of marriage. (120)

All the above conditions, imposed by the jurists, in fact, impair the real intention of the Quranic law regarding the marriage institution. According to the Quranic point of view, marriage is a legitimate means of gratifying the natural sexual urge and is, therefore a contract for the legalization of sexual intercourse. Now if a marriage fails to fulfil its basic function, where does this contract stand? To deprive the wife of asking for separation in certain cases and then to compel her to abstain from sexual

practice throughout her life is not fair, especially when, unlike her husband, who can adopt polygamy, she can not resort to polyandry.

In the case of infectious diseases, there is also a difference of opinion among the jurists. According to Abū Ḥanīfah and his companion Abū Yūsuf, in the case of infectious diseases, neither the husband nor the wife can ask for separation. 'Imām Mālik and 'Imām Muḥammad hold the view that in all diseases which inhibit sexual intercourse, such as leprosy, insanity and venereal diseases etc. either party has full right to ask for separation. 'Imām Shāfi'ī believes that only leprosy and insanity entitle the wife or the husband to ask for separation, but not any other disease.[121] Here too, as stated earlier, all the jurists lack something except 'Imām Mālik. The Qur'ān is concerned for the sexual morality and purity of women, and in the case of infectious diseases which may prevent women from living in fidelity or remaining sexually dissatisfied, there is a great chance that they may adopt "unlawful" sexual behaviour and thus spoil the whole patriarchal structure of Islam. A point which is worth considering here is that these jurists have accorded this right of separation not only to the wife but also to the husband. There seems to be no justification in giving this right of separation to men because they have already in their hands the power of divorce which they can exercise at any time without giving any genuine cause of their act. So in the case of any infectious disease in the wife, the husband can easily use his right of divorce

without going to any judicial process.

The Disappearance of the husband : In the cases where a husband is reported missing, which means he is unable to fulfil his marital obligations, whether the wife is entitled or not to ask for separation is again a controversial point among the religious authorities. One school in which the names of 'Alī, Ibn-Mas'ūd, Abū Ḥanīfah and Shāfi'ī are important, holds the view that the wife should wait until the husband returns or news of his death is ascertained. While the other school that of 'Umar, 'Uthmān, Ibn 'Umar, Ibn 'Abbās, 'Imām Mālik and Aḥmad Ibn Ḥanbal is of the opinion that after reporting in the court, the wife should wait for four years. If he does not come within four years, the marriage would be dissolved and the wife would be free to marry another person. (122) The view of the second school seems to be more reasonable and practicable, but here too, as there is no definite statement in the Qur'ān and the Ḥadīth to know how long a wife should wait in such a case, it must depend on the situation. Nowadays when communication is not as difficult as it used to be in the early Islamic period, there is no justification for asking a woman to wait for her missing husband throughout her life. It also depends on the wife; if she has enough property from her husband to support herself and his children and is willing to wait for him, she is entitled to wait as long as she can; but if the case is the reverse, then it depends on the situation as to how much time is to be required as a waiting period.

A change of religion : If a husband renounces Islam, whether it is expressed by words or by conduct, he is an apostate

in the eyes of the jurists, and his marriage with his Muslim wife is dissolved at once. In this case the wife does not need to ask for separation as the very act of the husband is sufficient to dissolve the marriage. (123)

As the physical punishment of the wife by her husband is clear from the Qur'ān, fiqh, therefore, does not allow a woman to claim a judicial divorce in case of cruelty unless there is actual violence of such a character as to endanger personal health and safety; furthermore, the wife can not ask for separation in case of conjugal infidelity on the part of the husband. (124)

(viii) Effects of Marriage Dissolution : After the completion of a valid or irrevocable divorce, the matrimonial relations between the spouses become illegitimate. In certain cases, for example, if the divorce did not take place by triple pronouncement, the partners can remarry, but on the whole, it is usually impossible to remarry. If the marriage was consummated before separation, the wife is required to wait for remarriage till her 'iddah expires; but if the marriage was not consummated, both the husband and the wife do not need to wait for the expiry of the 'iddah and they can marry at any time to whom they wish. During the 'iddah period, the husband is bound to provide maintenance for his wife. He also needs to pay the full amount of the dower if the marriage was consummated, but if it is not, he would pay half the dower. Nonetheless, if the divorce takes place before consummation at the will of the wife or because of her apostacy, she has no right to anything. (125)

II. PUBLIC STATUS

Before the public status of women in Islam is discussed, it may be observed that sexual ethics differ widely in different parts of the world and every society has its own way of dealing with such a problem. It is quite possible that a rule about regulating the sexual behaviour of fundamental value in one society is regarded as absurd in another. Therefore, to assume that one particular way of dealing with the sex is the best and final for all races and for all times is not reasonable. But at present, when we have a patriarchal atmosphere almost everywhere, whenever we talk about society we generally mean the "patriarchal society" in which sexual morality and chastity, especially that of women,forms the basis for a stable family and a sound society.

According to Islam, which is also a patriarchal system, as stated earlier, the legitimacy of a new born baby and the recognition of the legitimate father is of great importance. It is very important for a man to know, in a Muslim society, that he is the real father of his child. To get this surety Islam has ,therefore, evolved a certain concept of morality regarding sexual behaviour. It has, through certain rules, prescribed specific behaviour and attitudes for men and especially for women, according to which they might move in public decently without indulging in extra-marital relations. Such rules regarding the conduct and behaviour of man and woman towards each other and their movement in society come under the title of ḥijāb in Quranic

language as has been discussed briefly in the earlier chapter.

Considering Islamic law with regard to the public status of women or, in other words, their public appearance and outside activities, there is not much detail. One of the reasons why Islamic law has kept rather quiet on this particular issue, might be that - firstly, there was already abundant detail on this issue in the Qur'ān and the Ḥadīth as has been shown in the earlier chapter and secondly, the way how these restrictions were interpreted and put into practice already evolved a very strict Muslim society in which women were shut up within the four walls of the house or, if they happened to come out, were enveloped with heavy and huge coverings. If one looks at the Quranic rulings regarding the conduct and behaviour of the two sexes towards each other and their movement in the society, it seems that the purdah system, as prevailing today in many Muslim countries, is not what the Qur'ān actually prescribed. With the passage of time, the original concept of ḥijāb has been over-shadowed by the social practice of women covering their body from head to feet. The word purdah itself is a derivation from Persian and refers to secrecy, seclusion and modesty. The main factor contributing to the development of purdah is that the early interpreters of the Qur'ān were men who originated in Persia. A number of schools of thought flourished during the Abbasid period; thus these interpreters attached meaning to the verses of the Qur'ān according to their own peculiar trends and as local customs demanded. (126) It has already been seen in an earlier

chapter that the women of Byzantium, Persia and Athens were kept in complete seclusion and were guarded by eunuchs from the public eye. In the course of time when the Arabs conquered different countries, including Persia, their inter-mixture with different nations exercised its influence in the political, economic and social spheres. The Persians left a great impression by their theory and practice regarding the seclusion of women -

> "Association between the sexes became more and more restricted with the increase of Byzantine and Persian influence on Arab society." (127)

The later caliphs of the Umayyads dynasty gave veiling and seclusion a definite shape. During the reign of Walīd II, the veiling of women and their seclusion became an established institution. The ḥarīm system also came into vogue during his time. He introduced eunuchs into his household who were the guards of female honour. To the uneducated mind, walls and guards were the most effective protection.(128) The purdah system adopted by the royal household was bound to become the order of the day amongst the people accustomed to servile imitation of their lords.

This system achieved its fullest development during the Abbasid period, especially, during the time of Kādir Billah when the absolute seclusion of the sexes reached its peak. Otherwise in Manṣūr's, Rashīd's and Māmūn's time, there were occasions when women seemed to take an active part in many fields of life. (129) The political and social condition of these two great empires of Muslim history also contributed to the firm implantation of this system. The

economic prosperity and political stability brought about many changes in the attitude of the caliphs. The upper classes of society revelled in drinking and enjoyed their numerous beautiful maid-servants. Many Umayyad's caliphs, such as, Yazīd b-ʿAbd al-Malik and Walīd had big harems where they kept many beautiful female slaves and singers, for example Salamah and Ḥababah were the favourite beloveds of Yazīd who had paid an enormous price to get these two famous and beautiful singers of the time. These caliphs did not like the idea of exposing their women to the gaze of other persons. (130)

In medieval time, women were also secluded due to the feudal system of economy. The system in which life was stagnant, people stayed in the city and town in which they spent their whole life and did not move from one city or town to another. Facilities for travel and movement were limited and there were no large scale industrial establishments which could offer employment to women. Therefore, women had no chance of moving outside their homes and were mostly engaged in domestic affairs. However, even under the feudal system of that society, women in the villages and the rural areas could not afford to observe the traditional purdah and seclusion which shows that originally the complete seclusion of women and observation of the veil was adopted by the aristocracy simply as a mark of rank and distinction. However, this practice later became a fashion amongst the middle class of the society which ultimately resulted in the complete subjugation of women.

> "The way in which the older generation even now frequently veil themselves is a typically urban characteristic of the middle class. The custom was introduced centuries ago by the upper classes who secluded their idle women in zenanas or harems." (131)

If one goes through the early Islamic period, including the time of the Prophet, it seems that the practice of veiling and segregation at that time was much closer to the real Quranic intent when women, by observing all rules of modesty and segregation, took part in religious, educational, political and social functions. The ladies of the Prophet's family, who were noted for their learning, virtue, eloquence and strength of character, did not lead lives of idle seclusion. They were, instead, allowed great freedom. (132) There were innumerable occasions when women came out freely to attend public prayer and participated in the religious services on the feast days and listened to the public sermons of the Prophet. They also raised many questions and made enquiries on all sorts of social, religious and economic matters. (133) ʿĀ'ishah, the wife of the Prophet, was a learned woman on Islamic jurisprudence, and during the reign of the first four caliphs, her comments and ideas were treated as authoritative and as valuable advice. She personally conducted the movement against ʿAlī and took part in the battle of Camel. (134) Faṭimah, the daughter of the Prophet, often delivered sermons and had enough talent to argue regarding the succession to the Caliphate. She also offered help in many wars. Zaynab,

the grand daughter of the Prophet, took part in the battle of Karbalā; and Sukaynah, the daughter of Ḥusayn, was also very brilliant and played a vital role in the social life of that period. (135)

In the time of the first four caliphs, women were free enough in their criticism and actions. 'Umar and Uthmān had great confidence in their daughters, namely Ḥafsah and Umm Ḥabībah, and used to seek their advice on different matters. (136) In Umayyad times, though the harem system started to emerge, women in general could still hold the right to move in public for their needs. They associated and conversed with men and attended, especially in Spain, the fetes and tournaments. (137) During the early Abbasid Caliphate when the absolute seclusion of women was on its way, there are many instance of royal ladies whose influence, in fact, extended beyond the throne. Zubaydah, the wife of Hārūn al-Rashīd, played a conspicuous role in the history of her age due to the virtues and accomplishments she possessed. In the time of Caliph al-Muqtadir, when the empire was weakening, his mother supported the throne, presided herself at the high court of appeal and listened to the applications. She frequently held public audience and redressed injustice and herself signed and issued state edicts. (138) Shajrud-Durr, the wife of Malik al-Ṣāleḥ Ayūb, also succeeded to the throne after the death of her husband and the Khuṭbah was recited in her name and the coins were inscribed with her title. (139) Shaykha Shuhda bint al-Ibarī in the sixth century of hijrah was designated as "Fakhr al-Nisā'" (the pride of the woman

kind) due to her profound knowledge of Ḥadīth, intelligence and learning. She lectured publicly at the mosque of Baghdād to large audiences on literature, rhetoric and poetry. (140)

However, these were very few characters in the long period of the Abbasid Caliphate, otherwise from the time of Kādir Billah, women were kept more or less in complete seclusion. Even in the time of the Prophet, the Caliphs and the Umayyads, if women appeared to be active and free, it was rather due to their personal talent and confidence which ultimately gave them some courage to take part in public life. This confidence, of course, was lost when absolute seclusion and the ḥarīm system came into vogue with full force, thus making women helpless, timid and unfit for any effective role in a wider social life. However, this subjugated position of women fitted quite well into the patriarchal framework of Islam where women, in any case, were meant to be kept under control and subjection, especially, economically. As has been mentioned already, one of the devices by which the Qur'ān maintained male supremacy was to exempt women from earning their livelihood and supporting and protecting family members. It is the man who has been required to support woman and provide all her requirements. This trend of the Qur'ān clearly indicates that in Muslim society a woman's role as that of a mother and a wife is the most sacred and essential one, and therefore Islam can certainly not approve of a social pattern in which women neglect their

essential duties and take professions. One point which should not be lost sight of is that,in the Islamic social framework, the supremacy of man is due to the fact he spends his money and supports his wife and children. Once women are given the chance to stabilize their economic position by adopting professions outside the home, not only would the dominant position of men be in peril but also there would arise many doubts about the paternity of the child due to the intermingling of males and females so freely and regularly. Therefore, it seems that, except in special circumstances, Muslim women can not be allowed to take professions. There is only one vague verse in the Qur'ān which is brought forward by the modernists to support their claim that women, like men, are allowed to earn their livelihood. The verse reads as follows -

> "To the men a Share from what they have earned, and to the women a Share from what they have earned." (141)

This is a part of verse 32 in chapter four and if one reads the whole verse or reads it with the other verses in the same chapter, nos.30-31 and 33-34, it becomes clear that first of all this verse instead of speaking about worldly affairs, is talking about the after-life when people, whether males or females, would be rewarded according to their deeds; and secondly, in fact, this verse instead of allowing women to take professions, is negating the idea and is emphasizing repeatedly that men are supreme due to the fact that they earn and spend their money on women.

III. CONCLUDING REMARKS

In Islamic law, which is a derivation of the Qur'ān and the Ḥadīth, the jurists maintained a more rigorous patriarchal attitude towards women. As seen in matters of marriage consent, polygamy, concubinage, divorce, guardianship and custody of children, they certainly favoured men to an extent which perhaps was not intended by the Qur'ān. For example in the matter of marriage, the unlimited rights of the guardian over his female children almost deprived women of their right to give consent to their own marriage. Similarly in the matter of divorce the way the jurists adhered to mere words, to the extent of ignoring the real policy of the Qur'ān, did a great harm to women when these interpretations were put into practice. Due to the attitude of the jurists, especially of the Ḥanafites who even upheld the divorce of a drunken person, Muslim women always lived under great strain and had the fear of being rejected for no genuine reason. It was due to this apprehension that the nature of mahr, an absolute right of the wife, was changed and it became customary to fix a huge amount of mahr so that it would not be easy for a husband to divorce his wife immediately. Contrary to the practice in the Prophet's time, the jurists divided mahr into two kinds which ultimately resulted in almost depriving women of their right. The lenient attitude towards polygamy and, especially, concubinage also encouraged men to treat women as sexual objects and inferior to themselves. Until recently rich Muslims had, without difficulty, been filling their houses with beautiful women, either as wives

or concubines. Thus in overwhelmingly patriarchal Muslim societies laws of this type were exploited conveniently to a great extent.

To appreciate the exploitation of women's rights by men in a Muslim society, a detailed discussion will be made in the following chapter. This chapter will not only attempt to show the differences between Islamic social teachings and realities, but will also try to point out the subtle devices, such as marriage customs, arranged marriages and the institution of the mother-in-law, through which the patriarchal interest is maintained effectively.

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PART TWO

C H A P T E R 5

A BRIEF SURVEY OF THE SOCIAL CONDITION OF WOMEN IN PAKISTAN

I. THE ORIGIN OF PAKISTANI SOCIETY : A HISTORICAL REVIEW

The Pakistani society has been subject to various influences and has thus assimilated customs and social practices of different origins. An important factor which must not be ignored is that in the Indo-Pakistan sub-continent, Muslims lived side by side with the Hindus for nearly eight centuries and there was a close contact between the two communities. Despite the fact that neither lost its individuality and distinctive characteristics, there was a good deal of give and take between them. Both influenced each other considerably and imbibed many customs and practices from each other. (1) Furthermore, a great majority of Indian or Pakistani Muslims are descended from Hindus who, although converted to Islam, retained much of their traditional culture.

Another influence on Pakistani society is that of the British who ruled the subcontinent for a century in the Punjab but for two centuries in Bengal. Although the British adopted the policy of non-interference in the personal laws of the different religious communities, and the Muslims, in this respect, were ruled by what is called Anglo-Muhammadan law, yet there seems to be a noticeable effect of the British on Pakistani society. Therefore, before dealing with the condition of women in Pakistan, it is appropriate to take

into account the historical background of Pakistan.

Although Pakistan is a new state, it has an ancient history going back by some five thousand years to the climatic days of the renowned Indus Valley civilization. The first notable attempt by Muslims to penetrate into the subcontinent was in the year 711 A.D., when the lower Indus valley (the present Sind province of Pakistan) was invaded by the Arab general, Muhammad ibn Quasim. After this invasion, there was a period of suspended military operations for more than two and a half centuries until, at the beginning of the eleventh century, Mahmud of Ghazni, invaded India seventeen times and extended his dynasty to a part of the subcontinent. This was, in fact, the time when Islam began to be effectively introduced into India. Although many parts of the country, for example, Rajputana, Gujrat, Bihar and Bengal were conquered much later and northern India was brought under Muslim sway in 1206, yet after the reign of Ghazni, the political power of Islam expanded rapidly. The number of Muslims continued to grow throughout the years of Muslim rule until it slackened with the expansion of British control. The great Moghul empire, which was founded by demolishing the Turkish control in the early sixteenth century lasted, in its full strength, until 1707. After the death of Aurangzeb in 1707, however, the Moghul empire disintegrated, partly due to the weakness in the empire itself, and further due to the rise of Rajput and Maratha power and European encroachment. Of the Europeans, the English proved to be the most powerful, ultimately overthrowing the last Moghul ruler, Bahadur

Shah Zafar, in 1857 and establishing their rule thoroughly. The East India Company which controlled a small eastern part of the subcontinent in the first half of the seventeenth century had extended its administration to the borders of the Punjab by 1815. However, in 1947, the British rule came to an end with the division of the subcontinent into two sovereign states, India and Pakistan.

Keeping in view the above background of Pakistan and the various cultural influences to which its people have been subjected, it seems necessary to divide the cultural heritage of this country into two major parts to have a brief view of the condition of Indian Muslim women during various periods before the partition of the subcontinent.

1. The Influence Of Hindu Culture :

The available record reveals that, long before Muslims invaded the subcontinent, the country had experienced a large scale foreign immigration through intermittent inroads of outside forces. However, most of the races settled in the country and accepted the Indo-Aryan culture. As a result, their identity and individuality was absorbed in the vast majority of Hindus and eventually they became either Hindus or Buddhists. But when the Muslims appeared in India, probably for the first time in Indian history, an element was introduced which Hinduism could not fully assimilate. The social and religious conceptions of Islam and Hinduism were so diametrically different that it appeared impossible for the two to merge. However, due to a long, close contact, they exerted a good deal of influence on each

other. In fact, "If the Indian environment has produced a profound effect on Islam during its long residence in the country, it is no less true that Islam has in turn reacted on Hinduism and Indian life." (2) But at present, our main concern is the influence of Hindu culture on Muslim culture, we, therefore, pursue this aspect further.

As stated earlier, the majority of the people who accepted Islam were originally Hindus who maintained many of their old social customs as did their Persian and Turkish invaders. Many Muslims, including the rulers, also married Hindu women who brought with them many different customs and practices which have had a profound effect on the succeeding generations of Indian Muslims especially in the matter of marriage. (3) Thus, the Islam which was introduced into India was not the simple religion of the Prophet's days, but was the religion of the "half-converted" Turks, Persians and Hindus. Once out of Arabia, the Muslim mind was more or less reconciled to the Persian ideal of womanhood. Therefore, the advent of Islam in the subcontinent did not affect greatly the condition of women and their position continued to be as low as in the age of Manu. Muslims in India willingly accepted the low condition of women which was already prevalent in the subcontinent. Thus women's position rather deteriorated in certain matters, for instance, in the matter of women's seclusion and veiling. In fact, the rigidity of the seclusion of women reached a peak with the advent of Islam in India and the custom, which was confined to royal families and nobles in pre-Muslim days, spread to the genteel and the middle class also.

> "So strict was the convention in Muslim India, that any woman found in a public place without veiling her face was taken for a "shameless" woman and molestation of her was considered no serious offence as such a woman was reckoned outside the pale of decent society." (4)

A legal Muslim marriage, essentially a civil contract, does not involve any rites and requires a minimum of formalities. However, the Muslims in India performed numerous additional ceremonies derived from ancestral customs peculiar to India and significantly designated by the name of stri-achar. These ceremonies formed the principal part of the Muslim and Hindu wedding alike from the social point of view. Of several ceremonies and customs a few may be examined.

The Hindu bride, who was traditionally excluded from the right to inheritance, received a large stridhan from her parents as compensation. It was a large amount of the ancestral property which became later the property of the girl. This custom of Hindus was adopted by Indian Muslims in the name of jahiz which became just as important for the Muslim bride as stridhan for the Hindu bride.(5) Manja was another common rite among the Hindus from whom it was borrowed by the Indian Muslims. In this rite turmeric with saffron and some other perfumes is rubbed on the bodies of bride and groom.(6) The symbolism of this rite for the highly mystical Hindus, looking for magic and the supernatural in all things, was that saffron was sacred and connected with fertility, while turmeric was believed to be a protective against the evil eye and spirits. Besides many rituals and ceremonies connected with this custom, a

conspicuous one was the strict seclusion of the bride for several days. Once she was seated in a separate room she was not allowed to see any male member of her family, even her own father and brothers. She ate very little and did not change her yellow clothes which she wore when she started the seclusion until the wedding day lest some evil eye cast a glance on her. (7)

In Hindu culture there were many symbolic articles which were worn only by those women who were married. For example, placing glass bangles around the wrists, putting sendūr in the hair, making a mark with coloured earth on the forehead and between the eye-brows and wearing a large or small nath or loung. All these symbolic ornaments were adopted by Indian Muslim women with little change. That is, Muslim women decorated their hair with afshān instead of sendūr; wore tīkā on the forehead in place of tilak and also used nath at the time of wedding and loung after the marriage. These specific ornaments were the distinctive marks of a suhāgan and every Indian suhāgan whether rich or poor, Muslim or Hindu, wore them. If she became a widow, her first act would be to break her bangles.(8) Another peculiar custom borrowed from the Hindus and practised only by Indian Muslims was the covering of the bridegroom's face with the sehrā on the wedding day. (9)

Child marriages have been the characteristic of Hindu culture from early times and even, at present, one of the main problems of the Indian government is how to make a determined effort to stop this long established practice.

A Hindu girl, despite this modern age, is supposed to marry before she reaches puberty and the search for a mate in some of the castes begins when the girl attains the age of six or seven.(10) Despite the fact that the age for marriage has been made statutory the Indian government was astonished to discover that it was paying compensation to war widows of 13 and 14 after the war of 1971 with Pakistan. (11) Thus, Muslims because of a close association with their Hindu neighbours, also adopted this custom and child marriages became quite prevalent especially among those Muslims who lived in Hindu areas. (12)

In short, the fundamental difference between Islamic marriage and Hindu marriage diminished with the mutual influence of the two communities, and in respect of the marriage institution and family it was the Muslim community which absorbed more customs and traditions from Hindus.(13) Such influence becomes obvious in the matter of divorce too, when one realizes that there is a great aversion to divorce, little remarriage of widows, and no division of family property among many Indian Muslims.

> "In fact, the principle has been pretty generally established that in matters of inheritance, dowry, and the like, Muslim converts may adhere legally, as they do in many cases in fact, to the tribal customs or customary law of the group to which they or their ancestors belonged before conversion." (14)

2. The Condition Of Muslim Women In India Under Muslim And British Rule:

The status of women during the Muslim rule over India, and later under the British rule, was based mostly on customs

and environmental influences produced by the interaction of various cultural and religious groups. Before the Moghuls, the ruling classes who were Turks, Persians or Afghans, did not strictly adhere to Islamic law. Although they showed great sympathy towards religious leaders and Islamic law was administered by qaḍīs and muftīs, they did not try to change the subcontinent into a theocratic state. Balban, (1266-1287) who regularly visited the prominent ulemā' after Friday prayer and was most regular in the performance of his religious duties, enforced whatever he thought good and useful to the state without considering whether it was religiously lawful or not. The same was true of Alaudin Khilji, (1296-1316 A.D.) who ordered whatever he thought beneficial for his government. (15) Thus the status of women, like other laws and regulations, did not depend on Islamic tenets but was established on the basis of various cultural influences.

With the establishment of the Moghul empire in 1526, the condition of women underwent a considerable change, as the Moghuls, though Muslims, brought with them many of the laws of Genghiz Khan and followed many Mongol traditions. Thus under Moghul rule, Muslim women did not enjoy any freedom to move in public. They were kept under strict seclusion and the veil. Whenever Moghul princesses and the ladies of high rank happened to go out, they were carried in litters covered with heavy curtains and carried by men. Some Moghul princesses observed seclusion to an abnormal degree. Taj Mahal, the wife of the famous Moghul emperor, Shahjahan, for instance, did not take a male child in her

lap and covered her face if she happened to meet a boy of four or five. When she was passing away, she did not allow a male doctor to examine her. (16)

With the advent of British rule in various parts of the country, the foreign rulers were confronted with a pre-existing social situation. The people were found to have a strong adherence to what were called rules of custom rather than the laws of their religion in respect of many areas of their social life, including the status of women. Naturally, the British rulers who were more interested in administration, did not try to go against the wishes of local inhabitants in social matters. Therefore, the policy adopted by the British government was to leave it to the people of the various regions whether they would be governed, in matters of the family, by the rules laid down by their religion or by custom. In the early days when the British were settling, they enforced for Muslims the Islamic code in all its departments. But later, Islamic law relating to the crimes and punishments, revenues, land tenures, evidence and transfer of property were gradually replaced by the enactments of the legislature. However, matters relating to family, namely, marriage, divorce, maintenance, guardianship of minors, parentage, succession and inheritance continued to be governed by the so called "Muhammadan Law". (17) In other words, due to the presence of various religious communities, it was difficult for Anglo-Indian courts, established by the government, to adopt a single matrimonial law applicable to most of the inhabitants. Therefore, matrimonial disputes of Muslims were dealt with according to the law of the Qur'ān, or the so called, Muslim

Personal Laws or Sharī'at Laws and those of Hindus by the Shasters. (18)

The British policy of non-interference in matrimonial laws might have been a positive thing for Muslims to retain the essence of Islamic laws under foreign rule. However, the rigidity of Anglo-Indian courts in applying the law of a particular sect to its members, often caused great hardship for Muslim women who were already suffering under the influence of local customs and usages. Under British rule, it came to be accepted as a settled principle that people, in general, would be governed by custom and the rule of decision was to be any custom applicable to the parties concerned. Consequently, the real spirit and value of the Muslim law of marriage and divorce, already neglected by the previous rulers, was largely ignored. As a result, it came to be considered by the courts that there was no provision in the Muslim law for the protection of the wife against cruel treatment by the husband.(19) Owing to the seclusion in which Muslim women were kept it was extremely rare for a girl to receive a proposal personally or even to raise a voice of dissent.

There were thirteen different kinds of dissolution of marriage from which ṭalāq, khul' and the judicial divorce were more common. The wife could get separation only on the grounds of option of puberty, impotence of the husband and an accusation of adultery made by the husband. (20)

Polygamy, although allowed by the law, was not common in British India and was in the nature of a luxury afforded only by the rich. However, if a man violated the rule, that

is, if he married more than four at a time, he was punishable with imprisonment up to seven years, and also with a fine.(21) In the case of conjugal infidelity, on the other hand, the husband did not incur any legal penalty, criminal or civil, nor did the wife suffer any severe penalty or disability by committing adultery. (22) Although, the British did not involve themselves directly in matters related to the family, it could be claimed that they did play a part in the emancipation of Indian women. The government took many steps which helped the women of the subcontinent in the main stream of socio-political development. When the British rule started in India, illiteracy was appallingly high, especially among women. The government established many schools for women with special facilities, and offered them many jobs in government services. (23) It also terminated slavery which, in fact, helped in abolishing the institution of concubinage. (24) Consequently, a sound convention rose during the later British period against the purdah institution and other injustices done by the male oriented Indian society. The educated middle class and the younger generation began to look upon purdah as old-fashioned and preferred to have smaller families instead of adhering to the joint family system. However, this social change was not visible until the women of India organised themselves for their rights.

II. A BRIEF ACCOUNT OF PAKISTAN AND ITS PEOPLE

Before embarking upon the discussion about the condition of women in the present day Pakistan, it is appropriate to make a brief appraisal of the country's geographical and socioeconomic conditions.

With an estimated population of 75 million in 1977, Pakistan is the ninth largest nation of the world but ranks third amongst the Muslim countries. About 97 per cent of its people are Muslims - a fact that gives it prominence amongst the Muslim states by placing it second only to Indonesia as regards the size of the Muslim community.

Born out of the partition of British India on August 14, 1947, as a result of the recognition of the "two nation" theory, Pakistan is the foremost ideologically based state of the world in the present times. Although there were numerous political and economic factors which played their role in the movement leading to the emergence of Pakistan, Islam was the key note and a rallying point right from the re-organization of Muslims until their final achievement. It was the real force which united and mobilised the Muslim population of the subcontinent; and it is the raison d'être for Pakistan, a fact which makes Pakistan a very extra-ordinary country, since few others in the modern world can be said to have been created to embody a belief or doctrine or to owe their existence to an ideology. (25)

Pakistan comprises four provinces, the Punjab, Sind, Baluchistan, and the North-West Frontier Province (N.W.F.P).

The largest province Baluchistan with more than two fifths of the country's area has less than four per cent of the national population, while the most populous, Punjab, contains 58 per cent of the total population of Pakistan on one fourth of the national territory. Each province has its own regional language in addition to Urdu, which is the mother tongue of a sizeable section of the migrants from India, but being the national language is widely spoken and understood. The people of the Punjab are called the Punjabis, and those of Sind, the Sindhis; while the dominant groups in Baluchistan are Baluchis and Brohis and those in the N.W.F.P. are mostly Pathans.

Because of Pakistan's predominantly agricultural economy, a great majority of its people live in rural areas. However, the share of urban population in the total has been sharply increasing since the beginning of the twentieth century. In 1951 the urban population constituted 17.8 per cent of the total, in 1961, 22.5 per cent and, according to the 1972 census statistics, it was 25.4 per cent. The province of Sind had the highest percentage of urban population (41 per cent) due to the presence of Karachi, the largest city of Pakistan, followed by the Punjab (24 per cent), Baluchistan (16 per cent) and N.W.F.P. (14 per cent).

According to the Housing, Economic and Demographic Survey 1973, the sex composition of Pakistan exhibits a marked degree of masculinity. Females constituted about 46 per cent of the total population. That means there are 1161 males for every 1000 females or 861 females for every

1000 males. In the urban centres, however, the sex ratio manifests a higher preponderance of males; 1167 for every 1000 females in contrast to 1159 per 1000 females in the countryside. (26) The residential difference of the sex ratio reflects the migration of males from rural to urban areas, mainly for employment.

The level of literacy, like urban-rural composition, is a useful and convenient index for the socio-economic status of a country. The scale by which literacy is measured has varied in the three censuses of Pakistan. Nonetheless literacy has registered a marked increase since independence. It is, of course, very unevenly distributed between the rural and urban areas as well as between the two sexes. The urban centres with obvious advantages, have a higher percentage of literates; and female literacy, though increasing rapidly, still lags far behind that of males. According to the 1973 Housing Economic and Demographic Survey, literacy in Pakistan was 21 per cent for both sexes (30 per cent for males and 11 per cent for females). It was higher in urban areas (37 per cent) than in rural (15 per cent) and highest in big cities like Karachi, Lahore, Layallpur and Rawalpindi. Male literacy was 46 per cent in the urban areas in contrast to 26 per cent of females. On the other hand in the rural areas 26 per cent of the males were literate compared with 5 per cent females.

III. STATUS OF WOMEN IN PAKISTAN

In order to have a full comprehension of the status of women in Pakistan, the subject may be studied under the following heads -

1. Status and rights as accorded by the Qur'ān and the Sunnah of the Prophet.
2. Status and legal rights as conferred by Islamic law.
3. Status conferred by custom and traditions.
4. Rights and responsibilities conferred by the constitution and law of Pakistan.

The first two categories have been discussed in Chapter 3 and 4. The other two categories are discussed here under two different sections. The first section entitled "women in customary law", deals mainly with the existing social practices influenced by customs and rituals. The second section, "women under the law of Pakistan" examines how the government of Pakistan has been attempting to ameliorate the position of women by providing constitutional safeguards and implementing family laws and other laws related to social welfare, in general.

1. Women In Customary Law :

> "The provisions of Islamic law relating to the rights of women... have been subject to the greatest modification or change by the application of customary usage in the Indo-Pakistan subcontinent. ...(Not only that) these customs are themselves justified in popular opinion by Islamic traditions and values." (27)

(a) Marriage and Marriage Consent

In most societies of the world, marriage is regarded not only as an individual matter, but also as a collective one. Therefore, generally speaking, no-where is marriage solemnized clandestinely, and usually many relatives and friends are invited to participate. Thus, marriage becomes not only a pleasure for the couple to be married, but also a ceremony involving a great deal of fun and many customs. These rituals and ceremonies embodying some noble aspects of religion and old heritage differ from class to class, region to region and country to country.

Keeping in view that marriage is a very important event in the life of two human beings, a certain amount of entertainment is quite natural and justifiable, but in Pakistan, due to its complex cultural background, a number of burdensome customs and economically oppressive ceremonies are centred around marriage. Thus, a considerable social pressure is exerted on the concerned parties to follow them even though their observance might result in economic crisis.

> "A Muslim wedding can be, and often is, a very expensive affair. The rich spend money lavishly, sometimes squandering the savings of a lifetime and even mortgaging their property on the occasion of a son's wedding; and a poor man will borrow so heavily as to burden himself with debt for the rest of his life; the debt devolving on his son at his death." (28)

Thus, many families are financially ruined in an attempt to show off that they can afford to have a "splendid" marriage. Due to many complicated, time consuming, and expensive ceremonies which are practised at different stages

of the arrangements, marriage as an institution in Pakistan is working towards the disadvantage of women. Before describing the numerous prolonged ceremonies associated with the marriage, it is appropriate to throw some light on the arranged marriage system.

As soon as the female baby is born into the family, the most common comment she gets is that "she is someone else's property". Due to the reason that her stay in the house is limited, the girl is generally treated more sympathetically by her parents than a boy and it is considered inauspicious and morally reprehensible to punish her. (29) The moment she enters her teens, proposals start pouring in. Usually preference is given to relatives, and parents try to marry their daughter into families of their own kind (with a near cousin in the lineage group). (30) Before the direct negotiation starts between the two families, an important role is played by a social functionary, the match maker, who is generally an elder female and keeps a diary of the intending matches she has come into contact, alongwith their qualifications, ages etc. Once the proposal is initiated by the match maker, or any other older female relative, each party starts making enquiries about material, moral and social status of the other to verify its reputation. Occurrence of a divorce, adultery or free mixing of the sexes etc. in a family subscribe to its bad reputation. Until the enquiries are completed, members of the two families acquaint themselves with each other by occasional exchange of visits. The first and main get together is normally attended by the groom's mother

and sisters who come with their eyes wide open so as not to miss the slightest fault in the girl brought in front of them at this moment for a thorough"inspection." On such occasions, the girl is invited to entertain the "most important" visitors. While the girl, who is by now over conscious and extremely nervous, prepares the tea, the honorary guests observe her minutely, even the colour and length of her hair, the shape and colour of her eyes and especially the complexion and her manners. When everything is over, an intense discussion takes place at the groom's house which centres around the observed qualities of the would-be bride. If the verdict is in favour of the girl, the final proposal is made and the matters which are of interest to both the families are settled. However, it may happen that a girl is not approved of after the first proposal. One of the reasons why girls are rejected again and again is that the mothers seeking a match for their sons develop sometimes the habit of visiting numerous families of nubile girls in an attempt to make the best choice.

At all stages of the preliminary deliberations, before a date for the engagement is set, the boy and particularly the girl is kept out of the negotiations. The parents, in their quest to retain a dominant position in the joint family by arranging the match feel that they are priviledged as parents to tie their children as they consider best. It is, therefore, viewed as a shameful deed to ask the opinion of the individuals concerned, especially the girl.

> "Strong filial obligations to parents and the embarrassment attendant upon talking about so intimate a matter, may override a girl's personal feelings when she is asked to consent to a match which has been arranged for her." (31)

Although the girls are entitled, by the law of Islam and of Pakistan, to refuse the marriage arranged for them, circumstances make it almost impossible for them to do so. If a girl refuses the marriage arranged for her or tries to make her own selection and choice by meeting the groom, she is considered to have disgraced her family. Such action would injure not only her future prospects but those of her sisters too. (32) Thus, girls in Pakistan, in general, and especially in rural areas, consider it their duty to succumb to the wishes of their parents however formidable the consequence may be. A survey conducted on the issue indicated that the percentage of female respondants from rural areas, who favour choice marriage, was nil. (33)

The attitude of boys in this regard is not very different from girls. There are many cases in Pakistan when boys do indulge in love affairs with girls, especially in the universities where co-education is common. However, in most such cases it is already understood between the two that despite loving each other, they are not capable of deciding their marriage, as it is the "duty" of the parents. If, on the other hand, the boy decides to marry the girl he loves, it becomes more or less impossible for him to convince the parents and society. In the end he has to forego his choice because an independent choice by man or woman is interpreted as a challenge to the parents' authority and established norms and a highly 'immoral' and unacceptable act. (34) Therefore, marriage by courtship is almost non existent in Pakistan. If somebody does so, the social disapproval is so intense

that the lives of both parties are made extremely miserable.(35)

It is not only the girls themselves who are helpless in making choices for their life partners, but also the parents of the girls face many complications when they intend to marry off their daughters. Social pressure and prejudice is so great for the girls' parents that it is almost impossible for them to initiate the negotiation. Generally, it is considered as a lack of honour and a shameless act if the parents of the girl make the choice of the boy and conduct negotiations with his family on their own initiative. It might be, later, disadvantageous for the girl as well, since she can easily be taunted by the in-laws that they did not seek for her and it was her parents who proposed first. (36) Thus, despite having an intense desire to marry off their daughters, the parents have normally to wait for the proposal to arrive, whether directly from the boy's family or through an intermediary source, that of the match maker.

(b) Marriage Rituals

Once the final proposal is made after completing the important enquiries, a number of ceremonies at different stages of the engagement follow. Each stage is marked by one ceremony or another. For instance, in the girl's house, even when the scissors are set to cut the dresses for her, a lot of fun is had. (37) Of the various ceremonies and functions connected with marriage, the most important are -

Mangnī, Mānjā, Mehindī, Barī, Bārāt, Nikāḥ, Jahīz numa'ī, Arsī maṣḥaf, Sālamī, Rukhṣatī, Walīmah, Chauthī

It is interesting to note, however, that of all these ceremonies lasting for several months and practised almost all over Pakistan, only nikāḥ is required by Islamic law and walīmah is the sunnah of the Prophet. The rest have no religious significance.

Betrothal or mangnī which signifies the confirmation of engagement, involves in many cases, especially in the North West Frontier Province, a heavy burden on both the parties. (38) In the Sind province singing starts at least one week before the actual ceremony and relatives and women from the neighbourhood sing the songs of merriment until late night. On the day of the betrothal the girl's parents decorate and illuminate their house and often arrange a ceremonious feast for the guests to come from the boy's side. Before the guests arrive, the girl is heavily adorned and is seated on a bench or floor covered with a red sheet. The boy's parents bring a precious dress, ornaments including a ring, handkerchief, garlands of flowers, glass bangles for the bride and a large quantity of confectionery and dried fruits to be distributed among relatives and friends. To complete the ceremony the girl is seated in front of her future in-laws and the ring is slipped onto her finger by the boy's mother or sister. On that occasion, in some families, music and songs are arranged and professional singers are hired. At the end of the ceremony the bride's side offers a ring for the boy as well as handkerchiefs, a suit, and a certain amount of money and a large quantity of sweetmeats. It is note-worthy that, not only the boy gets many gifts on this occasion, but his close relatives are also presented with suits. The mutual exchange

of gifts between the two sides continues as long as the engagement lasts.

Between one and three weeks before the wedding date, the period of isolation for the girl is initiated with a ceremony called mānjā. Once she is confined to a room after the ceremony, the girl is not allowed to see male members of her family or even to see or speak to any women except very close relatives or friends. In her confinement, she is given a long course of beauty treatment which includes massage of the whole body with ubtan, many times a day and light meals with plenty of milk. She is also exhorted during this time by elderly women how she should prove herself a truly shy and modest bride on the wedding day.

The mānjā ceremony takes place in the bride's house, especially decorated for the occasion. Before the guests arrive, the bride is attired in entirely yellow clothes especially dyed for the occasion. All her friends and close relatives also wear yellow dresses. Then, the bride is seated on a high place with a large, red scarf over her head and a similar large handkerchief in her lap. The guests, who are mainly ladies, put flowers on the bride and fill her lap with different kinds of dried fruit and sweets. Then, five or seven women who must be married with male children, in turn, apply ubtan to the bride's face, hands, and feet and put a small quantity of sweetmeat in her mouth. They also wave some money over the bride's head which is later distributed among the poor. It is noticeable here that, as in Hindu society, during the whole ceremony, the widows of the family remain aloof and do not participate in ceremonial functions.

After the ceremony, the bride is isolated in a separate room and the guests are feasted and sweetmeats and betel are distributed among them. The actual singing, dancing and beating of drums commences from this day and continues until the wedding day.

The henna ceremony is performed the night before the wedding. On this important occasion, the houses of both the parties are profusely decorated and illuminated; and many guests are invited and feasted. First the boy's people come to the bride's house with a large tray containing a beautifully arranged henna paste encircled by burning candles. They also bring plenty of confectionary and dried fruit. In many families the bari, including several suits of clothes, many pairs of shoes, different sets of ornaments and bangles, cosmetics and perfumes etc. is also brought at the same night with the henna. After the guests arrive, the bride is brought draped in a large decorated red scarf and seated on a high place. A young happily married woman slips some sweets into the mouth of the bride. Then seven married women annoint her hands and feet with henna paste. They also wave some coins around her head which are afterwards distributed among the poor. Subsequently, the bride is carried to her room where she keeps awake almost all night due to the disturbance caused by songs and music.

Usually on the same night, after a little pause, the girl's people go to the groom's house with henna and confectionary and apply henna to the groom's little finger and are rewarded by him in the form of money. Sometimes, the gifts for the bridegroom, including his marriage suit and a

sum of money etc, are also sent with henna. When the girl's people come back late at night from the groom's house, the jahīz or trousseau with barī is laid out for exhibition which continues till the actual ceremony of nikāḥ takes place. Meanwhile, the people attending the marriage admire or criticize it as they wish. When it is confirmed that each and every attendant of the marriage has observed the jahīz, it is sent to the house of the bridegroom.

On the day of the wedding, normally a Friday, the actual ceremony starts at the groom's house where the marriage procession is formed consisting, sometimes, of several hundred people. Among the educated middle class, the boy takes a bath himself and then is adorned but in many areas of the Punjab and Baluchistan, the boy has to take a bath in front of his relatives and friends. In Baluchistan, before the boy starts his bath, he is surrounded by his friends who start singing and dancing. While some friends begin bathing the groom, the others stand with bare swords, to keep off the evil spirit. (39) When the bridegroom is ready, a turban is wrapped on his head and a huge garland of silver or gold braid with flowers and pearls added, called sehrā is fixed on his forehead. At this moment, many special songs are sung by the groom's sisters who are rewarded with money by him. The sisters of the bride and groom, in fact, play an important role on such occasions and receive many presents, including cash money from the groom.

Before the procession starts to move towards the bride's house, some money is waved round the head of the groom and then the assembly proceeds to the bride's home.

In villages, the groom commonly sits on the back of a mare, but in towns normally a decorated car is used for him, followed by several other cars or hired buses. Before approaching the bride's house, the procession is formed which moves on its way very slowly, generally with a fu-fu band and occasionally fireworks are also ignited. On reaching the bride's house the groom is stopped at the gate by the bride's brothers or male cousins and a mock resistance to his entry is followed until he pays a "reasonable fee". The women of the procession are usually seated in the bride's house, while the men occupy a separate house or a covered pavilion, especially arranged for the occasion. After a short while, when all the people are settled, the preparations for the ceremony of nikāḥ begin after the amount of the mahr and other necessary conditions have been settled, in the men's apartment. It must be mentioned here that women do not take part in the nikāḥ ceremony. Under the supervision of the qāḍī, the wakīl of the bride is chosen from among the near male relatives of her family. The qāḍī also appoints two witnesses who are generally the bride's brothers or from her other maḥrams. The three men then go to the women's apartment where the bride is still in her yellow clothes with her eyes closed and head bent. The wakīl, holding a register in his hands, announces to the bride, three successive times, that, the son of such and such person is willing to take her as his wife. Then, pronouncing the amount of mahr he asks for her consent. The bride who is by now completely nervous, starts weeping, often with a loud voice. The women around her also start

shedding tears, yet try to persuade the bride to sign the contract. At last, after a good deal of difficulty, the bride nods her head and with tears and sobbing signs the contract, without reading its detail. (40) If the bride is illiterate, she prints her thumb impression on the nikāḥ nāmah. It is interesting to note that, as soon as the bride gives her consent, a large gold nose ring is inserted in her nose which is taken off later only by the groom at the time of consummation of marriage. On receiving her signature, the men return to their apartment where the bridegroom and those three persons are presented to the qāḍī. The qāḍī first gives a sermon and then explains the details of the contract to the groom and asks for his consent. The bridegroom's reply in the affirmative, confirms the contract and the audience raise their hands with the qāḍī to pray. From the tray containing dried dates and almonds etc.,which is placed before the qāḍī during the performance of nikāḥ, some is sent inside the women's apartment, to indicate that the marriage has now been contracted.

The preparation of Rukhṣatī now starts and the adornment of the bride, who was bathed in the morning, is commenced by the married women. She is attired in a large red divided skirt with a short skirt and a very wide wrap of thin material. This completely red special dress is usually of silk or satin, worked with gold or silver lace. Her face and hair are decorated with shining tinsel and the whole body is annointed with perfumes. Then she is laden with heavy jewellery including the bangles and tīkā.

She is also adorned, sometimes with sehrā made of flowers and gold thread. While the bride is being decorated, the guests are feasted,normally the men first and the women later. This special wedding feast for at least several hundred guests, is arranged by the bride's parents who are obliged to provide it if they wish to maintain respect. Otherwise the family would be ridiculed by the relatives, ultimately giving rise to gossip by others.

After the feast, the bridegroom is brought into the women's apartment. As soon as he crosses the threshold, his sisters come forward and cover his head with their scarfs and bring him to the stage where the bride is already seated. Both are seated face to face and their heads are covered with a red silk sheet. The Qur'ān is then placed between the two and the husband reads Sūrah al Ikhlāṣ. Having read it, he blows on the bride as a mark of blessing. It is interesting to note that throughout this ceremony the bride keeps her eyes tightly closed and her head deeply bowed. A mirror is then placed between the two in a position that both can see each other's reflection. In fact, instead of casting an indirect glance over the bridegroom, the bride, according to the custom, covers her face with her hands to demonstrate her shyness and thus to prevent him from seeing her. The groom begs her to open her eyes and allow him to see her face. According to the custom, he must insist and the women around him ask him to say, "O mistress I am your slave please open your eyes." However, after a while, the bride lets him see her face in the mirror and, in turn, sees his

face. Due to the arranged marriage system, normally these reflections are the first glimpses of each other.

Nobody knows the actual significance of this unique custom called arsī maṣḥaf. However, it is widely practised throughout Pakistan irrespective of any caste and region. Having finished arsī maṣḥaf, the bride who is now ready to depart to her new house is taken to another room so that the final touches may be given to her make-up. In the meantime, the bridegroom is offered salāmī first from his mother-in-law and then from other relatives. Before leaving the women's apartment, he finds, customarily, one of his shoes missing. The shoe, which is always hidden by his sisters-in-law, is brought back when he pays a "ransom."

Marriage in Pakistan is a "lottery" where nothing is certain. Therefore, the scene of rukhṣatī is very depressing and affects all the guests, especially women. The girl who is now continuously weeping and is nearly motionless from grief, is embraced by her close friends and relatives. At this moment, the mother of the bride, who does not even change her clothes, is affected to a degree impossible to explain. When the bride has been met by all the relatives, the bridegroom holds her hand and both step out under the shade of the Qur'an held over their heads. Again some money is waved over their heads.

When late at night the bride reaches the bridegroom's house, many ceremonies are performed. Some of the most common are as follows - Before the bride is taken out of the car, her feet are washed with milk. In some cases, the girl

walks herself otherwise she is lifted by her husband who is stopped at the gate to pay the "entry fee" to his sisters and cousins. The husband loaded with his wife, buys admittance by paying a reasonable amount of money and then seats his wife on a decorated couch. The bride is given a small quantity of rice pudding seven times in her palm to feed her husband. The same is done by the groom who feeds his wife seven times. After this ceremony the bride's face is shown to the members of the bridegroom's family, who offer gifts and cash to her. During all these ceremonies, the singing is continued until the bride and groom are sent to their private apartment.

Early next morning while most of the guests are asleep, the test of virginity is performed, by examining and showing the wedding sheet to the female kin of the family. In fact, the virginity of the female is a very serious matter in most Muslim countries. Being the protector, a man in the Muslim family is expected to guard the sexual purity of his females before and after the marriage. Therefore, if a woman loses her sexual purity, she causes shame and humiliation for her father and brothers. (41) Thus, unmarried young daughters and sisters in Pakistan are carefully guarded and protected by their father and brothers. The sexual code in Pakistan is so strict that, if a girl happens to indulge in pre-marital sex relations and thus does not prove her virginity, she is sent back to her parent's house and is often divorced on such grounds. (42) In fact, in the tribal areas of the North-West Frontier, the strict application of the code, requires the killing of an unchaste daughter. The same is true for

the tribal areas of Baluchistan and Sind where the husband murders his wife and her lover even on the slightest suspicion of her illicit connections. Due to the fact that lewdness of women in these tribes is regarded as a great sin, which can not be pardoned, the person who kills such a woman is not culpable in the eyes of the tribal chief. His crime is normally connived at, not only by the chief, but also by the woman's family. (43)

After having examined the wedding sheet, the bride is asked to take a bath and is then decorated by her sisters-in-law. In the meantime, the bride's sisters and cousins arrive with a very elaborate breakfast prepared by her family after which she is taken back to her parents' house for a few hours. In the evening a sumptuous feast for walīmah is arranged by the groom's family. The house is decorated and illuminated lavishly and a large number of guests, whose number may sometimes be several thousands, are invited from the bride's as well as the groom's side.

After having stayed for two or three days in the house of her parents-in-law, the girl is brought back to her parents' house where, in the evening, chauthī is played. Many people are again invited, mainly from the groom's side who bring different kinds of fruit and vegetables including especially made flower sticks. After the feast, the bride and groom are seated in a couch where they play by gently beating each other with flower sticks and fruit. This procedure is later carried on by the audience who, of course, do not show any softness while beating each other with heavy stuff such as water melons or large brinjals. Having celebrated

chauthī, for five consecutive Fridays, the newlyweds are invited by their close relatives who perform further festivities on each Friday, involving a considerable amount of money. The chain of feasts continues for several months since the newly married couple is also invited by their friends.

It must be noted that, during all the preparatory and final wedding ceremonies, there is a great exchange of gifts in several categories; for example, between the new relations by marriage, within the family and among the servants attached to each family. To a certain extent, these gifts may represent a refined, balanced system of give and take between the two families. However, it has, in fact, taken the shape of an epidemic especially in the Punjab where not only the groom's immediate family receive many dresses but all the close relatives of the groom are also entitled to get at least one dress each. (44)

The general description of the ceremonies, which are an indispensable part of the Pakistani wedding, makes it clear that, in the matter of marriage, the prescription of Islamic law is not followed. Islamic law despite involving many complications, such as in mahr, divorce and the option of puberty etc., is very straightforward regarding the marriage contract and, in considering it a civil contract, requires only the 'ījāb wa qubūl of the parties in the presence of two witnesses.

As mentioned earlier, many customs crept into the Muslim marriage from the highly superstitious Hindus, who can justify most of their marriage rituals in terms of their

religion and belief. The Pakistani Muslims, on the other hand, do not have any religious support for what they practise in their marriages. Nonetheless, as the majority of the people, even the educated, do not understand Arabic and are not fully aware of Islamic law, they take many of the rituals as being of religious origin. There exists, therefore, a great confusion about what is religious and what is not. Some customs are practised so widely that, for a common person, it seems impossible to doubt their validity. As stated earlier, these customs have a lot of charm and, in fact, provide great pleasure and fun for the participants. They can not, therefore, be rejected forthrightly, nor can they be labelled as social evils. In the author's views, the practice of such rituals should be voluntary rather than obligatory, so that people would be free to enjoy them rather than being compelled under social pressure to observe them. If the practice of such customs is at the volition of the people, it is certain that with the passage of time most people would lose interest in them, especially due to the rapid pace of modernization. Even at present, despite heavy social pressure, there are many educated and broad-minded families, particularly in the large cities, who have discarded many of these customs.

Muslim women, who are mainly responsible for perpetuating such customs, must be made aware of the fact that many of the customs they practise at the wedding have been borrowed from the Hindus; and are, therefore, without a religious validity falling outside the Islamic teachings. If they were within the framework of Islamic teachings, some other Muslim country must have also practised them. In fact,

many customs and rituals practised by the Indian or Pakistani Muslims are unknown in other parts of the Muslim world. These differences are found not only in the marriage institutions but occur also in many aspects of everyday life. Living among several students in Durham from different parts of the Muslim world, the author herself found that she was very different from other Muslim students in her behaviour and dress, and except the common belief in the religion of Islam, it was difficult to find other similarities. So the women of Pakistan must know the origin of these prolonged and expensive ceremonies so that there is no dilemma as to whether these customs are Islamic or not. Due to the high illiteracy and lack of Arabic knowledge in the people, what has been happening in Pakistan is that Islam has been used as an instrument to exploit the ordinary masses. When it appears that the people would not agree with certain things, immediately the label of Islam is used to solve the "problem". The best example is again of Mr. Bhutto, who after facing the bitter criticism by the 'ulemā', changed the wordings of so c ialism into "Islamic Socialism", to gain public favour. The same happens when some reforms are introduced in the status of women. Although, the approach of the reformists is normally quite modern, it is insisted that they do exactly what Islam has actually prescribed. Thus to bring a healthychange in society overall and simplicity in the marriage institution, it is important to improve the literacy level, especially among women. Only then could women be able to make a sharp distinction between the Islamic teachings and social practices and would then decide according to their own choice what to

practise. So far, a great majority of the people, especially women, unaware of the genuine marriage system of Islam, regard the Pakistani marriage as quite in line with the former. Thus, any attempt to eliminate some of these unnecessary, rather Hindu oriented, marriage customs has been viewed, generally, as a departure from the Islamic marriage system. In the author's view, however, the exclusion of such cumbersome and time and money consuming customs would not only simplify the institution of Pakistani marriage, but would also bring it closer to the real Islamic system of marriage. In addition, it will be a great relief for millions of Pakistanis who pay a high price for practising these customs and thousands of girls whose marriage has been obstructed by these tortuous customs, will have a chance to be married. Nevertheless, one point must not be overlooked. The traditional concept of marriage, with all its rituals and customs, has played a great role in maintaining the auth-oritarian patriarchal family. Once marriage is made simply a matter between only the two persons involved, who then have a chance to live on their own, the authoritarian family system is bound to weaken or collapse.

Besides the prolonged and expensive ceremonies, there are some other practices connected with marriage, common in certain parts of Pakistan. One of these, found in many parts of the North West Frontier and Baluchistan, is walwar.[45] Under this system, the bridegroom pays the price of the bride by cash or commodity to her father before marriage. The price which varies according to the status of the girl creates

many problems for the boy who has to sometimes sell all his property to acquire a wife. It is ironic to observe how local customs cause hardship to the people of Pakistan. If, in some parts of the country, the girl's parents become destitute while getting a suitable husband for her, in other parts, the boy puts at stake all his wealth to acquire a wife. Those who practice walwar, believe that the girl's respect in the sight of her in-laws depends on the amount which has been paid for her. The greater the amount paid, the greater is the respect she enjoys. In fact, once the money is paid for the hand of a girl in a male-oriented society, her position is degraded to that of chattel. Such a woman becomes the property of her in-laws where she might be valued on account of her cost but, certainly, would not enjoy respect and freedom.

Despite the clear denunciation by the Prophet, wattasatta is another practice prevailing in rural areas of Pakistan. In this system, a match is arranged between the boy of one family with the girl of another and vice versa, by way of exchange. For instance, a brother can ask for his son the daughter of his sister and gives, in exchange, his own daughter in marriage to the son of his sister. Such arrangement might work in certain circumstances, but in many cases this practice leads to very unsuitable marriages. For example, the results of a survey conducted in a village revealed that a villager got a wife on condition that he would give, in marriage, his six months old niece to his brother-in-law, who was already eighteen when this promise took place. (46) A further unpleasant aspect of such marriages is that if, for some reason, there is a wrangling or strife between one of the couples, the pleasant and united relations between the other

couple do automatically suffer. Often, if there is a break of one marriage, the other is dissolved by force and the woman is sent back to her parents. (47)

Another practice which is prevalent in many communities is that marriage outside the family or clan is looked down upon. In some regions of Pakistan, such an attitude has developed to an extreme; for example, among the syyeds of Sind, if the parents do not find any suitable syyed boy for their daughter, they marry her to the Qur'ān. That means, after decorating the girl like a bride, the Qur'ān is placed in her hands by declaring that she has been married to it. She is then asked to swear that she would defend her chastity and honour throughout her life. (48) The reason for practising such a ridiculous custom is to make sure that the girl will not indulge in illicit sexual relations.

(c) The Dominant Role of the Mother-in-Law

The reason why in Pakistan the old and outdated customs are in existence despite the spread of Western ideas, are many, for example, poverty, ignorance, and illiteracy etc. But in the author's view, the major responsibility in keeping-up several burdensome customs and ceremonies comes on the women's head. Despite the male dominance in society, it is the woman who plays a very dominant role in the marriage institution. The demand for a huge dowry mostly comes from the mother of the groom so that she may very proudly show it to her neighbours and relatives. It is interesting to observe that, according to many surveys conducted on such issues the younger generation, enlightened by education, does

not like to demand any dowry from the girl's family. However, it is usually demanded, partly due to the society's pressure and mostly because of the mother's desire.

Although, it has been emphasized greatly that the family in Pakistan is strictly patriarchal in many respect, it is rather surprising to note that the elder woman of the family, generally, plays a more important and definite role than does an elder male. If a woman, after the marriage, remains in a joint family, she is invariably, in one way or the other, under the control of her mother-in-law, who not only dominates her, but her husband as well. The husband has to be very careful while treating his wife affectionately in the presence of his mother, as it might arouse jealousy in the mother, especially if she is a widow. He can not bring anything special for his wife, unless he brings something for the mother as well, otherwise stress might arise in the family and the husband be labelled a "squ anderer", spending lavishly on his wife. If the wife wishes to visit her parents, she must seek the permission of her mother-in-law. Similarly, if both the husband and the wife plan to go and see a film, or attend any function, they must get her approval. Living in one family, it is considered highly shameful for a wife to dare cook on her own for herself and her husband. It is the mother-in-law who holds the key of the purse and the kitchen. The wife must help her mother-in-law in the kitchen but should not use the kitchen as her own, or disturb the order of the things in the kitchen set by her mother-in-law. The author herself observed on numerous occasions that her sister's mother-in-law created a great fuss even

when she did not find a small knife in the place where she expected it to be. . She also observed that one of her brothers-in-law did not dare to buy a TV set for his wife, as he had one unmarried sister in the family for whom he was made responsible by his mother to provide a dowry. While an elder female or the mother-in-law is present in the house, it is regarded as solely her duty to welcome and entertain visitors. Even in Britain where it would be unlikely to have a large joint family, the author was told by one of the social workers of the "National Association of Multi-Racial Education" that in many Pakistani families they were not given an opportunity to ask questions directly from the lady of the house, instead an elder female, normally the mother-in-law, was ready to receive and answer the questions.

While Islamic law does maintain the male supremacy in the family, the reason why elder women usually enjoy a dominant position in the family, and have as well greater freedom outside the family, may be the attitude of the patriarchal system which does not demand a strict seclusion from the women who have entered their menopausal age. The joint family system further proves conducive for their authoritative role. Otherwise Islamic law does not require from a wife to stay with her in-laws. Instead, it is her right to demand from her husband a separate apartment to live in.

There is, in fact, a great deal of support in the patriarchal system for the authoritative role of the mother-in-law since she works as an anti-heterosexual institution in a male-dominated society. The presence of the mother-in-law in the family generally does not permit a man and woman to

have privacy and more intimacy. In short, the elder woman in the position of mother-in-law plays a very significant and definite role in the Pakistani family. It is she who carries on criticising her daughter-in-law and, if not satisfied with what she has brought as dowry, plays all sorts of pranks to destroy the happiness of the newly wed couple. Of many pathetic incidents one was brought to light hardly two years ago, in Lahore newspapers. It was about the mother of a girl who appealed to the police to register a case against her son-in-law. According to the details, the girl, married to a police constable, was from a poor family and therefore could not bring with her a splendid dowry to her husband's house. Only six months after the marriage, the marital relations started deteriorating until her husband found a wealthy girl who could fill his house with an exorbitant dowry. Now he asked his wife to give her consent for his second marriage. Using her right under the family laws of Pakistan she refused to sign the papers and came back with her female baby to her mother's house. Later, she was brought back to her husband's house by a trick and, at night, her mother-in-law and the husband attempted to burn her alive. Her face and body were burnt almost entirely but she survived with a mutilated face. The most pitiable aspect of this case was that in spite of many appeals by her mother, the case was not even filed, as the accused himself belonged to the police department. (49)

It may not be irrelevant here to mention a recent report, published in the magazine Time, August 13, 1979, p.15, given by a women's liberation group in India. According to the report, in 1978 in Delhi alone there were at least 200 suspected "dowry deaths" and another 86 up to August 1979. It was

believed that the number of such "murders", planned by the parents and the husband in avarice of getting a more expensive dowry, may actually be higher since many cases are difficult to corroborate.

It is interesting to note,however, that sometimes younger women also exercise a great power in the family. The reason for this is that, in patriarchal societies, the maintenance of men's honour and prestige depend on the behaviour of their women-folk. The continuous apprehension about the feared misbehaviour of women keeps men, to a certain extent, dependant on their women. Thus women who realize this "weak" point of men, sometimes exploit it and use it as a real weapon to exercise power.

(d) Dowry and Dower

The origin and existence of the dowry in Pakistani culture can be traced back to the influence of Hindu society. As stated earlier, originally the Muslims adopted several customs including the dowry, due to their direct and long contact with the Hindus. It is, in fact, a controversial issue in Pakistan whether the dowry is an essential component of marriage in Islam or not; and whether it is a social evil or has it some advantage? The early history of Islam appears to indicate that the dowry system can not be treated as an essential component of marriage. The Prophet himself married off his four daughters, Zainab, Ruqaiyah, Kulthūm and Faṭimah and there is nothing on record to prove that they were given any kind of dowry, with the only exception of Faṭimah. Even in her case the traditions reveal that the Prophet had asked ʿAli to sell his armour so that he could

arrange his marriage. After selling the chain armour, 'Ali handed over the money to the Prophet who happened to be his guardian as well. The Prophet arranged, from that amount, a very austere dowry for Faṭimah, which comprised only a few household items, such as one bed with pillows, a hand-mill, two leather bags for carrying water and some earthen utensils. That is why, even today, the dowry as an essential component of nikāḥ is unknown in the Arab world. Indeed, in many countries, for example in Saudi Arabia, if the dowry is provided, it is arranged from the money given by the bride-groom before the marriage as a dower amount. However, even if it is considered that giving the dowry is the sunnah of the Prophet and the Prophet, in fact, provided a dowry for Faṭimah from his own pocket, it must be appreciated that it was voluntary, reasonably simple and free from all forms of ostentation. In simple terms, it was a gift given to the bride by her father and the underlying aim was to help the newly wedded couple to make a start in life. Therefore, when marrying Ruqaiyah and Kulthūm to opulent Uthmān, the Prophet did not provide any dowry.

Nonetheless, in Pakistan, the matter is the other way round. Due to the wrong implementation of both the dowry and the dower, marriage has become almost a trade agreement in which each party tries to have the better part of the bargain. No marriage can take place in Pakistan without dowry and dower which are closely interlinked in the sense that often the extent of the former determines the amount of the latter.

The dowry itself is not an evil, and has certain useful

functions, for example, it can help spouses to establish a new household and thus remove some of the worries of the new couple. It can also establish good relations between the bride and her in-laws. But when the dowry does not remain simply a question of the parents giving their daughter presents, without showing it to the crowd who critically examine the monetary value of the gifts, it serves as a symbol of class superiority and creates many problems for the poor and the middle class. This is exactly what is happening in Pakistan that, exceptions apart, the general tendency among the masses is to treat the dowry as a status symbol. The false prestige attached to the dowry has created severe constraints for the marriage of many girls in Pakistan. According to one view it was claimed that the state of affairs has come to a stage that about 80 per cent of the marriageable Pakistani girls can not get married because their parents do not have the means to provide the dowry demanded. (50)

Sometimes, exorbitant dowries are offered by the parents so as to marry their daughter at a proper age and to a reasonably young, educated man. Similarly, often excessive dowries are given only because the bride's parents desire to show off their riches and, thus, enhance their prestige. It is, however, much more common that an expensive dowry is provided on the demand of the boy and his parents. The boy's parents look forward to handsome reward in the form of a dowry and, if they are poor, try to marry their sons into rich families. Wealth has corrupted the institution of marriage so much that the boys do not even hesitate in

demanding a car, colour television, and a sum with an air passage ticket, sufficient to cover the cost of higher education abroad. Therefore, realising the fact that the value of the dowry is the primary consideration in marriage, the girl's parents begin to accumulate the dowry shortly after her birth. Still at the time of her wedding it often requires them to shoulder a heavy debt. Due to the pressure of the social norms, it becomes necessary for them to go far beyond their means to provide a lavish dowry consisting of expensive gold jewellery, many dozens of dresses and household equipment, such as an iron, sewing machine, sofa, refrigerator, TV set, copper utensils, delicate china crockery and other useful items. As a result, the girls in Pakistan are viewed as a liability and the parents desire to have more sons than daughters.

Paradoxically, the people in Pakistan do realize the detrimental effects of the dowry system. The government itself, as will be seen in the next section, has been trying to curb the menace of the dowry by law. But, unfortunately, no effective solution is forthcoming. According to one survey conducted in the suburbs of Karachi, it was noted that 60 per cent of women insisted on maintaining the dowry system and 54 per cent of women thought that it should remain in force since it helps in gaining dignity in the father-in-law's house. It was also known that 83 per cent of women considered the dowry as a religious practice rather than a social one. (51) Under such a situation, it seems unlikely that any act or law would do much in eradicating the age-old custom. The effective and durable remedy could,

perhaps, be in trying to bring a gradual change in the thinking of the people. This, in fact, is the main battle which has to be fought and for this the government can, besides legislative action, mobilise all social welfare bodies, private as well as public, and use all the mass media. Help can also be sought from the religious leaders, who wield a good deal of influence with the masses. Exemplary behaviour of the ruling classes can also help in mobilising public opinion against the dowry since they are the people whose ways and practices tend to set the pattern for the rest of society.

The customary dower in Pakistan is entirely different from the dower prescribed by Islamic law. According to Islamic teachings, the payment of mahr is intended to be the pre-condition of the woman's agreeing to be the wife of a certain person. It is a kind of security for a girl, as it indicates the woman's right to own wealth and property independently, without the intervention of the husband. The nature of dower in Pakistan is so drastically reversed that the wife, in fact, has fears of losing the very marriage unless she gives up her right to claim any dower. That means, if in the first case it was "give the mahr and get married", now it is, "give up the mahr and remain married." It has been estimated that almost 90 per cent of men in Pakistan either do not pay the mahr to the wife or have it remitted by her, taking advantage of her subordinate and helpless position. (52)

Being from Pakistan the author has herself witnessed

that in the case of her four sisters, who did not have any perception of their right, the mahr had been simply treated as a documentary formality. Socially it is taken as a check on the power of the husband to divorce his wife. Once a huge amount of dower, which is normally out of proportion with the economic condition of the man, is set, it is argued that the girl will not have the fear of being 'kicked out' at the slightest mistake. Whereas the fact is that, in many cases, an exorbitant mahr does not protect the wife from her husband's bad treatment, or repudiation, since quite commonly, on the wedding night, instead of paying the mahr before the consummation of the marriage, it is absolved on the request of the husband.

Like the dowry, the mahr is also a sign of family prestige, therefore, it is fixed at a higher amount, often beyond the pecuniary resources of the bridegroom, which automatically implies that it is not for payment, but to enhance the family prestige. Sometimes, such an exorbitant amount of dower creates many problems for a husband and his right to divorce becomes a mockery, as he finds it impossible to break an unsuitable marriage just because he can not afford to pay such a huge amount of dower.

It is worth considering that Pakistan is, perhaps, the only Muslim country where the social laws and principles of Islam, especially those pertaining to marriage, have been moulded and interpreted in a way that they have taken a meaning quite repugnant to the purity of ideas and the spirit of true piety. Not only a significant departure has been

made from the essence of Islamic rules but numerous innovations have also been made. On the other hand, if we look at the Arab countries, it seems that the people there are, to some extent, successful in keeping up many social rulings of Islam in their real sense. For example, unlike Pakistan, it is customary in Arab countries for the family of the bride-groom to bear more expenses than the bride's family. It is the family of the groom which prepares a sumptuous feast for the guests. Similarly, the mahr in Arab countries is normally paid before the marriage from which, sometimes, a small part is used by the bride's father. (53)

(e) Polygamy, Concubinage and Prostitution

The existence of polygamy in Pakistan is defended as a man's natural privilege accorded by God. It is considered as an alternative to prostitution which is repugnant to Islamic teachings. The rich, especially the Pathan of the Peshawar Valley do resort to polygamy, justifying it either by the first wife's failure to produce a male child or in order to have a love-match. (54) As stated earlier, the marriage in Pakistan is normally arranged by the parents in which there is no question of personal choice. Therefore, the boys often keep two wives, first, "the traditional" wife, chosen by his parents, and the other "the modern", of his own choice. In this situation, the second wife normally gets the lion's share of the husband's money, time and love and, invariably, it is she who accompanies the husband to social functions. (55) A conspicuous example of such a situation is that of Begum Nusrat Bhutto, the second wife of the late prime minister

of Pakistan, Zulfiqar Ali Bhutto. While she played a vital role in the politics of Pakistan during the regime of her husband, nobody heard about Amir Begum, the first and traditional wife of Mr. Bhutto. It was only during the trial of Mr. Bhutto shortly before his execution that her name appeared in the newspapers.

However, in its broader sense, polygamy is resorted to by a very small minority in Pakistan, as men realize that domestic harmony is almost impossible when two or more wives share one husband. In addition, some restrictions have also been introduced on the practice of polygamy in Pakistan. For example, a man cannot have a second wife unless permission is given by an arbitration council, consisting of the Chairman of the local union council, a representative from the husband and one from the wife. However, if a man marries a second woman without the permission of the first wife, though he is liable to punishment, yet the second marriage is considered as valid. Such a slack law, in fact, can not guarantee a woman that her husband will not bring a co-wife into the house. There may be cases when a wealthy and amorous man would happily pay the fine and undergo six months sentence, but in return have his "sweetheart" as his second wife. In fact, religion has a great influence and hold on most aspects of life in Pakistan, and the Pakistani culture is closely interwoven with religion. Unlike Tunisia and Turkey where polygamy was abolished, it is very difficult for any government in Pakistan, even if liberal, to legislate what is repugnant to Islam. In spite of several modern interpretations of the verse regarding polygamy, the majority of religious

authorities still hold the view that polygamy can be resorted to in normal circumstances with the condition that all the wives would be treated equally.

Before discussing prostitution and concubinage in Pakistan, it would not be out of place to define the meaning of both. The "West Pakistan Suppression of Prostitution Ordinance, 1961", defines prostitution as promiscuous sexual intercourse for hire, whether in money or kind. The women, who offer their bodies for indiscriminate use for money, adopt prostitution by their own will and are free to have sexual links with whosoever they wish. They normally have their own brothels, where they run their profession. The concubine, however, is that woman who cohabits with a man without being his legal wife; she is the mistress of a certain person and sleeps only with him.

Prostitution, which does not have any religious ground, is prohibited in Pakistan and nobody is allowed to run a brothel. If somebody, whether the prostitute herself or her broker, solicits or persuades any person for the purpose of prostitution, he or she is liable to a fine and imprisonment. Not only that, the importation of any woman for the purpose of prostitution is also prohibited and severely punishable. If anyone attempts to procure, sell or lead away any girl, especially if she is under eighteen, with intent that she shall be employed or used for the purpose of prostitution or illicit intercourse with any person, or for any unlawful and immoral purpose, he shall be punished according to the Pakistan Penal Code, with imprisonment, which may extend to ten years and shall also be liable to a fine. (56) However, it can

not be claimed that prostitution as an institution is not present in Pakistan. Women indulging in prostitution are, in fact, scattered all over the towns, not because they want to adopt such a profession but due to many social injustices done to them, for example, economic pressure, abduction, broken marriage, widowhood, and rape etc. According to a report of the "Commission for Eradication of Social Evils", the highest percentage of prostitutes was in the city of Rawalpindi, which had seven prostitutes for every thousand males. It was also realized that a number of individuals and gangs were involved in this trade including female pimps who play an important role in the profession. Many innocent girls, who are enticed away from their houses on false promises of marriage, later come into the grip of female pimps who not only force them to ply their trade day and night, but also get a substantial portion of their earnings.(57)

It is interesting to note that many people, including important officials, believe that prostitution is a necessary evil and provides a "safety valve" for society. They compare prostitutes to the "sewage drains" of a city which help to keep the city clean. However, the majority are not convinced by the "safety valve" or "drains" theory and consider prostitution as a blot on society.

Before concluding this section another thing to be examined is the existence of professional dancing girls in Pakistan. These entertainers, who are normally invited and visited by the well-to-do, not only perform singing and dancing but are often prostitutes in disguise. Their

importance in urban social life can be assessed from their frequent appearance in the plots of Pakistani films and their popularity at a social evening among men. (58)

As stated in Chapter Three and Four, concubinage is lawful in Islam in the sense that men are allowed to have sexual relations with those women who are captured in war and are thus reduced to slavery. Therefore, under Pakistan Statutes, sexual intercourse with an unmarried woman with her consent is not prohibited in express terms.(59) However, it is very rare for men to keep mistresses or concubines, especially since slavery is non-existent and constitutionally prohibited in Pakistan.

(f) <u>The Wife at Home and the Family</u>

> "In all major areas - descent and residence, authority and succession, ownership and inheritance of property - the structure of the Moslem family in Pakistan is strongly male-oriented. The family, urban or rural, is invariably organized around related males, and descent is reckoned through the male line.... The women often have their way but ultimately it is the men who are responsible for direction and discipline." (60)

Being a predominantly agricultural country, society in Pakistan is by nature rural and conservative. The traditional family being integrated into agrarian society is strictly patrilineal (relying on male kinship), patrilocal (sons bring home their new wives), patriarchal and authoritarian. The supreme authority is always assumed by the eldest male of the family and the father holds complete economic control of property and family income. He constitutes himself as a censor of such behaviour of family members as

affects their prestige in the community. (61) It is rather difficult, at present, to say exactly what type of family is more prevalent since in rural and urban communities, as well as in large cities and towns, there is a growing tendency towards the nuclear family. However, keeping in view the dominant size of rural population in Pakistan, it can be claimed that, generally speaking, in all the regions of Pakistan, the joint family system still predominates. This means that a household contains an extended kin group consisting of husband and wife, their married and unmarried sons, unmarried daughters, daughters-in-law and their children and, sometimes, widowed sisters. However, in the cities, a combination of joint, extended, and nuclear family patterns is a common phenomenon.

Discrimination on the basis of sex is adopted from the moment of birth, which increases as the child grows into adulthood. Within the family, not only is the eldest male dominant and superior, but the male child is also considered to be superior and protector of family prestige, wealth and strength. In fact, the male domination and sense of superior status is taken for granted in Pakistan, mainly due to the patriarchal family system of Islam. Especially in rural areas, the traditional conception of man's superiority often takes the form of asserting inequality between the sexes. A village husband feels proud in beating his wife as it will prove his manliness. If somebody in the village treats his wife as his counterpart and gives regard to her opinion, he is not respected by his fellows and is

labelled as "hen-pecked". (62) In the villages, relations between husband and wife rarely become companionable. Women do not have the courage to address their husbands by name and, instead, use the word Mālik, meaning master. In some traditional families, the young wife continues to cover her face in the presence of her husband until she bears two or three children or holds the charge of the family in the case of the mother-in-law's death. Due to the joint family system in the villages, the wife is normally left in the care of her mother-in-law to be dominated.

Although, when a girl is born into the family, she is not literally buried as in the pre-Muslim Arabia, yet there are instances where the birth of a female is considered a misfortune to cause little rejoicing in the family. The birth of a baby involves many celebrations and ceremonial announcement by the family, but there exists a considerable difference in the parents' attitude if the baby happens to be a girl. In Bhawalpur, if a woman gives birth to a female, the midwife is given some pulses in a black pot; and if it is a boy, she is awarded a considerable amount of money. In Baluchistan, N.W.F.P., and some areas of the Punjab, especially rural, sweetmeats are distributed among the relatives and neighbours who come to congratulate the parents give money to the baby, if it is a boy. In the case of a female birth, nobody is usually informed. However, the relatives and neighbours come later to express their sorrow and try to console the mother by saying "do not worry if darkness has come, there must be rainfall", meaning that next time she may have a boy. (63) Similarly, a rich Pathan would

sacrifice two goats for a male birth and would distribute the flesh with sweetmeats, while in the case of a female child, only one animal is sacrificed whose meat is distributed without any sweetmeat. (64) It might be interesting to know that the writer of an article published in the Pakistan Times happened to meet a girl whose name was "Bus bibi" meaning, "that is enough, no more". On enquiring, the girl revealed that she was the sixth daughter in a row, so the parents gave her this name. Thus the poor girl carries with her the label of not being wanted. (65) On the other hand, the desire and preference for a male child is the rule of Pakistan rather than the exception and the birth of a son is a time of great rejoicing since he will determine the family's future growth and power and is the source of family pride. (66)

The main reason why the male child is always welcome in almost every community of Pakistan is that society in Pakistan is male-oriented where only the man upholds the superior and authoritative position. However, there are some other reasons as well, for example, the male child, due to the patrilocal system, does not leave the family on marriage as does the female, and as the earning member, can always be a source of economic security and he is a source of strength. A female, on the other hand, is considered as a handicap and a potential source of shame. As a result, from early childhood, there is found a sharp discrimination between the two sexes. Although the parent-child relations are of rather an authoritative nature and the father expects from his children of both sexes complete obedience, yet the relations between father and sons, especially the eldest son, who will inherit

the prestige, power and responsibility, are somewhat friendly. Being regarded as an asset and a permanent part of the family and responsible for protecting the family honour, he is encouraged to develop qualities of assertiveness, dominance and aggressiveness, while a girl is trained to be modest, obedient, docile, permissive and non-competitive. She is expected to help her mother in the household work from an early age so that she is trained to be a good wife. From early childhood, she is considered weak and fragile, dependent and needing protection by the male members of the family and is subject to vigilant protective attitudes by parents and brothers. From the cradle, a village girl faces a hostile environment when she sees that the best share of whey is always kept aside for her brother while she gets worthless butter-milk. Naturally, in many cases, the girls in their adulthood consider themselves weak, inferior, defenceless and incapable of standing on their own feet. They conveniently accept the low status considering it natural and as their fate, without realizing that, in fact, this has been imposed on them by their male counterparts.

> "Given the great difference between the opportunities and life experiences available to men and women, it is not surprising that women who had lost many of their rights and responsibilities never even attempted to claim them...the high status given the male from the time of his birth as well as the broader opportunities for social and intellectual development place him above the female from childhood." (67)

The traditional role of the wife as a helper and inferior to the husband is, in fact, religiously orientated and is strongly emphasized and enforced in Pakistan. The wife is

entitled to respect, but must prove herself innocent, obedient and always submissive to her husband. If she is shy, quiet and has an introvert nature, the husband will take pride in her behaviour.

> "A bold and well-built man, who is dashing, dominating and guiding the wife all the time is an ideal husband, whereas an ideal wife is the one who is timid, coy, submissive and highly imbibed with the idea of service even to the extent of self-denial." (68)

In the East, including Pakistan, marriage involves not only acquiring a wife or husband but, in fact, a whole family. Therefore, after marriage, the Pakistani wife, uprooted from her family, has, in the majority of cases, to adjust herself to a new home wherein there are numerous in-laws, including the mother-in-law, to whom she must be subservient.

> "Once married, a woman burns all her boats and is tied up ineluctably to the whims, career and person of her husband. She may well be able to manoeuvre him or even in time subtly dominate him, but nonetheless she is always a function of her husband; whether sexual, economic or social. He is the only sun in her universe; and if he is dimmed then her world is darkened. So, she must cling to him jealously. When he is honoured, it reflects on her, when he is insulted, she burns with anger at his antagonists. Fidelity is thus sparked and sustained by the very nature of her affiliation to him." (69)

This means that the status of a wife in Pakistan is largely determined by the status of her husband. She does not have any social and economic independence and the husband is her sole provider and protector. In many circles, it is regarded as reproachable and degrading if the house

is run using the woman's earnings. In a patriarchal society where the father holds complete economic control of property and family income, a wage-earning woman is regarded as responsible for disgracing her menfolk by implying their incapability to fulfil their traditional role. In fact, men feel proud in maintaining their women, as it gives them a reputation of being good providers. By wielding economic power, they can simultaneously maintain their dominance. Thus, the life of a wife is essentially private, revolving around household activities. They are mainly occupied with child-care, preparation of food, embroidery, sewing and other household chores. The wives who give birth to many sons enjoy a much better position in the household, since competence in bearing a male child is highly esteemed. Unless the wife bears a male child, she has no security in marriage and enjoys little prestige.

> "Until she has borne a child, especially a son, she has no real acceptance in the family, for her participation in the family is through her children. A childless wife is likely to suffer the disgrace of a co-wife in a few years and the mother of daughters faces the same possibility." (70)

It is commonly believed in Pakistan that only the mother can look after the child carefully and can play an important role in the socialization of the child. A woman's role as a mother is, therefore, greatly revered. However, when it comes to the question of custody, it is the father who comes first and gets the preference.

(g) Divorce

Although it has been explained at the outset of this chapter that there is a considerable influence of Hindu culture on the marriage institution in Pakistan, which ultimately degraded the position of Muslim women in many ways. It cannot be denied, however, that the traditional and subjective role of woman in Pakistan has also its origins in the laws promulgated in the Qur'ān and Islamic law, which determine the rules of marriage, divorce, inheritance, child custody and general behaviour. It is Islamic law which makes a woman dependent on the husband for her economic needs as he is the provider and maintainer and, strictly speaking, marriage in Pakistan means economic security and social acceptance of a woman. Therefore, for most Pakistani women, there is nothing as frightening and dreadful as the prospect of being divorced. Divorce is almost out of the question in most middle and lower income families unless the situation becomes extremely miserable and there arises a danger of personal safety because of the tyranny of the husband. (71) The marriage contract, which is considered a most sacred rather than a civil contract, ties two even incompatible people together for ever, therefore, divorce is usually a remote possibility. If, unfortunately, the wife is divorced, regardless of the fact that she might be the one who suffered, she has no value and place in society and is looked down upon by the people.

> "Punjabi women are reluctant to divorce unless in great misery, because there is a prejudice against divorcees as such and of remarriage, which makes another marriage difficult to achieve." (72)

Islamic law has also played a very important role in allowing men an unlimited right to divorce. Despite the repugnance by the Qur'ān and the Prophet for a quick and immediate divorce, Islamic law regards ṭalāq al-bid'ah legal and valid. Naturally in Pakistani's strongly patriarchal society, divorce is left almost solely to the husband's discretion. It was only after the promulgation of "Muslim Family Laws Ordinance 1961," when the unlimited right of a husband to divorce was, somewhat, restricted. A husband became unable thereafter to divorce his wife irrevocably by merely repeating thrice, "I divorce thee". He is now required to give a written notice for ṭalāq both to the wife and to the Chairman of the arbitration council. The council fixes a period of ninety days during which all necessary steps are taken to bring about reconciliation between the parties. If the attempts at reconciliation fail, the ṭalāq becomes effective and is treated as one divorce. It is clear that this procedure is according to the real spirit of the Qur'ān. However, the provisions of this law will be examined in detail in the section dealing with women under the law of Pakistan.

As regards the woman's right to seek separation, she is not legally defenceless. However, the whole set up of society is composed in such a way that, despite having legal freedom and being eligible to go to the court in defence of her interest, she has little opportunity to use this right. She is entitled to go to the court to seek separation on certain grounds, but normally does not dare to go to the court to redress her injuries due to the strong convention demanding seclusion and a highly submissive role on the part

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(h) Segregation and Socio-economic Status

Keeping in view the patriarchal structure of the family in Pakistan, based on Quranic principles, the public status of Pakistani women is not difficult to discover. Greater emphasis on male supremacy in Islam, together with its stress on sexual modesty, represents the basis on which the distinctions are set between men and women.

> "The strong and continuing family, a major value of Pakistani life, has several important Islamic aspects. Thus modesty is enjoined as an Islamic value; the chastity of women is secured by an elaborate code of behaviour and avoidance of exposure through the institution of purdah." (74)

In fact, there are different and contradictory descriptions of the word purdah, a Persian derivation, because of its many forms. Many commentators, including some Western writers, consider that purdah needs to be materially present either in the form of burqa', chādar, 'aba or charshaf. However, the fact is that purdah can be maintained in many symbolic fashions, for example, by the complete silence of women in the presence of men, by downcast eyes or bowing of the head, by using dark sun-glasses or by avoiding those roads and foot paths where there is a great traffic of men etc. etc. The purdah system which, in reality, is one of the devices and manifestations of female subjection and control under patriarchs, will not achieve its object properly if its meaning is limited merely to the covering of the body of a woman from head to foot. In its wider sense, purdah means segregation and seclusion of women in society by implementing and enforcing a high standard of female modesty, chastity and fidelity before and after

m arriage. The main characteristics of a purdah society, or in other words, a patriarchal society, have been mentioned in the preceding chapter. Therefore, it will be sufficient here to say that in order to insure the paternity of the child and pure lineage, a strict segregation is maintained in Pakistan by evolving many sexual taboos and a systematic code of legal and moral sanctions.

> "A word of fuller explanation of the expression purdah (literally pardah "curtain", equivalent to Arabic ḥijāb) seems to be necessary. Pakistani usage often applies it only to the wearing of the burqa', the cover-all garment worn by women when appearing in public; but it refers to the larger issue of full segregation and is the equivalent of harīm (harem) in Arab lands, Zenānah in Pakistan and India, selamlik in Turkey, and anderūn in Iran". (75)

Purdah, or the seclusion of women is largely prevalent almost all over Pakistan and the intermingling of males and females, especially if they are young, is treated as a strict taboo. In many parts of Pakistan, especially in the Punjab, purdah correlates with economic status and is a matter of honour and prestige; therefore, an extreme form of purdah is adopted by those of middle class who aspire to a social status higher than the one they actually have. Among certain people, such as the Pathans, the invisibility and segregation of women is such a critical issue that they even murder the men who endeavour to break such strict restrictions. In a Pathan village, a policeman was shot by one of the inhabitants because he insisted on using the path from which men were excluded, being used only by women when carrying water. (76)

Except in very early childhood when both sexes mix and

play together, there exists a sharp distinction and prejudice on the basis of sex. As they grow older, men and women are restricted in their meeting outside the home. Even in the family circle, many precautions are observed if some young lad, even if he is a close relative, visits the members of the family. It is taken for granted in Pakistan that men and women see each other as sexual objects. Therefore, if members of the opposite sex who are not related, meet, talk, or carry on any activity together, it is assumed that such intimacy must lead to sexual temptation. As a result, the great majority of women do not dare to break such strong injunctions of the segregation of sexes lest they imperil their family prestige. Although there is no bar on women going out for shopping yet, as the women's life is essentially private, much of the shopping for the family is done by the male members of the family or by the servants. In small villages and towns, elderly saleswomen go about from house to house with feminine necessities.

For maintaining purdah, there exist many devices in Pakistan. One of the physical manifestations of purdah is the separate places for women in the household and in public. In the household, normally women reside in a separate quarter or room called zenānah, where women do not wear a veil and busy themselves in cooking, sewing, managing the household and adorning themselves and where no stranger or even a distant male relative is allowed to enter without the permission of the head of the family. In public, there are separate compartments for women in buses and trains. Festivities, such as weddings, are celebrated in separate

groups and different parts of the house and even separate arrangements are made for entrance of men and women. Days are reserved for women at different public resorts and saints' shrines. In many factories, women have special apartments for work and a separate canteen to eat in.

There is almost no co-education system in Pakistan except at the university level and even there, in the libraries, special reading rooms are reserved for female students and it is endeavoured to separate boys and girls as much as possible. While the author was at Karachi University, doing her degree, according to a University regulation the boys and girls were asked to maintain a minimum three feet distance while walking or sitting together.

The burqa', a head-to-toe covering and the veil for the face, is another manifestation of purdah or, in other words, a device to control women. Worn mostly in cities, it allows mobility of women in crowded areas. In fact, this has been the only means by which a woman, without endangering her prestige, can move outside, with confidence. Even now in many parts of Pakistan, the burqa' is considered to be a positive evidence and sign of the girl's piety and dignity. Contrary to urban areas where the burqa' helps women to have some out- of-door mobility, in the rural areas it hampers their mobility as most of them have to work in the fields. Therefore, in the villages, the purdah or seclusion is mostly expressed in symbolic ways rather than wearing the burqa'. Punjabi village women and some tribal Pathan and Baluchi women maintain segregation by lowering their gaze, covering their heads, avoiding males during their working hours in the

fields and by turning their back if they meet with a stranger.

> "Two of the major methods of preventing the breach of modesty lie in limitations on the physical mobility of women beyond the home and the establishment of sexual "invisibility" through such items of clothing as the burkah and the shawl. These instruments of seclusion are commonly known as purdah in the Islamic world. The use of purdah in Panjgur (an oasis in Baluchistan) coincides with a general Pakistani model." (77)

In short, whatever is the mode of purdah, it is a fact that seclusion and segregation of women, whether urban or rural, is prevalent in Pakistan and the intermingling of the sexes is avoided as much as possible to ensure the physical modesty of women. A woman's participation in public life is, therefore, limited.

As a matter of fact,women in Pakistan do not have to struggle for the recognition of their legal, political, civil and religious rights. They are free to vote in all elections. They are also free, at least theoretically, to contest all the seats in the central and the provincial legislatures and to vote for them. Regarding property rights, they enjoy the same status as men and no distinction is made, under the law of the country, between men and women in acquiring or disposing of the property. Legally speaking, they have equal access to all opportunities and their rights and responsibilities are well defined in the laws of Pakistan.

> "In theory, political and civil emancipation of women in Pakistan is, the preceding observations notwithstanding, accepted, or at least recognized as a desideratum to the achievement of which the government is officially committed." (78)

In reality, however, a wide gap exists between theory and practice and the women in Pakistan do not take full advantage of these rights because they have been socially handicapped by the purdah system. To a large extent the inaccessibility to such rights is because the literacy level among women is extremely low and they are ignorant of their rights. If some women want to fight for their rights, the strong notion of female modesty bars them from taking any effective method. Furthermore, economic helplessness plays a major role in hindering women from effective participation in many sectors of public life. Although, by Islamic law and the law of Pakistan, women are entitled to have independent monetary resources without the consent of their husbands, it becomes difficult in a predominantly patriarchal society for them to benefit from these rights. There is no law whatsoever which stops women from saying their prayers in the public mosque, but so far as the author's observation and knowledge goes, there is not even one woman in a thousand who would dare to go to the mosque to say her prayers. In short, the social life of women in Pakistan is extremely limited and whatever involvement they have in public life, is through their husbands and other male kin.

As might be expected in a patriarchal system, not only social control, but economic control is also exercised by the patriarchs in Pakistan for maintaining male dominance. In fact, it is not only in Pakistan where women have been accorded a position of economic dependence, but in many other Eastern countries too, the man has always taken responsibility

for the support of all the women in his family and retained it as a matter of personal honour and pride. (79) If he fails to support women of his family, he sinks low on the social or economic scale and is taunted by his male colleagues. Therefore, the Eastern man has hardly tolerated sending his wife outside the household to earn a livelihood; instead, a great hostility is found in his attitude towards women's employment. With regard to Pakistan, the hostility of men towards women's employment outside the household is also religiously oriented and is the outcome of the religious command that man is the sole maintainer of the family. As it is considered a moral duty for men to maintain their women, the majority of Pakistani men feel that they would be looked down upon by their friends and relatives if they allow their women to work outside the family. In a survey a bachelor, government servant said that it would hurt his pride to see his wife working, therefore, he would rather die than let his wife work. Another man, a sales manager of Saudia Arabian Airlines, who was a bachelor at 34, stated very confidently that since he was basically a possessive man, he would not like his wife to work but instead would want her to give him as much time as he wanted. (80)

A woman can secure the respect, value, and honour of her husband by retaining her complementary status and not extending her role to where it may overlap with the man's. Perhaps in the near future the traditional attitude will change, but so far, the general social environment is not very congenial for working women. Social prejudice, confining traditions, irritating and insulting remarks and the stares of

males make a working woman's life quite difficult because she is regarded as a deviant and her character is suspected.

> "(The most important difficulty in adopting a career) is the disapproval bordering to hostility by the immediate family members not excluding the parents and husbands who mostly begin to think that the sense of superiority and chivalry is hit thereby... it means that women who work gai nfully have to face odds of discrimination and inequalities because of domination by men and the prevalence of sense of superiority within them" (81)

In fact, the unsympathetic and hostile attitude of men towards working women is one of the major impediments in the implementation of measures to increase the contribution of women in national development. Despite the assurance laid down in Articles 25 and 27 of the constitution of Pakistan that no citizen otherwise qualified for appointment in the services of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, caste and sex and that there should be no discrimination on the basis of sex alone, the fact remains that women are still considered ineligible to hold certain posts, such as in the engineering services, foreign services, defence forces, civil services and law and judiciary. However, law, judiciary and defence are such professions from which women are often excluded even in advanced countries. Until recently, the only professions readily accepted and approved by Pakistani society for women were teaching and medicine. Even here there were many factors, for example, apprehension of mixed gathering, looking after a male patient and night duties which produced a kind of hatred against the medical professions, especially nursing; and it was considered debasing for a girl of a noble family to join the nursing profession. (82)

However, both teaching and medicine are, somehow, supposed to be more lady-like and respectable. Studies conducted by various organisations reveal that, of the entire employed females, 76.4% were in the teaching profession. (83) The reason why the teaching profession is so widely accepted, even by those who are against the employment of women, is that it fulfils the condition of purdah. With a negligible exception, nearly all teaching takes place in the women's institutions where there is no fear of intermingling of the sexes.

> "The idea of being employed by an outsider or employment involving contacts with persons outside women's own families and being supervised by men who are not members of family is considered highly distasteful by their society." (84)

As traditionally employment of women, except in the profession of teaching, is not readily accepted, women in Pakistan are not very willing to seek employment in the factories and government offices where they have to face the strict and rude attitudes of their male co-workers and also, sometimes, of the management which also comprises men. Therefore, the entrance of women into such departments is mostly accidental, forced by family circumstances and economic need. However, once they enter into the profession, they do not need to fight like the Western women for their equal pay with men.

It should be clear that when it is stated that there exists great prejudice against women's employment, it means for such employment and professions where women are paid by cash. Otherwise, if one looks at the agricultural sector it becomes obvious that, besides carrying on the household

work, about 70% of women are involved in the planting, harvesting and processing of agricultural products, such as the cutting of wheat and fodder, picking cotton, milking cows and feeding animals, cleaning grain, spinning yarn and grinding wheat etc. etc. In a study of "Rural Women's Participation in Farm Operation", it was shown that more than 80% of women were active participants in farming and helping their males in various cropping seasons, more than 65% were involved in fodder-cutting, 17 and 41% respectively participated in hoeing and wheat cutting, 47% helped in pouring of seeds, 67% participated in threshing and almost 100% of women took part in cotton picking. (85) However, as the important role played by women in various farming activities is taken for granted as being household activities and the majority of the females are unpaid labourers, or their work is not paid for in the strict economic sense, it is not accounted for in the national economy.

Despite the forces of traditions and the old values, it must be realized that Pakistan is passing through a period of transition and the modernizing influence is already erasing old concepts. A new society is being born. Although it can not be clearly stated that the general trend towards women's employment is widespread, however, a small but significant change has taken place in the structure of the female labour force, especially in the large cities. As stated earlier not too long ago, the only professions readily and willingly approved by society for women were teaching and medicine. Now there is hardly an office without a woman. There are a few women at least in almost every government department and

besides numerous air-hostesses, receptionists, office secretaries, stenographers and typists, telephone operators, ticket checkers, and customs officers, there are a few lawyers, many journalists, writers, engineers, and architects etc. etc. (86) During the short history of Pakistan, women have also been appointed as Vice Chancellors of the universities, ambassadors, and ministers. Examples include Begum Rana Liaqat Ali Khan first as ambassador and then as governor of Sind, Dr. Ashraf Abbasi as deputy speaker in the National Assembly, Miss Kaniz Yousuf as Vice Chancellor of Islamabad University and Miss Gulzar Bano as Secretary of a Federal ministry. If one casts one's mind back it seems that the change in the status of Pakistani women is enormous. Hardly a year after the birth of Pakistan, the newly established State Bank of Pakistan took on its staff, two women and since then the number of women has been increasing not only in the field of accountancy but also in many other areas of the national economy.

2. Women Under The Law Of Pakistan :

(a) The Changing Status of Women in Contemporary Muslim Society

Reforms in personal law often create many problems for any government, especially in the countries where religion plays a great part. However, realizing that progressive ideas must find a place in the social life of Muslims, reforms of Islamic law have been attempted in various Muslim countries. In fact, the whole Muslim world is passing through a transitional period, and the people are in two minds as to how to respond to modern ideas and change which are taking place throughout the Muslim world. On the basis of their reaction and attitude, the countries may be classified into three categories : first, the countries which are influenced by the modernization movement with regard to women's rights and thus have a liberationist tendency, including the Lebanon, Kuwait, Bahrain, Turkey, Tunisia and the pre-revolutionary Iran. The second category consists of Saudi Arabia, Qatar, Yemen Arab Republic, Afghanistan and the United Arab Emirates, which have traditional and conservative tendencies; and thirdly, the countries having opposing tendencies where liberal and traditional ideas tend to conflict, for example, Egypt, Syria, Morocco, Iraq, Indonesia, Algeria, Jordan, Oman and Pakistan. (87)

While the traditional Muslim societies in the past prevented women from participating in political, social, economic and administrative life, recently they have adopted a lenient attitude towards women, by opening the doors for women to the "battle ground" of public life in almost all

fields. In many Muslim countries, such as the Lebanon, Syria Jordan, Egypt, Turkey, Iraq, Pakistan, and the People's Democratic Republic of Yemen, women enjoy their political rights, as do men and have been provided with opportunities to work in many spheres.

Change in Egypt dates back to 1798 with the beginning of French colonization. The Egyptian code of personal law, originally compiled in 1857, was modified in 1909. Then, a few reforms were introduced into family laws with the promulgation of the Egyptian constitution in 1956, according to which polygamy was restricted and certain concessions were granted to women in their right to gain a divorce from their husbands. Recently in 1979, some more amendments have been made in the Personal Status Law, especially regarding polygamy. An Egyptian woman is now entitled to sue her husband for divorce if he remarries. In Tunisia, the law of Personal Status, applicable to Muslims only, has been effective since 1957. According to this law, a marriage contracted by a minor before attaining puberty is null and void, and no divorce is effective except one enacted before a court of law. The same law has forbidden polygamy on the irrefutable presumption that equality of treatment among wives is impossible, especially in the modern world. In Morocco, according to the law of 1958, if there is fear of injustice between co-wives, the court may prohibit plurality of wives. In the case of many wives, if the husband does not treat them equally and one of them complains of injustice, the court would intervene and grant judicial divorce to the wife. In Syria and Iraq also, the husband is required to obtain official permission if he wants to marry another woman;and in Syria,

according to the law of Personal Status of 1953, such a request can be turned down if the court judges that he is unable to support a second wife. (88)

In Turkey, the first improvement in women's legal status came in 1917, when certain changes in the marriage institution were introduced. However, radical changes were brought about by Ataturk (1923 - 1938), a few years after the proclamation of the Turkish Republic. In 1926, the declaration of the civil code, which was an adoption of the Swiss civil code with some minor alterations, introduced a profound change in the social and legal position of Turkish women. The family laws, which became a part of the Turkish civil code, gave great security to women in marriage, divorce, and inheritance. Certain conditions were introduced for a valid marriage, for example, mental and physical capacity for marriage, an age limit and the registration of marriage. No marriage was valid unless it was solemnized by an authorized person, that is, a magistrate or his deputy. Similarly, before the marriage, the parties concerned were required to obtain a medical certificate to prove that they did not have a contagious disease; and at the wedding ceremony, which took place in a municipal building, the registration of marriage was made obligatory. The new Turkish civil code did not prohibit the marriage of a Muslim woman with a non-Muslim man which was entirely contradictory to Islamic teachings. It also prohibited polygamy and regarded monogamy as the basis of the family. Regarding divorce, the procedure was made on the pattern of the Swiss civil code which is part of the Western legal system. A

law suit could be brought to the court by either of the spouses and the dissolution of marriage depended entirely on the decision of the judges. Women were also given the right to hold property in their own name, independently of their husbands. In 1934, the government granted women the right to vote for the parliament and the right to be elected as a member of the parliament. (89)

In Iran, the veiling of women was officially forbidden in the year 1936, and during the five years before that, many reforms were introduced in their legal condition. As in Turkey, medical fitness on both sides was made necessary before the marriage and the minimum age was fixed for both. The marriage was regarded as a civil, rather than a religious, contract. In 1967, another enactment of a new Family Protection Law was introduced which seems to have had the greatest impact, especially on the institution of polygamy by greatly curtailing its practice. (90) The conditions during the post-Shah period characterised by the revolution are discussed in the last chapter.

(b) Women Under the Constitution of Pakistan

Many Pakistani believe that, as Pakistan was born from a religious background, it should be an Islamic state governed by Islamic law. In fact, there has been a great tension between the country's modernist and the traditionalist groups. The traditionalists or 'ulemā', who wish to see Pakistan as a theocratic state, have always been a great obstacle in the way of those people who try to modernize or secularize Pakistan. When the former prime minister of Pakistan, Mr. Bhutto, for instance, claimed, a few years ago,

that he was a socialist and intended to bring socialism into Pakistan, the 'ulemā' became furious and almost unanimously gave the verdict that he was an infidel. Consequently, Mr. Bhutto had to change his wording and declare somewhat diplomatically that, by socialism he meant 'Islamic Socialism'. The strong hold of 'ulemā' is demonstrated by the fact that it took nine years to make the country's first constitution after independence, during which there was a hot debate even about the very name of the country, whether it should be the Islamic Republic of Pakistan or simply the Republic of Pakistan. However, as regards the government of Pakistan, it has almost always remained somewhat modern in its approach, trying to keep the constitutions and legislation secular, in the British tradition.(91) Even the founder of Pakistan, Mohammad Ali Jinnah, did not believe in seeing Pakistan as a theocratic state. He had an intense desire to see the women of Pakistan in a high position, and during the struggle for Pakistan, gave them great confidence to stand on their own feet and take part in politics. He did not approve of purdah as it existed in the subcontinent. Therefore, his sister, Fatima Jinnah, never observed it and was a great advocate of women's rights. In 1964 she contested against Ayub Khan for the country's presidentship.

Although, in many respects, the contemporary role of women in Pakistan has not changed much from the traditional attitudes towards their role in society, however, within the short history of Pakistan, many laws have been formulated which accord women, at least in theory, an

equal status with that of men. At first glance, changes in the household and in kinship may not be impressive, however, steps taken by different governments in Pakistan from time to time, have certainly created a favourable state in which several traditional prejudices and hostile attitudes against women are vanishing and the people are developing new and more liberal attitudes with regard to the status of women in society.

The foremost step taken in the interest of women's rights may be the constitutional guarantee of equality. During the 33 years since its independence, Pakistan has had three constitutions in each of which there is an assurance of equality for both sexes in every sphere of life and there exist several articles concerning equality, non-discrimination, and the protection of family etc. The first constitution of Pakistan adopted in 1956, laid down that all public places, except the ones which were to be used for religious purposes, were open to all citizens without any discrimination on grounds of race, caste, religion or sex. It also pointed out that there would be no discrimination in the employment on the grounds of race, religion, caste or sex. Realizing the fact that women have generally been subject to the hostile attitudes of men and the cultural environment has caused many hindrances for the women who wish to take part in politics, ten seats were reserved for them in the National as well as in each Provincial Assembly, for a period of ten years. However, due to a prolonged spell of commotion and anarchy in the country, the constitution was not put into practice and was ultimately

abrogated with the proclamation of martial law in 1958. The second constitution was introduced in 1962 during the regime of Ayub Khan (1958-1969). It also accorded women certain constitutional safeguards and guaranteed equality of rights and privileges to all citizens, irrespective of caste, race and sex. Instead of ten, six seats were reserved for women in the central legislative; and five in each Provincial Assembly, in addition to the number of seats to which they could be elected directly. The third constitution of Pakistan, which came into force in 1973, during the regime of Zulfiqar Ali Bhutto (1971-1977), however, gave special attention to the problems of women and specific constitutional guarantees were accorded to safeguard their rights. The new constitution added two special clauses pertaining to women in the articles on fundamental rights. It provided many effective steps to remove discrimination on the basis of sex alone, especially in the employment of women in various government services. Article 25 of the constitution definitely ensures equality for all citizens when it lays down that "all citizens are equal before law and are entitled to equal protection of law; there shall be no discrimination on the basis of sex alone (and that) nothing in this Article shall prevent the state from making any special provision for the protection of women and children." (92) The second clause of this Article is in fact, the outcome of the efforts of women's organizations and guarantees equality of women and men. It precludes discriminatory classification on the basis of sex which could have appeared under the previous

constitution. Formerly women were excluded from fourteen government services, such as engineering services, foreign services and the civil services etc. The present constitution, however, shows a visible change in that it lays down in Article 27 that "no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the grounds only of race, religion, caste, sex, residence or place of birth." (93) Article 18 also ensures the right of women to enter any lawful profession or occupation and to contract any lawful trade. These two Articles open every government service to the women of Pakistan for which they are qualified; they can not be debarred from any service including the army, provided they fulfil all the requirements. This means, at least constitutionally, that all the public offices, from the lowest to the highest, are open to women. To ensure full participation of women in public life, Article 34 further states, "steps shall be taken to ensure full participation of women in all spheres of national life." (94) To protect the family, Article 35 clearly states that the state is responsible for protecting the marriage, the family, the mother and the child. This Article has been included for the first time in a constitution of Pakistan and opens the door for further legislation for the greater protection of women and children in matters of marriage, divorce, maintenance, and adoption etc.

Regarding the franchise and the right to stand for elected office, the women of the subcontinent have always been in a much better position than their Western sisters

who struggled very hard to gain this right. According to the present constitution, women are eligible to contest elections at all levels for all general seats. In addition, according to Article 51, ten seats in the National Assembly and five seats in each Provincial Assembly are reserved for women. Similarly Article 228 guarantees the appointment of at least one female member to the Islamic Advisory Council. The constitution in Article 37 makes clear that technical, professional education and higher education should be available to all, on the basis of merit and special provisions should be made to ensure just and humane conditions, if women are employed, and that they would enjoy maternity benefits in employment. (95) For the effective implementation of these Articles, the government took several progressive steps, for example, a section was set up in the labour department to look into the problems of working women. Similarly, many agriculturally based industries were set up where women were employed, and in order to give them more leisure time, many time-saving devices were introduced, especially for married women.

(c) Muslim Family Laws Ordinance, 1961

Until 1955, there was only one act, "The Dissolution of Muslim Marriage Act, 1939" which could remedy Pakistani women's affliction to a certain extent. Under this act, a Muslim woman could apply to a court of law for the dissolution of her marriage on certain grounds, such as negligence or disability of her husband in performing his matrimonial obligations. However, regarding the maintenance

of the wife by the husband and payment of mahr, different courts held different view points which ultimately created many difficulties for women in seeking separation. In addition, despite having all the protection, it was not easy for women to secure these benefits in the court due to the expensive, long and slow process of law. Thus, in order to accord women their proper place in society, a commission on marriage and family laws was appointed by the government of Pakistan in August 1955. Its terms of reference were to study the existing laws of marriage, divorce, and family maintenance and to determine whether those laws required modifications. The seven-member commission, including three women and one theologian, was also asked to report on the proper registration of marriages and divorces exercisable by either partner through a court of law or by other judicial methods. Almost eleven months later, the commission unanimously submitted its report but one member, the traditionalist scholar, disagreed and a note of dissent by him was later included in the report. The report called "Marriage Report and Marriage Commission Dissent", brought to the surface, inter alia, the strain between modernists and traditionalists. The modernists recommended several revolutionary changes in the basic norms of family life which raised a lot of criticism from the orthodox and conservative 'ulemā'. The orthodox feared that if the recommendations of the report were accepted, the social system established by Islam would be destroyed since the family and social life would undergo a radical change. They also argued that the acceptance of the recommendations would automatically

open the door of ijtihād reducing the value of not only the vast theological and juristic literature of Islam but also relegating the Qur'ān and Ḥadīth to ignominious insignificance. (96) In his note of dissent the only member of the commission, who represented the 'ulemā' or the religious class of the country, bluntly criticized his co-members for their Westernized outlook. Defending polygamy, he stated that the other members were suffering from an inferiority complex against the West and wanted to copy it with closed eyes. Even Maulana Maududi who reflects both modernist and traditionalist views and realizes the pitfalls of the traditionalist view, seemed to be concerned to preserve sharī'ah as traditionally interpreted. Although he regarded quick divorce as a sin, he did acknowledge the legal validity of the traditional interpretation of quick divorce. Similarly, he clearly differed with the idea of putting any restriction on the practice of polygamy. He emphasized that the sharī'ah makes no distinction between the first, second, third and fourth marriages and it equally allows all of them. Thus, if the first marriage requires no order from a court of law, even the third and fourth, to say nothing of the second marriage, should not be conditional upon obtaining any order from a court of law. The modernists, on the other hand, insisted that they did not propose any new rights for women which the Qur'ān and sunnah had not already granted them and an effort was only made to provide machinery for the implementation of these rights. (97)

Some main recommendations of the commission were as follows :

The first important recommendation made by the commission was to emphasize the reinterpretations of Islamic jurisprudence in the light of expanding human knowledge and widening experience. The members of the commission maintained that the laws and injunctions of Islam were flexible and changeable on the basis of their universality. The commission suggested that all marriages and divorces should be registered on standard forms embodying the important conditions and non-registration be punishable with a fine. The minimum age for marriage was suggested as eighteen for a boy and sixteen for a girl. Prohibiting a man from pronouncing a divorce at one sitting, it was suggested that a divorce should be obtained only in a court of law to ensure that there is no injustice done to the wife. It was suggested that a person willing to divorce his wife should have recourse to a Matrimonial and Family Laws court and the court should not permit him to pronounce divorce until he pays the entire mahr and makes suitable provisions for the maintenance of his wife and her children. It also recommended that, as the marriage contract is of a civil nature, the right of the wife to divorce should be made more certain and precise. Although the commission recognizes polygamy in certain cases, it was of the view that the decision should be left to a court of law instead of the individuals. The members of the commission were convinced that it was entirely irrational to allow individuals to resort to a second marriage whenever they pleased. According to the majority of members, the verse regarding polygamy related

only to the protection of the rights of orphans. Thus, the commission suggested that a person wishing to marry a second or third woman should apply to a matrimonial court where he must establish a valid reason for doing so.

Besides these recommendations, the commission made several other important suggestions regarding maintenance, custody of children, guardianship of property, inheritance and wills etc.,including a strong proposal for the establishment of Matrimonial and Family Law courts in each administrative division of the country. To avoid delayed and expensive processes of justice, it was recommended that every case must be decided within three months and no court fees be charged. (98)

Nonetheless, these revolutionary recommendations raised such a storm of controversy between the modernists and the traditionalists that the government had to shelve the report for an indefinite period. After the military take-over in 1958, however, the government proved itself strong enough to ignore the pressure of the traditionalists and bitter opposition by the orthodox males of Pakistan. As a result, the "Muslim Family Laws Ordinance of 1961", which incorporated many of the recommendations of the commission was promulgated in March 1961, taking effect from July 16, 1961. If on the one hand, the promulgation of the Ordinance was a great victory for the modernist and the feminist movements, on the other, it was a great set-back for the traditionalists who dreamed of seeing Pakistan as a truly Islamic state, governed strictly by the laws of shari'ah.

As stated earlier, reforms in personal law are not easy for any government, especially in a country where religion plays a great part and the majority of the people are not educated; thus, the Pakistan government also faced many demonstrations and protests against the present Family Laws Ordinance to the extent that on July 4, 1961, a resolution was passed in the National Assembly to repeal the Ordinance. However, many educated and broadminded people welcomed the Ordinance wholeheartedly and wrote many articles in various newspapers and magazines in its favour.

Basic features of the Ordinance affecting the status of women are - the registration of marriage, minimum age for marriage, polygamy, divorce, dissolution of marriage, maintenance, dower, and the great stress on arbitration and all such measures which will stop the disruption of families.

Prior to the Ordinance, formal registration of marriage was not necessary in Pakistan. No reliable statistics concerning marriage contracts, therefore, existed. According to the Ordinance, it is now a legal requirement to register all the marriages at the local union offices. Section 5 of the Ordinance provides that every marriage solemnized under Muslim Law, shall be registered according to the provisions of the Ordinance, and for this purpose, the union council is authorised to grant licences to one or more persons to be called nikāḥ registrars. If a marriage is not solemnized by the nikāḥ registrar, it should be reported to him for registration by the person who officiates at the marriage. Contravention of this provision is punishable with simple imprisonment up to three months,

or with a fine of up to one thousand rupees (nearly £50) or with both. (99) The marriage of minors was prohibited in Pakistan by the earlier "Child Marriage Restraint Act of 1929", and the minimum age of marriage was fixed at fourteen for a girl and sixteen for a boy. The "Muslim Family Laws Ordinance, 1961" made some amendments in the act and raised the age limit to sixteen for a girl and eighteen for a boy keeping in view the changing attitudes. Nevertheless, the most significant provisions of the Ordinance relate to the restraint of polygamy and mollification of the effects of the existing law with regard to ṭalāq. The Ordinance puts many restrictions on more than one marriage while the wife is alive. If a person wishes to contract a second marriage during the life of his previous wife, according to the Ordinance, he has to obtain permission from his existing wife and he is required to convince the court why he intends to take a second wife. Section 6 in the Ordinance reads -

> "No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage... an application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee and shall state the reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto. On receipt of the application under sub-section (2) the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant subject to such conditions, if any, as may be deemed fit, the permission applied for." (100)

Valid reasons for allowing a second marriage include, physical infirmity, sterility, insanity, and the physical

unfitness for conjugal relations. The arbitration council which consists of the chairman of the relevant union council and one representative of the wife and one representative of the husband, has wide powers to decide what is just or unjust. A contravention of this clause, that is, remarrying without the permission of the arbitration council will result in immediate payment of the entire amount of mahr due to the existing wife or wives, whether prompt or deferred, and imprisonment up to one year, or with a fine of up to five thousand rupees (nearly £250) or both. It must be noted, however, that though a person marrying without the permission of the council is liable to punishment, the marriage would still be valid and is not held to be void in the eyes of the law.

Section 7 of the Ordinance has provided an elaborate procedure to be followed for effecting divorce. In fact, the Ordinance, with regard to divorce, has helped to bring the existing law of divorce in conformity with the spirit of the Quranic procedure by greatly curtailing the absolute power given to the husband by Islamic law. According to the Ordinance, pronouncement of ṭalāq does not operate a divorce, but is merely the manifestation of a wish to divorce and also three months must lapse before a pronounced divorce is declared final. It is compulsory for the husband under the Ordinance to give notice of divorce in writing, not only to the wife, but also to the chairman of the union council. Within thirty days of the receipt of notice, the chairman will institute an arbitration council which will try to bring about a reconciliation between the

parties. However, if the attempts at reconciliation fail, only one ṭalāq becomes effective on the expiry of ninety days. This means that the Ordinance has done away with the irregular forms of divorce i.e. ṭalāq al-bid'ah, that is why the law that a woman once divorced can not remarry her husband unless she contracts an intermediatory marriage and then gets a divorce from the second husband, does not stand anymore. In the case of not submitting any notice as envisaged by the Ordinance, the ṭalāq does not become effective because the period is to be counted from the date of notice to the chairman of the union council, and not from the date of the pronouncement of divorce. During the period between the pronouncement and its becoming effective, the marital status of the parties does not undergo any change and they still continue, in the eyes of the law, to be husband and wife. If a person contravenes the provisions, he is liable to punishment with simple imprisonment up to one year, or with a fine which may extend to five thousand rupees (nearly £250) or both. (101)

According to the Ordinance, the woman has the right to seek separation in the case where her husband remarries, or if he neglects or fails to provide her maintenance for a period of two years. Apart from this, impotency of the husband, insanity, absence from the family for more than two years, disposition of the property of the wife, and cruelty of conduct, physically as well as morally, are also grounds on which a wife can ask for a separation. If separation occurs in the form of khul', the wife is required to give notice to the council after the acceptance of her

offer by the husband. When the parties go to the court to seek khul', the court has the right to decree separation. When the aversion is mutual and both parties desire separation by mubārāh, the offer of separation may proceed either from the wife or from the husband and notice is to be given by the party from whom the offer of dissolution emanated. The Ordinance also includes dissolution sought on the ground of khiyār-al-bulūgh. Section 9 of the Ordinance provides for the maintenance allowance in the case where the husband fails to maintain his wife or wives adequately, or does not maintain them equitably in the case of polygamy. The amount payable,if not paid in due time, is then recoverable as arrears of land revenue. (102)

A cursory view of the Ordinance is enough to indicate that the government in its approach to alleviating the problems of women is quite liberal and seems to deviate, in many respects, from the traditional sharī'ah. Regarding polygamy, it was only in the twentieth century, with the influence of Western culture, that the Muslims in the East, the so-called "modernists", started showing reluctance to its practice. They tried to prove that it was not a simple matter of personal choice, but was restricted only to special circumstances and it was up to the government to decide when it should be resorted to. Whatever the government does, or so the modernists claim, the fact remains that polygamy can not be conditioned with the problem of the orphans. If it were so, the Prophet would not have allowed his companions to resort to polygamy so widely. There is not a single example when the Prophet

insisted or asked anybody to marry a second time only with a widow who had children to be supported. If the government of Pakistan has restricted polygamy, it is not certain that it has become convinced by the modern interpretation of the relevant Quranic verse. It might be the Western and modern influence which persuaded the government to adopt some revolutionary changes in the status of women.

(d) Some Other Important Measures Taken by the Government

Not only through the constitutions and the family laws, but also by various other steps, the government has been trying to improve the status of women in Pakistan so that they can take part fully in socio-economic life. In the early years of Pakistan, the Ministry of Social Welfare and the National Council of Social Work were set up. The Village Agricultural and Industrial Development Project was also launched to provide women with greater scope for adopting careers as home economists, and general social work leaders. In 1961, the "Commission for Eradication of Social Evils" was appointed to look into the problems and suggest remedies. Similarly the "Commission on National Education" was also set up. Under the "West Pakistan Family Courts Act, 1964", many family courts were established to deal with the matters relating to marriage, divorce, dower, maintenance, and guardianship etc. Subject to the provisions of the "Muslim Family Laws Ordinance, 1961", the family courts have exclusive jurisdiction to entertain, hear, and adjudicate upon matters relating to

matrimony. They have unlimited pecuniary jurisdiction and are not ordinary courts whose jurisdiction is limited by the "West Pakistan Civil Courts Ordinance, 1962." They have also special and exclusive jurisdiction to deal with matters concerning the custody of children. (103)

In a conservative society like Pakistan, the traditions and age-old customs are so deep rooted that it is not easy for a government desirous of change to do away with these customs by legislation. However, appreciating the complications, problems and the oppressive nature of the dowry system, the government has been trying to reform it by curbing extravagance, waste, and any ostentatious display of wealth in marriages. In 1948, a maximum limit of 2000 rupees (nearly £100) was imposed on the dowry. In 1967, on the other hand, according to the "West Pakistan Dowry Act, 1967", those exhibiting the dowry on purpose were made liable to one year's imprisonment, or a fine of 5,000 rupees (nearly £250) or both. Towards the end of 1975, a "Dowry Bill" was presented in the National Assembly to provide for the restrictions on dowry and bridal gifts, which was then referred to a select committee. The select committee considered the Bill at a meeting within a fortnight of its first presentation and prepared a questionnaire to assess public opinion on the issue. Although the committee received several hundred replies from various social, cultural and women's organisations and the general public within a few weeks, the reaction to the Dowry Bill was quite diverse. Some people appreciated the step taken by the government,

others, though they did not negate the idea of legislation, gave more emphasis to bringing about gradual change in the thinking of the people. However, in August, 1976, a "Dowry and Bridal Gifts Restriction Act, 1976", was passed by the Parliament which extends to the whole of Pakistan and applies to all citizens of Pakistan. Under this act all proceedings with regard to the giving of a dowry and gifts to the bride as well as wedding expenses are controlled. The salient features of the act provide that neither the aggregate value of the dowry and presents given to the bride by her parents nor the aggregate value of the bridal gifts or of the present given to the bridegroom should exceed 5000 rupees (nearly £250). Further, no dowry, bridal gifts or presents may be given during a period of six months preceding or following nikaḥ and rukhṣati. Similarly, the total expenditure on marriage, excluding the value of dowry, gifts and presents, but including the expenses on mehindī, bārāt, and walīmah, incurred by or on behalf of either party to the marriage, should not exceed 2,500 rupees (nearly £125). Under the rules of the act, the value of property given or received by either party to a marriage will be assessed at the prevailing market price. Apart from relatives and friends of the bride or bridegroom, there is a restriction on presents from anyone else. For instance, ministers, speakers of the Assemblies, Chairmen of the Senate, officers of grade 17 and above, and also those having executive or judicial authority are forbidden to receive any wedding gifts, except those which are given by their relatives. Different rules have been prescribed under

which the parents of the bride and the groom will furnish relevant information to the marriage registrar. According to these, lists of dowry, bridal gifts and presents given and received as well as the details of expenditure incurred in connection with the marriage must be presented to the registrar by the parents of each party to the marriage on separate forms. Reversing the previous and prohibitory order, it has also been made compulsory to exhibit all items of a dowry at the time of rukhṣatī . Contravening any provision of the act or the rule made thereunder carries a penalty of six months imprisonment, or a fine of up to 10,000 rupees (nearly £500) or both. The punishment also provides for the forfeiture of excess dowry, bridal gifts or presents by the Federal Government, to be utilized for the marriage of genuinely deserving and poor girls. For this purpose, it was decided that a jahīz khānah, containing confiscated property will be set up under the Religious Affairs Ministry. (104)

The regime of Bhutto proved itself more liberal and an ardent advocate of women's rights; more so than the previous governments. Many seminars, functions and galas were arranged during the period 1973-1976 for the purpose of making women aware of their rights. However, the most prominent attempt to raise the status of women was the setting up on June 31, 1976 of the "Pakistan Women's Right Committee", perhaps with an aim to enforcing new family laws under the chairmanship of Yahya Bakhtiar, the Attorney General of Pakistan. A conspicuous thing was that out of thirteen members of the committee, nine were women legislators and

lawyers. The terms of reference of the committee were to consider and formulate proposals for legal reforms with a view to improving the social, legal, and economic conditions of Pakistani women; and to provide for quicker legal remedies for obtaining relief in matters like maintenance and the custody of children. The committee, which was far advanced, took up the consideration of legal reforms and after reviewing eleven acts or ordinances including the "Muslim Family Laws Ordinance, 1961", the "Family Courts Act" and other laws relating to marriage and divorce, recommended numerous changes in its first report. According to the committee's view, the "Muslim Family Laws Ordinance of 1961" was not adequate to meet the difficulties faced by women with matrimonial problems. It was, therefore, emphasized that the Ordinance had to be updated in order to meet the social and economic conditions of the present day. (105) The committee recommended that if a wife lived with her husband for five years or more after the marriage, she should be entitled to receive one-eighth of her husband's moveable and immoveable property, if he divorced her at his will. It was also recommended that in the case of a husband seeking divorce, he should be required to pay for the upkeep of his wife, to be calculated at one month for each year of marriage, in addition to the period of 'iddah. The committee by quoting relevant Islamic authorities, also insisted that there is no bar to a woman seeking khul' at her own will. According to the members of the committee, it was for a woman to decide if it was intolerable for her to live with her husband, and the jurisdiction of the arbitration council

was only to decide the compensation she was to pay, if there happened to be a dispute over it. Thus, the committee recommended that where a wife seeks release from her husband through khul', she should give notice to the chairman for determining the amount of consideration to be paid to the husband. (106) However, the committee which could submit only one of its reports, raised, once again, a storm of controversy between modernists and traditionalists and the women members of the committee were accused of being imbued with the ideas of modern feminist movements as originating in the West. In a series of articles published in the Dawn, Atiyah Khalil, a learned woman rather cynically criticized the recommendations and emphasized the Islamic scheme of things where men are a degree above women, particularly in the share of marital life, and that it is the man in whose hand is held the marriage tie. According to her, to give a woman a free scope to seek khul' without the will or the consent of her husband, as stipulated by the committee, was entirely un-Islamic, as Islamic sharī'ah does give to the woman the right of "obtaining" divorce from the husband, not "giving" divorce to him. (107)

On the other hand, many people considered that the government, by setting up the committee with such vast terms of reference, took a wise and commendable step towards ameliorating the condition of women. Not only that, there were some people and women's organizations, such as the "Pakistan Democratic Women's Association", who even suggested some more amendments in the report to the extent that it was suggested that in the matter of inheritance, daughters should get as much as the sons and in the absence

of a male heir the entire property should be divided between the daughters to the exclusion of all others except their mother, if alive. Similarly, considering polygamy to be a violation of the rights of women, it was advocated that it should be completely abolished as in Turkey and Tunisia. It is interesting to note that like the Marriage Commission, this committee also insisted that it had not specifically suggested any recommendation which could be repugnant to Islamic injunctions; and that it was only trying to ensure restoration of those rights which were accorded to women by Islam fourteen centuries ago. However, before any compromise between the two groups could be reached, or else the strength of one over the other could be established, there came the end of Bhutto's regime that put the future of the committee in doubt.

IV. CONCLUDING REMARKS

The topics which have been discussed under the title of 'women in customary law' seem to indicate that, despite modernizing trends throughout the Muslim world, Pakistan has, so far, been very successful in maintaining and strengthening the patriarchal values in its culture. It appears that several social customs such as

interesting but subtle marriage rituals, arranged marriages, dowry and the dominant role of the mother-in-law have proved themselves strong enough to stop the modern influence infiltrating into the traditional patriarchal set-up. In fact these social devices with a great charm in them have been the real factor in strengthening male dominance in Pakistani society.

However, despite the strong hold of religion, patriarchal traditions and the resistance to change, the attitude of the people regarding the status of women has changed considerably and, with the assistance of government legislations which have granted women complete equality with men, it seems inevitable that revolutionary changes in the traditional structure of the Pakistani Muslim family will take place in the future. Rapid growth of urbanization, industrialization and increasing interest in education have delivered a considerable blow to the traditional patriarchal values. For example, the decisive and dominant role of the mother-in-law has been greatly curtailed due to the breakdown of the joint family system, at least in the cities. Increasing education and awakening among women in the cities,has also reduced their interest in extravagant marriage rituals. Instead, their minds seem to be occupied by other really useful things in life such as higher education, professions and recreations. The increasing awakening of women for their rights is

manifested by the emergence of several women's groups throughout Pakistan. Some of the groups, such as the 'All Pakistan Women's Association' and the 'Business and Professional Women's Club' have done a great deal in furthering women's rights. A detailed analysis of women's organizations and their activities will be made in the next chapter.

Nevertheless, one must not overlook the changing situation in Iran which until recently, before the expulsion of the Shah, was reckoned to be a quite liberal and modern country. Not only in Iran, but in some other Muslim countries also, a strong reaction against the Western outlook and modernization is raising its head. This situation is probably caused by Muslim Patriarchs who have perceived the danger in accepting the Western outlook, especially with regard to the status of women.

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C H A P T E R 6

WOMEN'S MOVEMENTS IN PAKISTAN

Not only on a government level, but also on an individual basis several efforts have been made to improve the general condition of Muslim women. There are some enlightened women reformers, rather liberal and broad-minded, who face the opposition, not only of men, but of those women as well, who, being unaware of their rights, accept all injustices done to them by males as their destiny and fate. Due to long seclusion, segregation, and submission to men, they do not even have the courage to think of any change in their status. The religion which maintains male supremacy has played an important role in forming women's subjugated personality and they conveniently accept unjustified polygamy, easy divorce, and veiling by saying that it is written and is their fate. However, due to modern education and the influence of Western ideas through Western contact, there are some women and a few men in almost every Muslim country who, from time to time, by spreading and forming liberalizing feminist movements, have been attempting to make women conscious of their rights so that they can fight for their proper place in society.

I. THE DEVELOPMENT OF WOMEN'S MOVEMENTS IN THE MUSLIM WORLD

The phrase "Women's Emancipation" can be misleading as the form and magnitude of women's emancipation tends to vary from country to country due to the different

religious, social, economic and political patterns of life in each country. In America and Europe it might mean the right of abortion and equal pay with men in all sort of jobs and to gain more access to policy-making positions etc. While in some developing countries like Pakistan, it could mean the abolition of veiling and going out for necessities, trying for a larger share in education and employment, and the right to say more in the management of local, national and international affairs etc.

However, as regards the feminist movements in Muslim countries, despite some differences, they have several similar aims to be achieved. For instance, severe restrictions on the practice of polygamy and divorce, the abolition of strict purdah and segregation, and equal opportunities for jobs and education etc.

A brief description of some feminist movements in some Muslim countries may be made -

Unobtrusive but strong reaction against the inferior status and strict seclusion of women can be traced back to the time when Western countries, especially Great Britain and France, colonized many Muslim countries. However, it was only in the middle of the nineteenth century when organised efforts for the emancipation of women were begun. Jamal al-Din Afghani and Sheikh Mohammad Abduh who were greatly concerned in improving the status of women, built the ideological foundations of the feminist movement in Egypt. Nevertheless, the first courageous effort was made by Quasim Amin, a judge and a great advocate of women's

emancipation. In his two famous revolutionary books, namely Taḥrīr al-mar'ah (The Emancipation of Women) in 1898 and al-Mar'at al-Jadīdah (The Modern Women) in 1901, he severely denounced polygamy and emphasized the need of women's mental growth and intellectual enlightenment through education. Although these books, advocating the liberation of women, created a great uproar among orthodox and religious Muslims, yet they greatly encouraged women. As a result,the first women's organization, "The Society For the Betterment of Women" was founded by Fatima Rashid in 1908. A considerable change took place in Egypt between the two World Wars and Egyptian women found themselves bold enough to demand complete equality and equal rights with men. After the First World War ended the leadership of the feminist movement passed, for the first time, into the hands of an extremely dynamic woman, Huda Sharawi. As she was the daughter of one of the richest landowning families and her husband was a member of the Legislative Assembly, she succeeded in exercising great influence. In 1919 she became the Chairman of the Women's Executive Committee of the Wafd party. In 1923 on the eve of the International Feminist Congress in Rome she founded the "Egyptian Federation of Women" and left for Italy unveiled to participate in the congress. Her enthusiasm and hard work not only persuaded many women to discard their veil but brought about many reforms in the marriage and divorce law. (1) Unlike Iran where there was official moves for unveiling, the veil in Egypt disappeared gradually with the help of feminist movement which became one of the most

popular and progressive movement in the country in the middle of the twentieth century. From 1930 until 1950, the general trend of the women's movement was towards educational, labour and political demands. Egypt had its first woman teacher in 1915, its first female pharmacist and lawyer in 1925 and its first woman pilot in 1933. In 1945-46 women were admitted to the colleges of engineering and agriculture, in 1947-48 to the veterinary college and in 1953-54 to the college of sciences, and in 1962 to al-Azhar University. (2) After the revolution in 1952, Gamal Abd al-Nasser's (1952-1970) secular and progressive policies encouraged women's organisations to organize themselves better and work for the cause of women.

It is interesting to note that in Turkey the early feminist movements were launched by men who took great interest in initiating social reforms in the country. In the middle of the nineteenth century it was the Tanẓimāt movement sponsored by men which aimed at giving women equality with men. It also approved Western education for women so that they could play a decisive role in the national affairs. Towards the end of the nineteenth century, Midhat Pasha and Ziya Goek Alp assumed the leadership of the feminist movement and the concept of liberty, individualism, and the emancipation of women became a topic of public discussion. However, not too long ago, in the second decade of the twentieth century, Turkey faced an enormous upheaval which paved the way for a radical change in the status of Turkish women. Thousands of women worked in army workshops, and several were trained to become good soldiers during the First World War. Turkish women were, in fact, lucky as

they gained complete equality with men in all spheres of life after the establishment of the Republic by Kemal Ataturk. However, it should be kept in mind that whatever rights Turkish women have, they are under a secular code not under Islamic law.

Iran is a country where women have been kept in strict seclusion for a long time even before the advent of Islam. Although the "Family Protection Law of 1967" (revised in 1975) gave women a favourable legal position, their social position was never very satisfactory. The traditional values regarding female modesty, chastity, and purity do not seem to have changed much. This fact is manifest from the latest revolution in Iran where women are being asked to marry at an early age and required to prove themselves pious and modest by wearing the chādar. However, the first prominent leader of the feminist movement in Iran was Tahira in the middle of the nineteenth century. She was actually attached to the Bahai movement and was imprisoned and then murdered when hardly thirty two. She discarded her veil and addressed large gatherings of men at the time when nobody could even imagine seeing an unveiled woman. As religion had a strong hold over the masses and the religious leaders exercised great influence on social life, Iran could not produce many feminist leaders who could really do something to eliminate the social evils and improve the status of women. At the beginning of the twentieth century, due to the Western influence and education, some people seemed to change their

outlook. But again the religious leaders greatly resented it and did not approve of the idea of the liberty and equality of women with men. It was after the First World War when Reza Shah came to power and introduced radical changes in the status of women without paying much attention to the hue and cry of the 'ulemā'. As a result, in 1925, an Iranian woman was permitted for the first time to leave for Paris for higher education. Veiling was, however, officially forbidden in 1936.

At present, the biggest feminist group is the "Women's Organization of Iran" which is, in fact, an umbrella organization of all the women's associations in the country and guides and co-ordinates their activities and also initiates research and projects to further its tasks. It has established a research group to study and collect data about women's problems. The strength of this organization and its effective role can be judged from the fact that in 1976 it had 161 centres all over Iran and a membership of two million women throughout the country. (3) The organization which aims to promote the status of women and raise their social, educational and economic standard, has established over seventy Family Welfare Centres throughout the country. These offer vocational training, legal and vocational counsel, family planning advice and Day-care centres and thus help in promoting women's economic independence. It also established, in 1973, a "Research Unit for Functional Literacy and Training" to develop effective educational programmes for Iranian women, especially rural. In 1975, to celebrate International Women's Year, seven hundred seminars were

arranged all over Iran so that attention could be drawn to women's demands and their requirements. (However, it must be kept in mind that after the revolution in Iran, there has emerged a strong group of traditional women who claim to represent the real intention of Islam regarding the status of women and aim to achieve women's rights within the framework of Islam).

II. WOMEN'S MOVEMENTS IN PAKISTAN

1. Historical Background:

The Muslim women of the subcontinent were always kept in strict seclusion and veiling. Especially after the war of 1857 when the Muslims' authority and strength waned and they sank to an inferior level on the political, economic and social fronts, the women were more closely confined in purdah and seclusion than ever before. They were expected to be highly chaste and incredibly pious and thus were guarded at all cost. They hardly came out of their homes and avoided being seen, or even heard, by strangers and their male relatives. However, at the time when strict seclusion of women was interwoven with a Muslim's honour and the Muslims came to a stage when they hated everything connected with the British, some far sighted Muslim intellectuals including Syed Ahmad Khan, launched a movement for Muslim renaissance and tried to explain to the people the importance of change. The Aligarh Movement led by Syed Ahmad Khan was of the view that Islam was not hostile to change. In addition to the Muhammadan Anglo-oriental College and Muslim Girls' College at Aligarh, a few schools

were set up for Muslim girls in Lucknow and Aligarh by some prominent leaders of the movement. At the turn of the twentieth century, Amir Ali, a well known writer, in his book, The Spirit of Islam, included a special chapter on women in which he adopted a liberal attitude towards women's status in society, and hinted that by degrading the status of women, the Muslims had damaged the real Islamic spirit. However, the first two decades of the twentieth century were rather quiet and there were hardly a dozen women who could fight for their rights only through magazines advocating women's rights, for example, Tahzīb al-Niswān, Khātūn, 'Ismat, and Tamaddun. Towards the end of the second decade of the twentieth century, some women's associations were formed with high aims and aspirations, such as, "The Women's Indian Association", "The National Council of Women", "The All-India Women's Conference", "The All-India Muslim Women's Organization" and "The Federation of University Women" etc. (4) In 1917 a Muslim Ladies Conference was held at Lahore where a number of resolutions in support of women's rights, including one demanding legal action against polygamy, were drafted. In another All-India Women's Conference in 1924, a resolution was passed which declared that the marriage of girls to men already married must not be permitted and purdah must be discarded as it was against the interests of women. The Indian National Congress, which was fighting for the freedom of Indian from colonial subjection, gained great momentum when several Hindu women started taking an active part in the struggle. Nevertheless, with the exception of a handful of educated women, millions

of Muslim women were still in strict purdah and were ignorant of what was happening outside their own four walls. Realizing the critical situation, some leading families of the Punjab took a daring step by allowing their women to discard purdah and to imbibe some aspects of Western culture so that they could confidently take active part in the political affairs of the country. The third and the fourth decades of the twentieth century were full of disruption and there arose an acute political crisis in the subcontinent.A need was felt for women's full co-operation in the struggle for creating a separate homeland for the Muslims. Thus in 1938, the Muslim League passed a resolution, initiated by Mohammad Ali Jinnah, for the creation of a League Sub-Committee for women so that they could be persuaded to participate totally in political, economic, and social fields. The main features of the resolution called the "Patna Resolution" were to establish women's sub-committees at the provincial and district levels in every part of the subcontinent, to increase the membership of the League, to accelerate propaganda and publicity so that political awakening could be cultivated among women, and to guide and advise women in a way that they could equally take part in the social, economic, and cultural uplift of Muslim society as a whole. (5) After the establishment of the Women's Sub-Committee, Muslim women had, for the first time, a chance to organise themselves and make an effective contribution in the political sphere. Men who realized the fact that the movement for independence can not gain momentum unless women are involved, relaxed many restrictions on them. Thus they were given freedom of action

to a certain extent, ordinarily denied to them. Some prominent women of this period were actively involved in the Muslim League politics, some of whom are still alive and keep fighting for the cause of women. Among them were -

Begum of Bhopal, the first president of the All-India Women's Conference and the Chancellor of the Muslim University Aligarh was one of the most vigorous leaders for the cause of women. She introduced momentous educational and social reforms in her own state.

Bi-Amman, the mother of Mohammad Ali Jauhar and Shaukat Ali Jauhar, in spite of strictly adhering to purdah, left a deep impress on the politics of the time. After the arrest of her sons by the British government, she led a campaign against the British and the import of foreign goods. Wearing a veil, she made a big tour of the country and presided at public meetings to mobilize public opinion. She categorically exhorted her sons while they were in prison not to give in on principles.

Fatima Jinnah was an active member of the Muslim League and after the establishment of Women's Sub-Committee, she founded many women's committees in the subcontinent. She never wore a veil and critically spoke against the prevalent orthodox ideas which hindered women's progress. After the creation of Pakistan, she acted as the First Lady to Jinnah who became the first Governor-General of Pakistan, and continued to work for the betterment of women till her last breath.

Begum Jehan Ara Shahnawaz was among the oldest of the Muslim League workers and was until recently an ardent fighter for women's rights. She was perhaps the first woman who openly discarded purdah and was educated at Queen Mary's College, Lahore. She started her political career by accompanying her father, Mian Sir Muhammad Shafi, to England for a conference, as his private secretary. Between 1930 and 1932 when the British government, in order to seek some solution to the communal problems, convened three Round Table Conferences in England, she was elected to participate, as the only Muslim woman member, in the first two and as the only woman representative of the undivided British India in the third. She was also an Indian delegate to the Committee of the League of Nations and the International Labour Conference of 1935 held at Geneva. In 1937, she was elected to the Punjab Legislative Assembly and from 1937 to 1942, as the first Muslim woman to do so, she worked as the parliamentary secretary for Education and Public Health. In 1946, she was re-elected to the Punjab Assembly and went to represent the Muslim League on a tour of the U.S.A. She boldly participated in the Muslim League civil disobedience movement and was consequently arrested in 1947. She continued to exercise an effective influence on the social and political life of Pakistan until recently and was a senior vice-president of the All-Pakistan Women's Association (APWA) from 1947 until her death in December 1979.

Begum Shaista Ikramullah, the daughter of Sir Hassan Suhrawardy the Vice-Chancellor of Calcutta University, was another outstanding woman who stood bravely against the

British government and actively participated in the freedom movement. After obtaining her Ph.D. from London University, she practically involved herself in politics and was appointed, in 1941, Convenor of the "Muslim Women's Federation". A year after that she was elected to the All-India Muslim League Women's Sub-Committee and four years later, was elected to the Indian Constituent Assembly. After the birth of Pakistan, when the Constituent Assembly of Pakistan was established in 1947, she was elected as a member and for six years she devoted herself in the fields of refugee rehabilitation, education, and health. In 1948, as a member of the Pakistan delegation to the United Nations, she took part in drafting the Constitution of Human Rights. In view of her education and ability, she was appointed as an Ambassador to Morocco from 1964 to 1967. She has written a number of books and articles in Urdu as well as English.

Begum Salma Tassaduq joined the Muslim League in 1937 and as the General Secretary of the "Punjab Provincial Women's Muslim League", she devoted herself to the independence struggle and for the betterment of Muslim women as a whole. After the creation of Pakistan, she continued her work as a social worker and headed many social organizations. In 1958, she was the Deputy Minister for Labour in the West Pakistan Cabinet.

Lady Nusrat Abdullah Haroon (d. 1974), founded the "Empire Ladies Association" and worked sincerely for those women who were the victims of old customs and outdated traditions. She was a great advocate of women's education

and encouraged them to study at home if there were no schools nearby.

Begum Rana Liaquat Ali Khan, the widow of the first Prime Minister of Pakistan, started her activities for improving the status of women by being the secretary of her husband when he became the General Secretary of the Muslim League. Immediately after the emergence of Pakistan, she did invaluable work for the rehabilitation of millions of refugees by setting up transit camps, a Lost-and-Found Bureau, a Widow's Home, an Abducted Women's Home and many hospitals. It was she who founded APWA, which is the largest and strongest women's organization in Pakistan and is recognised by the United Nations under category B. In 1954, she was appointed as Ambassador to the Netherlands from where she returned in 1961 to be appointed as Ambassador to Italy and Tunisia. In 1973, she was appointed to the Governorship of the Sind province. Despite her advanced age, she still plays a valuable role in social welfare. (6)

In addition to those mentioned above, there are several other women, such as Tazeen Faridi, Begum Khadija, Khurshid Ara, Parveen Shaukat Ali, Shamim Kazmi, and Rashida Patel who have done great pioneer work for the uplift of women and are still actively fighting against the injustices done to the Pakistani women. However, the above account makes it clear that before Partition, there were some women whose political and social awareness can not be doubted and it was, in fact, their pioneer and bold work which made Pakistani women a little more aware of their rights.

2. Women's Organizations And Their Activities:

It is believed that the two World Wars in the twentieth century gave enormous impetus to the cause of women in the West and many barriers were broken when thousands of women left their homes to take the place of men in factories. A somewhat similar situation was faced by the Pakistani women immediately before and after the creation of Pakistan. Not only did they prove themselves surprisingly equal to men in talent, hard work, and organization in the struggle for Independence, but also they made a significant contribution in the national social services, after the inception of Pakistan, by tending the sick and the homeless. For the first time, they realized that they must acquire education and should play an active role in the social and economic spheres of life. However, it was not an easy task especially when there was not enough support from the men's side. Although several women came out to accelerate the movement for a separate homeland and they continued to participate in social welfare programmes, and in relief camps for the rehabilitation of millions of refugees during the early years of Pakistan, their initiative was never accepted wholeheartedly and they were not encouraged at large. Therefore, as soon as the years of turmoil ended and the people settled down, the attitude of men started changing and they wished to reimpose the restrictions which were earlier relaxed under special circumstances. The main instrument to be used in the hands of the orthodox and 'ulemā' was religion. As religion played a definite role in the birth of Pakistan, it was insisted upon that every

problem whether political, social, or economic, must be solved according to the strict Islamic shari'ah. Thus women had to be quiet and submissive and must not clamour like Western women for female rights. But the circumstances had changed. A few women who were educated and had by now enough confidence to stand up for their rights, organised themselves and formed the "All-Pakistan Women's Association", through which they launched a strong movement and demanded the setting up of a Family Law Commission to study existing women's problems including marriage, polygamy, divorce, custody of children and inheritance etc.

At present there are nearly 50 women's organizations in Pakistan which are trying their best to improve the social, economic and political condition of Pakistani women by making them aware of their rights. These organizations whose main objects are education, vocational training and economic independence, have been growing in strength and popularity since Independence. The emergence and development of such feminist movements in the country's patriarchal and male dominant society is of great significance. Once women become aware of their rights and are enlightened by education and are economically independent, it would be extremely difficult to impose restrictions on them and to give them a secondary and subjective position in society which is otherwise crucial for maintaining patriarchal system. That is why the orthodox 'ulemā' have never approved such movements in Pakistan and have rather tried their best to suppress them. However, it can not be denied that some organizations, especially the "All-Pakistan Women's

Association", with the affiliation of the country's 37 women's organizations and the "Business and Professional Women's Club", have gained considerable momentum and, though on a small level, have been able to exert effective pressure on law and policy making bodies. For example, in the Budget Session of 1948, when a report on the Shariat Bill conferring certain economic rights on women, was withdrawn from the agenda at the last moment, due to pressure by some orthodox members, the Women's Committee of the Muslim League arranged a protest march to the Assembly and sought the intervention of the Prime Minister. Finally the "Muslim Personal Law of Shariat of 1948" was enacted. Similarly, when the Prime Minister, Mohammad Ali Bogra, married a second woman in the presence of his first wife, APWA started a countrywide agitation against him and thousands of women marched and protested outside his house, ultimately forcing him to set up a commission to study the existing family laws. (7) Again, when during Ayub Khan's regime, orthodox religious leaders put up a resolution in the Assembly for the repeal of the "Family Laws Ordinance of 1961", women's organizations launched a big campaign against them and Maulana Abbas Ali Khan, who sponsored the resolution.

To appreciate the role played by women's organizations in Pakistan, it is appropriate to give a brief account of some major organizations.

(a) <u>The All-Pakistan Women's Association</u>

The All-Pakistan Women's Association, generally known as APWA, is the premier women's body with its branches all

over Pakistan. It is one of the largest bodies of voluntary workers in the world and enjoys consultative status with the government of Pakistan. Recognized by the United Nations under category B, it is also affiliated to many women's organizations in the world, for example, the "International Alliance of Women", and the "General Federation of Women's Clubs" in America. A non-political organization, it was founded in 1949 by Begum Liaquat Ali Khan, the wife of the first Prime Minister of Pakistan. The fundamental aim of the Association is the furtherance of the moral, social, and economic welfare of women and children. With this set aim the Association works for :

1. The informed and intelligent participation of the Pakistani women in the country's growth and development.

2. The advancement and welfare of the women of Pakistan through the improvement of their legal, civic, constitutional, social and economic status and rights.

3. The promotion of social, educational, and cultural programmes and policies all over the country by affording opportunities of knowledge and learning for women.

4. The health and well-being of the people of Pakistan in the home and in the community, including the eradication of disease and prevention of physical and bodily suffering.

5. The promotion of international goodwill and brotherhood of mankind. (8)

To fulfil the above-mentioned aims and objects, the Association has set up several projects all over Pakistan and works with all other agencies - national and international

for the achievements of these aims.

The main fields covered by APWA are listed below.

(1) The Social Welfare section includes volunteers' training, health, education programme, urban community development projects, clinics, dispensaries, hospital work and related measures.

(2) The Education department runs hundreds of small primary schools and mothers' clubs, and several secondary schools for promoting literacy and better educational facilities.

(3) The Health Project covers family planning, short health courses for volunteers, maternal and child health; and the establishment of clinics, dispensaries and hospitals.

(4) The Rural Reconstruction department works in close co-operation with the government's Village Aid Programme; and has established Community Centres of its own.

(5) The International Affairs section covers all international conferences and delegations and arranges for visits and programmes by foreign guests and visitors.

(6) The U.N. Affairs section is responsible for all contact work, seminars, and special programmes of the U.N. and also for promoting U.N. publicity and requests.

(7) The Craft section deals especially with Cottage Industries and the setting up of Industrial Homes and Schools.

(8) The Rights and Responsibilities for Women section and the Advice and Legal Assistance section are the sections which are of great use to many families in domestic and other matters.

(9) The Cultural Affairs project promotes cultural programmes and works in co-operation with the National Arts Council.

(10) The Conferences section is responsible for all conference and seminar arrangements and the following up of resolutions passed. (9)

In its literacy and rural development programmes, APWA has played such an important role that in 1974 it was awarded The Mohammad Rez Shah Pahlavi Literacy Prize by UNESCO. The enormous work done by APWA in its short history in the fields of health, social welfare, and education can be appreciated if one looks at a number of institutions established by it. Until 1976 it had established 46 primary schools, 13 secondary schools, 4 colleges, 57 Vocational Training Centres, 63 Industrial Homes, 4 APWA Cottage Industrial Shops, 26 clinics and dispensaries, 7 hospitals, 39 Adult Education centres, 20 Rural centres and 42 Maternity and Child Health centres. (10)

Besides establishing and running several projects, and organizing seminars, conferences and symposia, APWA's activities and achievements radiate in many directions which may be discussed later.

(b) <u>The Business and Professional Women's Club</u>

To help working women and review their problems, this club was founded in Karachi in 1960. It is affiliated to the "Federation of Business and Professional Women's Club" which was first founded in America in 1919 and is now an international organization embracing 66 member countries.

The club which has its branches in Lahore, Rawalpindi and Hyderabad, aims to look after the interests of all types of working women and agitate for the removal of social injustices. It also aims to encourage women to acquire high education in all fields so that they can apply their capacities and intelligence to their benefit as well as to that of others. One of the most important projects undertaken by the club is to provide facilities to working mothers by establishing Day Care centres. It also arranges national and international seminars on problems affecting directly women of all classes and aims to set up a Vocational Guidance Course so that young women could be encouraged to take up other professions besides teaching and medicine.

The "Central Organization of the Women of Pakistan" is a loose association of a wide cross-section of women's organizations. It represents women workers, especially those who are married as well as professional and welfare groups. It holds its meetings regularly and takes quick action whenever any issue concerning women arises.

"Regional Co-operation for Development" (R.C.D.) was started with the object of promoting better understanding between Iran, Pakistan, and Turkey. Besides arranging seminars on women between the three countries, the section also organizes social, cultural and educational programmes.

The "Pakistan Women's Institute" came into being in 1975 at the Kinnaird College, Lahore and aims to encourage educated women to serve their country by making them aware,

through discussions, of their expanding role. The main projects of the Institute are to establish a library containing books and periodicals related to women in Pakistan and other countries; to arrange a monthly Educational Workshop for discussion and debate on selected issues pertaining to the condition of women and to investigate into their important problems.

(c) Activities During the International Women's Year, 1975

In various ways the above mentioned and other women's organizations play an active role in the socio-economic and political life of Pakistan. Their active role was demonstrated well in 1975, the United Nations Women's Year. In fact, it was the first organised attempt, on a world wide basis, to concentrate on the status of women in society and define the areas where discrimination is made on the basis of sex alone. The real aim of the "International Women's Year" was to promote equality between the two sexes, ensure full integration of women in the total development effort, especially by emphasizing their responsibility in social, economic and cultural development at national as well as international levels, and promote inter-state friendly relations and co-operation. The World Conference of the United Nations in connection with the Women's Year was held at Mexico at which 133 countries participated. At this conference it was decided that states would develop their own programmes keeping in view their national conditions and priorities and within the overall World Plan of Action.

Pakistan's participation in this conference was a matter of great importance, especially when the leader of Pakistan's delegation was elected one of the Vice-Presidents of the conference.

The government of Pakistan, which was already quite liberal in its attitude towards women and had accepted their full and equal participation in national life as a principle of state policy (Chapter five), adopted a warm and progressive attitude towards the International Women's Year. In order to implement programmes for celebrating the Year at national and international levels a preparatory committee, the "National Organising and Co-ordinating Committee" (N.O.C.C.) was established. Women's organizations throughout the country undertook special projects to increase the participation of women in every sphere of life. Several seminars, conferences and workshops were held by women's groups to highlight the problems faced by women. There were special programmes on TV and radio, newspapers published several articles on the significance of the Year and the Post and Telegraph Department issued special commemorative postage stamps.

In response to the specific United Nations' decision, APWA held its meeting in November 1974 to set out its programmes for the year 1975. Some significant seminars, symposia and activities held during the Year were :

A symposium on the status of women in general and on the topics selected by the U.N. for a concerted effort by all member states for raising the status of women was arranged jointly by the Pakistan National Centre and APWA

on January 22, 1975. Presided over by Princess Ashraf Pahlavi, the founder of the "Iranian Women's Organization", it was attended by representatives from 36 women's organizations.

In February a "Crafts and Food Fair" was organised at Karachi in which the crafts sections of various women's groups took an active part.

On March 20, a seminar on the "Full Recognition of Women as People" was arranged by the Business and Professional Women's Club in which many important recommendations were adopted, for instance, the setting up of a permanent national commission on the status of women. An appeal was made to the government to take the necessary steps to ensure women's representation at all levels. The same club sponsored a seminar on "Employment Opportunities For Women" in August. Another seminar at the end of March was held at APWA Head Office, Lahore.

On April 5, the APWA organised, in co-operation with the Social Welfare Directorate and other women's organizations, a seminar on "Family Laws" in which 49 organizations were invited to participate.

The "National Rural Seminar For Women on Social Development", was held in May under the auspices of APWA and the Federal Ministry of Labour, Health, Social Welfare and Population Planning.

The seminar on the "Role and Status of Women in Pakistan" organised by the Pakistan Administrative Staff College Lahore, in October, was attended by highly educated women including thirty Ph.D's to discuss the problems of

rural women; and legal, political, economic, social, cultural and educational conditions existing in Pakistan. At the end of the seminar, more than three hundred recommendations were unanimously agreed upon.

An international seminar on "Women's Participation in Development" was held at Rawalpindi-Islamabad from November 10 to 15, 1975. This was organised by the National Organising and Co-ordinating Committee in co-operation with the United Nations. Pakistan was the first country in the world to hold an international seminar as a follow-up to the United Nations World Conference. (11)

Not only during the year 1975, but also before and afterwards, these organizations have been arranging several seminars and other activities to highlight women's problems. For instance, in 1958, a seminar on the "Role of Women in the Preservation and Development of Cultures in the Community" was convened by APWA in collaboration with UNESCO. Another seminar on the "Role of Women in the Developing Economy of Pakistan" was held in Karachi in 1961. In 1976, a three day seminar on the "Status of Women in R.C.D. Countries" was held in which outstanding women workers from Iran and Turkey representing the fields of social welfare, social planning and administration participated. Recently, at the end of 1978, the Pakistan Federation of Business and Professional Women's Club held an international seminar on "Women - their Total Potential with Special Reference to Muslim Women of Developing Countries" in which the President of the International Federation, Miss Mildred Head also

participated. Also General Zia, who ousted Bhutto in 1977 and claims to have introduced strict Islamic laws in the country, participated in the seminar and promised to establish a Division for Women's Affairs which, by establishing several projects, will protect women socially, legally and economically; and train them in skills to enable them to earn an economic livelihood. A few months later, the "Women's Division" was created in the Federal government at Islamabad. This attitude of General Zia, who is otherwise a devout Muslim and has attempted to implement strict Islamic law in the country, proves the author's earlier point that, throughout the history of Pakistan, the government has been quite liberal in its attitude towards women.

To appraise the work done in 1975 and afterwards and to plan for the work to be continued throughout the Women's Decade, the "National Organizing and Co-ordinating Committee" decided to celebrate a nationwide Women's Week from 18th to 24th October 1976. Its purpose was to awaken men and women to the needs and problems of women and to invite their attention to these and other relevant problems through debates, discussions, meetings and seminars. To attract the attention of women masses, several women's dinners, dramas, fairs, functions, film shows and sports and handicrafts exhibitions were organised so that they can, at least, get together for a better understanding of their responsibilities and needs. Throughout the Women's Week it was emphasized that in a developing country like Pakistan, it was vital for women to actively participate in socio-economic development, and also achieve economic independence instead of playing a

secondary role and depending on males for their economic needs. At the end of the Week, a 19-point Declaration on the Rights of Women was announced which assured all appropriate measures to abolish prejudicial customs and practices which are discriminatory against women, and also ensured women their legal, social, education, health and economic rights.

III. CONCLUDING REMARKS

From the demands made by various women's movements and organizations in Pakistan or elsewhere in the Muslim world the following main points emerge -

1. The recognition of the rights of women to participate in all spheres of life, including politics.

2. Equal opportunities and facilities for women's employment and education.

3. The abolition of purdah and segregation.

4. The abolition or severe restriction of the practice of polygamy and concubinage.

5. The curtailment of the male privilege of divorce by introducing severe restrictions.

6. The introduction of effective measures to remove those social taboos that hinder women's progress.

7. The creation of special Family Law Courts to deal exclusively with family matters.

8. The setting up of commissions to investigate the role of women in society and also to recommend means and ways for the improvement of their status.

If one keeps in mind the traditional family structure of Islam and the admitted subservient position of Muslim women in the family, it seems that the emergence and development of feminist movements in Muslim countries, demanding the above mentioned concessions, certainly may cause a great commotion throughout the Muslim world. All the justifications given by the "apologists" or modernists for granting women freedom and equality with men are of no avail. The reason is that neither Islamic jurisprudence nor the Qur'ān or the Ḥadīth allow free mixing of the two sexes that women should go out without covering their bodies properly and be independent and earn a livelihood in cases where there is a male member in the family for support. In addition, these sources do not introduce any restriction on the practice of polygamy except by asking for equal treatment in the case of more than one wife, nor do they limit the number of concubines and it is not required of a husband to give any reason why he intends to divorce his wife.

Although the need for the re-interpretation of certain matters in the Qur'ān and the modification of some aspects of Islamic law might be justified, there is a clear danger as to the extent to which the interpretation and modification should be taken. A greater difficulty arises when an attempt is made to re-interpret those Quranic injunctions which clearly establish male superiority over women. For instance, in the matter of husband and wife when the former is regarded superior to the latter to the extent that he can even beat her if she is not obedient to him, or in the matter of giving witness or regarding inheritance. Thus it seems clear that

if women's movements aim to achieve the aforementioned objects under the Islamic system, they are trying in vain, as Islam, being a patriarchal system, can never grant such concessions which may weaken the bases of its social structure. If, on the other hand,women's movements do achieve their aims in the long run, their victory would become a great challenge to the social structure of Islam. Due to the impact of Western modernization with its techol-ogical and industrial aspects, Muslim countries have been in a state of flux for more than a century. As a result, the traditional religious, social, economic and political patterns of the medieval time have been weakened. It is, therefore, imperative for any Muslim government to have a clear-cut idea about the rights and responsibilities of Muslim women in order to form a real Islamic society.

Muslims all over the world are in a state of dilemma as to how to react to the Western influences on their socio-economic life and Pakistanis are no exception. However, this sort of conflict is not as grave in Pakistan as could be found in some Muslim, especially oil-producing, countries. Nevertheless, the situation in Pakistan is confounded by its ideological background. Since religion played a sig-nificant role in the creation of Pakistan, the majority of its people, consciously or unconsciously, are convinced that it should be an Islamic state,governed by Islamic laws. But a great deal of confusion has been created, since various groups tend to define the Islamic law and its modus operandi in their own different ways. These groups can be generally classified into four. First,the orthodox religious leaders

who have had always a great opportunity to try to impose their own traditional ideas on the people. Second, the government which has always been liberal in its attitude, especially regarding women. Third, a handful of broad-minded, educated elite influenced and impressed by the modern Western way of life who demand to have radical changes in the social, economic, educational and political pattern of life. And fourth, the ordinary, mostly illiterate masses who do not really understand what is meant by an Islamic State and are in two minds as to which group to support.

However, with the status of women in view under the law of Pakistan and the increasing number and activities of various women's groups, it may be perceived that the hold of religious leaders is weakening and many common people seem to have decided their way by supporting the government policies about the status of women and encouraging and joining the ever increasing women's groups. Nevertheless, it will be misleading to deduce that the hold of religious '<u>ulemā</u>' has decreased to a minimum level and that the hostile attitude of men towards women has changed considerably. Of course, the general atmosphere seems to be favourable for a change for which a slow evolutionary process is necessary.

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Part Three

C H A P T E R 7

THE FUTURE OF MUSLIM WOMEN IN RELATION TO STRICT ISLAMIC LAW AND THE DEMANDS IMPOSED BY MODERN WESTERN CIVILIZATION

The modern technological, social, political and economic development in Western countries has given rise to numerous serious issues in the Muslim world. In many Asian and African Muslim societies the process of Westernization has begun with full force. The outward manifestations of the worldwide extension of Western technology and skill are obvious and can be realized easily. However, the inner effects of Western ideas on traditional Muslim religious, economic, social and political affairs are largely intangible and thus pose a great threat for traditional Muslim society and its culture.

Before discussing the danger, confusion and dilemma with which the Muslim world of today including Pakistan is confronted, it seems necessary to describe briefly the nature, historical background and salient characteristics of the process of modernization as it affected European countries and America. Once the nature and trend of modernization is understood, it will be easier to compare the Islamic social system with it and appreciate where these systems differ and what type of danger the Islamic system, especially regarding the family, as well as the status of women in and outside the family, is likely to face if the Muslim countries do not resist the encroachment of Western ideas and values.

I. MODERNIZATION AND WOMEN IN THE MODERN WORLD

> "Modernisation is only a word that is used to describe the dynamics of social change brought about by the transformation of the Western economy over the last two hundred years. It is not used as a philosophical statement of how things should be but as a way of measuring the rate of this change." (1)

In other words modernization also called sometimes Western-ization, is the process of change towards those types of social, economic and political systems that have developed in the European countries and America from the eighteenth century onwards. The so-called "modern world" which emerges out of these radical changes is, in fact, the rejection of monotheism and the breakdown of patriarchal values. The system of the modern world is generally based on the concept of freedom of individuals and equality of sexes with less tendency towards religious doctrine. The modern world clearly recognizes women's rights and also gives respect and importance to the working class and non-whites.

1. The Development Of Women's Movements : A Historical Review :

For such a radical change in the attitude and in the religious, social, economic and political systems, it is almost impossible to date it precisely. One may look back as far as the Renaissance (1300-1400) when the idea of liberal education and learning for both sexes was spread, or one can attribute it to the Reformation, the religious movement of the sixteenth century which had far-reaching effects in the economic, social and political spheres, or one can take into consideration the French Revolution

in 1789 which provided a considerable momentum for breaking down the powerful monarchies and ancient hierarchies. In fact, the process of modernization has not been a simple matter. It consisted of a whole complex of interrelated changes involving ideological, technological and institutional innovations. It was not only, as commonly understood, due to the Industrial and technological revolution and the accompanying economic development which determined the way Western societies evolved, but also the philosophy, new liberal ideas and education that gave direction to the discoveries and new techniques. In addition, increasing urbanization tended to reduce the size of the family and broke up the old values which, in turn, provided wider economic and political participation for both sexes.

The first intellectual change started with the Renaissance meaning the rediscovery of Greek classical learning, culture and the arts. The approach of the Renaissance was dramatic and there was less emphasis on any spiritual guidance; instead, it emphasized worldly affairs and gave more importance to individuals. Consequently spiritual guidance to the ruler seemed to be disappearing and, in fact, the seed of Nationalism was sown at that time.

The second intellectual change was the beginning of the Reformation movement which challenged the authority of priest and king by asserting the precedence of conscience. The Reformation was a reaction against idolatory and ritual in Christianity. Although Christianity had its roots in Judaism and started from a Judaic base which was monotheist

and believed in the word of God rather than in images, when St. Paul's teachings reached other lands and Christianity was spread over the Mediterranian area, it was influenced by the pagan philosophy of the Greeks and Romans, ultimately giving great importance to Mary, pictures, music and rituals. By the time power was given to the Church, Christianity was full of pagan influences and the Church had acquired many pre-Christian traditions and forms. The Reformation tried to purify the Christian church and recover the primitive purity of Christianity. This was the time when Christianity divided into two major sects, the Roman Catholic and the Protestant. The Roman Catholics did not change very much and continued to follow the traditions of a medieval age. However, the movement had a great effect on the Protestants and their domestic life. The sacredness of marriage was reduced to some extent, which resulted in making divorce a bit easier. The idea of marriage as a companionship gained considerable popularity among the ordinary masses. Although patriarchal authority was clearly asserted by the Puritans, especially in family matters, they introduced a new notion of humanity and human responsibility. Some of them adopted a more humane and sympathetic attitude to women and criticized old customs and beliefs such as the notion that women were naturally shameful and unclean. Some of the small Puritan sects, for example, the Quakers and Ranters included women in decision-making and women not only prophesied, but they preached as well. Some extremist religious sects even attacked conventional marriage and advocated free love and the complete independence of the female sex. (2)

In fact, from the time of the Renaissance till the Reformation, there was a very slow and subtle, but significant process of change which later paved the way for a great and rapid change throughout Europe and America. The conspicuous change, however, started with the French Revolution in 1789, the first great social upheaval in Europe to find an intellectual expression in purely non-religious terms. In fact, the French Revolution supplied an important additional momentum to that of the intellectual development which had started developing since the Renaissance. The nature of the Revolution was political and it was the assertion and liberation of the capitalist class against an outdated feudal system and monarchy. The Revolution advocated the economic, political, legal and social equality of the sexes and held out the promise of emancipation to the oppressed. French women who, for centuries, were treated as an inferior and suppressed class considered the Revolution as an effective relief from their miseries and showed great interest in and appreciation for the Revolution and fought for the realization of its aims. Thus, once the Revolution was under way, women organised themselves and founded several political clubs and newspapers through which feminists cited women's political contributions to the struggle for liberty and drew attention to their patriotism. Realizing that they had reasonable grounds for their proposals, they argued that since they were fulfilling the duties of citizens, they could not logically be denied the rights of citizens and, therefore, must be accorded political equality.(3) In fact, the idea of the Puritans that people should have a say in their own governing within the Church and the State was put forward by the feminists as the demand for the vote.

During the Revolution the most exclusive and independent feminist society was the "Société des républicaines révolutionnaires" which was intensely conscious of the dignity of womanhood. Although basically it represented the interests of women of the working class, it played a vital and conspicuous role for the cause of women and demanded social, economic and political equality for them. The feminist cause gathered so much strength with each new French upheaval that the Société along with nearly 48 other women's organizations was banned and women were prohibited from political meetings. (4)

The efforts of women did not succeed much except in the matter of divorce, inheritance, legal majority of women at the age of twenty-one and in civil suits when they were granted the right to appear as witnesses. However, it became manifest that women, basically of the middle class, did have the power to organize themselves and fight boldly for their rights. It must be borne in mind that the Napoleonic codes almost swept away every advance the women had made during and after the Revolution.

Until the French Revolution, the question of women's rights had not been raised as such, instead, the preceding movements including the French Revolution were started against religious innovations, monarchies and hierarchies. Nonetheless, these movements did create a collective consciousness among women for their rights and they dared, for the first time in patriarchal history, to analyze their own position. However, despite the survival of some

of the ideas of these movements, the economic, social and political helplessness of women continued to increase throughout the nineteenth century and it seemed that, to secure and recover its strength from the great jolt caused by the aforementioned movements, the patriarchy suppressed the female sex more than ever.

In various ways women in the Western patriarchy have suffered and been regarded as the cause of human suffering and misery. In fact, the Eden legend of the female represented the most crucial argument of the patriarchal tradition; and the connection of woman, sex and sin constituted the fundamental pattern of Western patriarchal thought and determined most sexual attitudes.(5) In the early nineteenth century, politically, women were not allowed to vote, stand for election, hold public office or, in many parts of central and Eastern Europe, join political organizations or attend political meetings. Similarly, to ensure that they did not become economically independent, women were debarred and prevented from holding and transferring property, engaging in trade, running a business, joining a profession and opening a bank account or obtaining credit in their own name. Regarding civil and criminal law, in most countries, women were not 'legal persons' in the sense that they were not allowed to enter into contracts and were regarded as minors or children in the eyes of the law. Until their marriage, regardless of age, women needed the permission of their fathers to work, marry, change residence and so on, and after marriage the authority passed to the husbands who enjoyed complete

freedom to dispose of their wives' income, property and children. (6)

In America, until 1840 the law gave the husband the exclusive control and guardianship over the children, the custody of the wife's person, the sole ownership of her personal effects and absolute right to use her real estate and the product of her industry. Under English common law the husband owned both her person and her services and was allowed to sue others for wages due to her and confiscate them for himself. The wife had no legal rights of property ownership, for whatever she owned, earned or inherited, belonged to her husband. The husband could take the property from his wife by personal violence and was neither punished nor forced to restitute. Her position under common law was worse than that of slaves and she was the actual bond servant of her husband as she vowed a life-long obedience to him. The two i.e. the husband and the wife were called "one person" and that one person was the man in the eyes of the law. She was also not permitted to choose her domicile and, upon marriage, automatically had the same domicile as that of her husband, even if he was living in another country.

According to Western jurisprudence, whether it was in England or France, the husband was something like a legal keeper and a lord to his "slaves" and was regarded as sovereign. By law, the husband had full control of the children and even after his death, the wife was not regarded as the legal guardian of her children unless he accepted

this before his death. Thus a widow wishing to remarry had to submit the question of child custody to a family council consisting of her dead husband's relatives. As the children were the father's legal possessions and he was the sole "owner" of them, he could deprive the mother of her offspring. Divorce opportunities for women were virtually nil and in the case of the wife's desertion, the husband, if he wished, could compel his wife to return by law or by physical force. In fact, until 1881 the legal right of a husband to use physical force to stop his wife from leaving home had never been questioned. Similarly until 1884, the wife could be imprisoned for denying her husband his conjugal rights or refusing to return home. In France a woman found guilty of adultery was given two years imprisonment, while a husband was held liable only if he brought a concubine into the home to share with his wife and even in that case, he was only fined. (7)

These were the circumstances in the nineteenth century which forced women to protest and start a campaign for particular reforms. However, besides such suppressive socio-economic and political conditions, there were some other factors as well which created a conducive environment for the feminists in the nineteenth century to organize themselves and they, unlike their predecessors, found an eager and amicable atmosphere for their mission. Some major stimulating factors for a collective consciousness among women for their rights and a radical change in their status were as follows:-

(1) The nineteenth century was the period when, economically,

socially and technically the most decisive and irreversible changes took place due to the Industrial Revolution. The most influential and greatest effect of the Revolution was on the family and on paternal authority. As women did not have any previous experience of work in the factories, the employers found it easier to subdue them. Thus, now, women were under the control of employers rather than of their husbands and fathers. That meant the men's social control in the family was threatened. Secondly, the economic basis of patriarchy was weakened because, whatever the wage earned by women, it did give them a feeling that they were no longer desperately dependent on the male's income.

The pre-industrial family which used to be very large, consisting of husband, wife, children, uncles, aunts, grand-parents and cousins etc. and was a productive unit in which all members played an effective role, was reduced to a smaller family unit and ceased to be an economic unit due to a drastic decline in domestic production. Because of the transfer of production from home to factories and the large scale industries, thousands of men, women and children left their homes to look for the jobs in the factories. At that moment, women observed that there existed a lot of discrimination on the basis of sex and that they were not employed in better jobs, but only in menial jobs. They got jobs mainly in the mines and factories where the conditions were appalling and working hours unlimited. Thus, in order to gain better employment and admission to the professions, women started agitation and demanded better

jobs and facilities and equal pay with men. Since admission to good professions was not possible unless women had a chance for education and had some political power to force the government for the legislative improvement, they also demanded the right to have access to higher education and the right to vote.

(2) One of the main characteristics of the nineteenth century was the denial of sexual enjoyment for women, and it was emphasized that women were maternal rather than sexual creatures. Thus throughout the century there existed a great danger of sexual abuse, and to control, especially women's sexuality, many devices were introduced. Besides some physical means, a certain kind of morality and social pressure were created to prevent women, even, from expressing any desire for sex. In England, the Victorian period divided women into two classes, first 'good women', mainly from the higher middle class, who represented purity of mind and spirit by their modest behaviour and dress and were passive and symbols of chastity and delicacy. They were not supposed to enjoy sex and if they did so and actually admitted it they were suspected and were not considered as good company for other, 'proper women'. Apart from child-bearing and presiding over a big household, they were like an ornament to society and a status symbol for their husbands. On the contrary, 'bad women', mainly from the working and lower middle class, represented sexuality by not considering themselves as a special class, thus behaving and dressing provocatively. These women could not afford to stay at home and lead an "idle" life, and thus went to work in the factories.

Out of such suppressive circumstances, there developed a strong reaction against the traditional outlook about sex and some of the ordinary women started treating sex as an integral part of their life and of self identification. Soon women became aware of their sexuality and power due to curiosity, education and the appearance of books and pamphlets giving advice on how to improve one's sex life. Thus they protested against the almost universal belief that woman's basic role was to fulfil man's sexual desire and be pregnant with his children. The process of sexual awareness for women which began to rise in the late nineteenth century as a protest against the denial of sexual enjoyment for women, accelerated in the twentieth century. Within the past few decades, the establishment of sex clinics, the invention of new techniques which can increase both partners' enjoyment, the availability of several effective contraceptive devices and the legalization of abortion clearly indicate that female sexuality and her right to sexual enjoyment is now widely acknowledged and recognized. The introduction of birth control techniques in the nineteenth century, in fact, played a vital role in granting women sexual freedom. Women who, by using contraception could reduce the fear of unwanted pregnancies, started increasing their sexual activity and their enjoyment.

(3) Until the seventeenth century, each individual was considered as one element in a total picture. In the nineteenth century, due to the spread of liberal ideas, the concept of the individual as a separate personality weakened the traditional religious influence over sexual morality,

and the church, which in the past had played a dominant and definite role in determining the human behaviour, lost its previous rights and authority over many areas of human life.

(4) Lastly, the changes in the demographic structure due to urbanization brought about changes in class structure which ultimately created the middle classes. The professional and industrial middle classes, especially of women, in turn, played a vital role in changing the socio-economic and political life. The rise of feminism in the nineteenth century was, in fact, due to the emergence of the middle class.

All the aforementioned factors and changes in values and social structure motivated, rather forced women, especially the middle class, to organize themselves and redefine their role in a male oriented society.

In England, the movement for women's emancipation started in 1792 when Mary Wollstonecraft published her 'shocking' book "A Vindication of the Rights of Woman". By many of her contemporaries, the book was considered as an attack on the traditional family and marriage and a source of diffusing French Revolutionary ideas. And as a matter of fact it was true because the ideas contained in the book really seemed to be a by-product of French upheaval and it was clear from the book that the author was inspired by the revolutionary thoughts of the Revolution about liberty, equality and fraternity. Her main emphasis was that women are human beings first and females second, therefore, they must enjoy the rights of a human being. She argued that all human beings must have the right to decide their fate and their

own interest rather than depending on others. She insisted on giving women rational education, free scope for intellectual development and larger opportunities for economic independence.

After the publication of the book, though on the surface there did not appear to be any great change, women gained a greater awakening of consciousness. However, British feminism in an organized form is believed to have started some time between 1830 and 1850. It commenced with the emergence of the Reform Movement which ultimately opened the way for an expansion of suffrage movement in 1866 and paved the way for a series of investigations into the conditions of working women. In the 1860's British feminists derived great help and courage from John Stuart Mill, a great advocate of women's rights and the author of the famous book "The Subjection of Women" in 1869.

In America, the first female anti-slavery convention in 1837 had profound implications. In fact, the Abolition Movement provided the first occasion on which women were able to organize themselves in a political manner. The official inauguration of the women's movement took place with the Seneca Fall Convention of July 1848, which initiated a long series of women's rights conventions in the United States. The first serious attempt to achieve female suffrage started in 1867. In some other countries, for example, France, Germany, Sweden, Norway and Finland etc. organized feminism developed in between the sixties and nineties of the nineteenth century. (8)

2. The Main Aims Of The Feminists In Europe And America :

The ideas, activities and objectives of feminists were not the result of a plain desire for female equality, instead, they were a complex mixture of many ideological and political elements. Political changes and developments gave feminists the opportunity for enlarging their demands and claims. Although the primary aims and objectives of feminism were remarkably uniform in the nineteenth century, there existed two groups of feminists. First, moderate feminism which was rather conservative and against sexual and alcoholic libertinism, and initially confined itself to demanding more rights for women in the economic, educational and legal fields. In other words the aims of early moderate feminism were primarily economic in character, therefore, the admission of unmarried women to the profession and the control of married women over their own property were their two major demands along with the provision of better educational facilities for women. Radical feminism on the other hand mainly concentrated on the vote. (9) However, as time passed, both groups started concentrating more and more on the franchise and it became, in many countries, a unifying theme on which feminists could concentrate. Naturally when the vote was won, mainly in the second and the third decades of the twentieth century, many feminists, especially the radicals, felt there was nothing more to do and it seemed almost everywhere that they fell into apathy.

The second organized campaign for women's rights started in the 1960's in the form of the Women's Liberation

Movement. This was a radical and revolutionary movement whose intellectual roots and approach were very different from the feminist or suffrage movement. The two main theories and doctrines adopted by the Women's Liberation were socialism and sexual freedom for the female. (10) Although the theory of sexual freedom and fulfilment was bitterly criticized and rejected by the feminists and was considered as immoral, the Women's Liberation and its ideas gained most striking success in many European countries and America, perhaps due mainly to the sexual awareness among women and the spread of effective contraceptives. In the opinion of Women's Liberation movement, the patriarchal system is still maintained by capitalism, therefore the capitalist system must be replaced by socialism which would improve the socio-economic condition of women. In recent years the Women's Liberation has become an international movement due to the identification with shared goals. In all the countries it has launched campaigns aimed at all the major areas of women's oppression, legal, economic, sexual and their role in reproduction and the socialization of children. (11)

In England it was as late as 1967 when the first whispering of the Women's Liberation was heard. In March 1970, the first national conference was held which set up a "National Co-ordinating Committee". This is an umbrella organization without having its own programmes and initiatory powers and works with the co-operation of other women's groups. In America the main reformist group is the "National Organization of Women" which originated the struggle in 1967

and is the largest, highly organized and very active group. (12)

Over all there exist two major groups of feminists at present whose main arguments can be detailed as follows. (13)

Radical Feminists	Abstract Socialists
1. Men are the oppressors.	Men are not the oppressors : it is the system.
2. All societies have been male supremacist.	Capitalism oppresses women.
3. It starts with a psychological power struggle - which men win.	It starts with private property.
4. Socialism has nothing to offer us.	We have got to discover our relationship to socialism.
5. Socialist countries oppress women.	The scene is not too good in socialist countries for women - but that is because women's liberation was not part of the revolutionary struggle.
6. What we want, is all women to unite against men and male-dominated society.	It is most necessary to convince men of the importance of our struggle. They are oppressed by their roles too.
7. We want to liberate women from male oppression.	All people are alienated under capitalism, we want to liberate everybody to become 'whole people'.

Both these groups seem to present their positions as polar opposites and only the time will tell which one gains wide acceptance and success. However, it can be appreciated that since the Renaissance until now, a great change has taken place in the status of women and they now enjoy much more freedom and legal safeguards than ever.

3. The Improved Status Of Women :

The social and legal reforms affecting women positively, but reducing male authority as husband and father, started mainly in the second half of the nineteenth century. Some of the legal power of the patriarchy was eroded when the British Parliament, in 1839, declared that children were not to be the property of their fathers in certain cases. This modified paternal control was further overturned by the promulgation of the "Guardianship of Infants Act" in 1886 which provided that on the father's death the mother should be the guardian of her children. In 1925 the Act was further modified to give father and mother equal rights and power over their children. (14) In the last decades of the nineteenth century the State also began to take over some of the family's former responsibility, especially for bringing up and educating children. This involvement of the State in the mental and physical welfare of the child again reduced the father's authority and power over his offspring. He could no longer offer training to his children, as at a tender age they went off to school. By 1925, in England and America, the traditional situation was almost totally reversed as the mother gained virtually complete control over her children, with the father's rights and authority being nominal. Such legal success for women directly hitting at one of the basic elements of patriarchy, is of great significance and is reflected in basic changes in culture.

The economic disabilities faced by married women were altered in the second half of the nineteenth century. In

1858 British women who left their husbands were allowed to retain anything they inherited or owned after separation. The married women were still not affected by this legislation. However, the subsequent acts in 1882 and 1893 provided women with sole rights to all their property and earnings and also provided generally that wives were in the same position with respect to property as their husbands. Similar reforms were introduced in many European countries and America which allowed women to manage their own property without the intervention and direction of their husbands.(15)

Regarding marriage, since it was now based on emotion rather than on economics, English law allowed divorce in 1857 and awarded financial maintenance as well as child custody to the successful petitioner in 1884. In France, as well, it was in 1884 when serious changes occurred in the divorce laws. (16)

Although the various reforms in the second half of the nineteenth century did not overturn patriarchal control and authority and men were, overall, still dominant, it was obvious that these reforms did create a new attitude towards women, one which was readily willing to grant them greater freedom than had been feasible before.

At the beginning of the twentieth century women found themselves living in a very different situation and it was surprising to notice that their position had changed far more dynamically than that of men. The amendments to legislation in the nineteenth century made it possible, in the first half of the twentieth century, to pass a host

of laws which equalized or, at least, improved the status of women with regard to inheritance, property, judicial duties, citizenship, education, economic, matrimonial matters, maintenance and guardianship of their children.

Besides the improvement in law and the growth of higher education for women, the twentieth century also saw the exceptional circumstances of the two great World Wars which accelerated the rapid process of social change. Because of military and economic necessity and a serious labour shortage during the war periods, it became necessary to ignore the traditional idea of women's place and thus many taboos and restrictions against women were broken. Thus they left domestic service and went into jobs and replaced men in offices and factories, who had gone to fight. The entrance of women into industrial work and public service gave them a new experience and they started realizing their value in society. Although when the First World War was concluded, it was assumed and rather emphasized that all women must go quietly back to their homes and become housewives, this was not possible, as women had experienced the joy of independent living. Thus they continued to work, and after the Second World War it was a common phenomenon that both the husband and wife shared their economic roles. In many European countries the number of women in the active work force has increased remarkably since the Second World War. By 1966, in England, they constituted 42.2% of the total labour force and in France the percentage was over 43 in 1975. Married women who, in the nineteenth century,

hardly worked outside agriculture, constituted 50% of the total labour force by the second half of the 1960's in many countries such as England and Germany. In addition, women also advanced in professional occupations, such as, medicine and law. By the mid-1960's 25% of all English doctors were women and their share was 22% in France; 20% in Germany and 6% in the United States. In legal professions, 19% of all French lawyers were women by the end of the 1960's, the corresponding figures in Germany and Britain were 7 and 4% respectively. (17)

The smart Western women of today in neat, lighter and more revealing brief dresses show the signs of their new freedom and status. They are responsible individuals and are capable of moving from a position of inferiority to one of superiority. Although men are still dominant in the fields of law, architecture,the natural sciences and engineering etc., they have lost their absolute power and domineering position overall. Women at present are more eloquent and effectively involved in defiance and antagonism than ever before, whether it is a matter of campaigning for liberalising abortion or improving legislation to provide equal opportunities and wages for women or protesting against the high prices of basic necessities.

One of the most significant and important changes in women's role as mother and their exclusive power as mothers seems to serve as a prelude for a great shock and damage to the patriarchal system. Although it is argued that modernization has impaired motherhood and its functions, the fact remains that the mother of today is in a much better

position and has a legal standing greater than ever before in Western patriarchal history. The growing importance of the maternal role can be easily measured by looking at the past when women had no rights over their children whatsoever and fathers were the only legal guardians and had sole custody of children in casesof separation or any dispute. Today it is the view of the law that the mother is the indispensable emotional provider and natural custodian of the child, who must decide about her child in the case of separation and divorce.

In addition, the increasing interest in sexuality and premarital sexual experience which is now virtually legitimized in contemporary Western society seems to be paving the way for greater general freedom for women. Such a sexual revolution in the form of effective and influential contraceptive devices, a result of better technology in manufacture; recognition of the "illegitimate" adolescent; pre and extra-marital sexuality and homosexuality must assist in dissolving patriarchal values and ultimately abolishing both male supremacy and the traditional socialization by which the patriarchy is maintained. The economic independence of women and the involvement of the state regarding the child's welfare has already undermined the authority of the patriarchal family and its financial structure.

Such a radical change in the status of women and the decreasing authority of men over women and children seems to augur the quick decline of patriarchy.

II. CLASHES BETWEEN THE ISLAMIC ORTHODOX SYSTEM AND MODERN VALUES

For a comprehensive understanding of the problems and difficulties confronting Muslim societies in granting equal rights to their women or emancipation in the Western sense, it was necessary to ascertain the position of women first in Islam, and then in a Muslim society where the traditional values and mores play a greater role in determining women's position and male-female relations. This subject has been discussed at length in the previous chapters. Furthermore, to understand what the Muslim countries are experiencing under the cover of modernization, it was appropriate to review first of all the developments in Western countries. Therefore, in section I of this chapter it was discussed how in the West, over the course of centuries, the medieval feudal way of life was supplanted by a modern way of life. It was also appreciated, while discussing different aspects of the modern world, that the present social system of the West is established on the basis of unity and sex equality and on the fact that women are not generally placed in a sphere apart from men.

1. The Development Of Westernization And Its Influence In The Muslim World :

Similar to the West, a process of transition and change has also been underway in the Muslim world since the middle of the nineteenth century, and at present, especially oil-producing Muslim countries, more open to the modern world, are passing through a critical transitional period. On the basis of oil wealth, these countries are not only importing

a lot of Western technical equipment and luxuries, but, as well, a large number of their people are frequently visiting Western countries. Consequently, a great deal of infiltration of Western culture and values is taking place into these societies, exerting a considerable pressure on old traditional Muslim values. In fact, socio-cultural and political transformation in the Muslim world did not start, as in the West, with the growth of new forms of production, industry, liberal ideas, the massive involvement of women in labour markets and the rise of new middle classes. Instead, the pressure from within and also from outside disintegrated the traditional patterns and shook the very foundation of the Islamic social system characterized by the confinement of women which had reflected a specific division of labour and a certain concept of society and of power. Furthermore, the influence of the modern world penetrated traditional Muslim life through various ways. European reformative movements such as the Renaissance, Reformation and the French Revolution had hardly any real influence on the Islamic world. Maybe because the contemporary Muslim empires and cultures were more progressive and superior to those in the West and thus the West had little to offer. However, later when the West advanced its economic, political, military and technological status and the Muslims' power declined, the West gained an opportunity of political intrusion. This resulted, for the first time, in a direct contact between Eastern and Western people. In time, the political, intellectual and material priority of Western people paved the way for blind im itation of their habits and values

by the people in the East. The visible success and superiority of the West, especially in technology, persuaded Muslims to borrow some of its elements. The rulers of the Muslim world, in particular, tried to maintain themselves and their identity by copying the Western way of life. They also imported Western instruments of defence. Having little confidence in their skill and strength these Muslim rulers went to the extent of borrowing even the governing institutions such as parliaments, constitutions and Western legal codes. They also tried to introduce industrialization in their countries perhaps not out of any local requirement or to suit local conditions but merely to copy the West. This resulted in great disturbance and tension and assisted in undermining the old institutions. Indeed, they failed to realize the implications of allowing the use of Western methods and equipment. It is only recently that it has been, at large, realized that even a minor Western element or institutional reform would inevitably bring in its wake a cultural transformation which ultimately would disturb traditional Muslim culture.

The settlement of European powers in Muslim countries as a ruling class also played a great role in the worldwide establishment of the Western cultural process. Once the Westerners were established, they had every chance of displaying the superiority of their technology and culture and impressing that the technological, economic and political system of the West was a model for developing countries. Thus the masses, impressed and overwhelmed by the advancement of the West, developed a sort of inferiority complex and

started considering many things of the West as superior. As a result, the acquisition of not only Western equipment but also of Western culture, habits and manners came to be regarded as a matter of social propriety.

> "The prestige enjoyed by everything Western in the eyes of the natives created in the latter a propensity to emulate all the ways of the West. In fact, it often led to a subservient desire to acquire not only Western equipment, but also Western behaviour, mannerisms, and attitudes. Consequently, Western medicine was accepted not only because it was demonstrably superior to traditional Middle Eastern medical practices, but also because it was Western." (18)

Consequently a class of people emerged who blindly admired Western culture and through them Western values started to infiltrate into the traditional Muslim structure at a faster rate. Such people were, in turn, patronized by the Western governments.

As pointed out in the previous chapters, not only did Muslim governments adopt a liberal attitude towards the women's problem but also several reformative movements emerged which tried to reform or rather modernize Islamic law regarding the status of women by adapting it to changing modern conditions. Although some of the modernists, such as, Mohammed Abduh, Rashid Reza, Jamal al-Din Afghani, Qasim Amin, Ameer Ali, Syed Ahmad Khan, Chiragh Ali, Khuda Baksh and Ghulam Ahmad Pervez did not approve of mere imitation of the West, they were much convinced by Western enlightenment and insisted on a re-interpretation of the Qur'ān and Islamic law in order to bring them into conformity with modern life while still keeping the spirit of Islam and its laws. They believed that Islam being flexible can not be confined to

a certain period or time due to its universality and perpetuity. (19) Most of the modernists indicate that what is contained in modernization especially with regard to women is not repugnant to Islam and they tend to justify this by Quranic injunctions. They declare polygamy as an undesirable institution and contrary to the spirit of Islam. They assume that since no man can treat four women with equal justice, the Qur'ān in fact recommends monogamy. They also do not agree with the law of divorce as practised by Muslims and argue that the seclusion of women is a recommendation to suit specific circumstances and that it is not intended to be a perpetual law. (20) They wish to preserve the essence of Islam by adapting it to modern time and call for a greater social contact between the two sexes, limitation of polygamy and the practice of divorce and concessions for women who wish to get a divorce - all certainly within the framework of Islam. In their writings these modernists have adopted an almost apologetic attitude to the Islamic social system - the veil, polygamy and divorce. Their defensive attitude, in fact, indicates that they evade the challenge of the West by trying to prove, in one way or the other, that whatever the modern world offers is just the same as Islam has already prescribed. Some reformists, such as Salamah Musa and Taha Husayn have gone further and they in their writings preach the complete adoption of Western culture and the total break with the traditions of Islamic culture. In other words such radicals wish to separate religion and the state and try to disestablish the dominating socio-religious system of Islam.

The impact of such a liberal modern attitude at the time of cultural crisis in the Muslim world has been great. As stated earlier, Muslims imitated the West not only in science, technology and skills, but also in cultural fields, such as fashion, clothing, habits etc. The Western improvements in agriculture, irrigation, transport, buildings, sanitation and medicine attracted Muslims very quickly, as they lacked these elements in their own culture. Through education, these people were also acquainted with certain political concepts of the West, for instance, nationalism, sovereignty of the people and the self determination of individuals.

By providing education, salaries to working women and legal safeguards to wives in matters of polygamy and divorce, modernization also destroyed the father's authority in the family and dethroned him from his previous position. As has been seen in Chapter five, the rights enjoyed by men under the traditional Islamic law in matters of guardianship, fatherhood, polygamy and divorce were greatly curtailed through legislative reforms. The husband, who was not required to give any reason or proper motive for divorcing his wife or marrying another woman, was now required to go to the court of law if he intended to pronounce a divorce or marry a second wife. The undisputed right of guardians to marry their children was reduced by introducing a minimum age limit for a valid marriage. The absolute right of a father for the custody of children was also shaken by the intervention of the court which, in certain cases, was authorised to decide which parent should have the custody

of the children. Such changes in Islamic legislation, though generally not as radical and dramatic as those in Turkey, represented a significant departure from traditional Islamic philosophy of family law. Westernization also affected traditional patterns of hetero sexual behaviour and traditional Islamic social control over sexuality by encouraging women to go outside the home, either for economic necessity or education. Although the number of such women is very low and is primarily confined to urban areas, it would be wrong to conclude that it is insignificant. In a restricted male dominated society just a few women, working side by side with men and freely walking along the street with face uncovered, can directly attack the spatial barriers defined by traditional Islamic norms -

> "The heterosexual relationship is caught between the poles of attraction and repulsion latent in traditional Muslim ideology. Modernization and economic necessity are breaking down the seclusion of women which was the traditional Muslim solution to the conflict. Sexual desegregation creates new tensions and anxieties. Space and authority boundaries between the sexes have become unclear, demanding confusing and painful adjustments from both men and women". (21)

Increased higher education for women, together with the influence of mass communication from the West which proclaims liberty and equality for both sexes, has also changed the old outlook of marriage and it is now more of a contract between the individuals rather than between the two families. A modern educated young wife finds it difficult to play a secondary role in the patriarchal family and to be junior to her mother-in-law. The same is true for the young man who likewise refuses to remain dependent upon his father

and instead wishes to have his own independence and financial resources. Thus, in urban areas particularly, the patriarchal family consisting of the father, his wives, his sons, his sons' wives and their children is being replaced by a Western type conjugal family consisting of husband, wife and children. This trend has resulted in the gradual obfuscation of paternal authority.

Throughout Muslim history, the subjugated position of Muslim women has been directly related to the structure of the patrilocal/patriarchal family in which the man, in the role of father, husband or brother has played an authoritative role in all areas of life. In the absence of the patrilocal system where sons bring wives to their home, the traditional socialization of children, especially of females, is almost impossible. It is through the patrilocal joint family that male dominance is conveniently achieved and women are made submissive to their men. As stated earlier, one of the characteristics of the modern world is the self determination of individuals. Exceptions apart, in the Western system the privacy and individuality of people, irrespective of sex, is highly regarded and maintained, and every individual, of course within certain limits, is free to decide most of the matters of his/her life. Obviously any system, whether Islamic or non Islamic, which is characterized by patriarchal principles, can not approve of such "detrimental" ideas. However, the increasing number of conjugal families, especially in the cities, has caused a considerable setback to the traditional patriarchal-patrilocal family.

The extravagant marriage customs which were especially designed and are approved in a patriarchal system, because they safeguard the patriarchal interest in the family and strengthen the ties of an extended family, are also diminishing in the cities. Instead, human romantic considerations are gaining popularity.

2. Resistance To Modern Values :

However, one must not overlook that neither the breakdown of Muslims' highly prized moral orders and norms was an easy task nor were Western ideas and values accepted immediately and wholeheartedly. The element of hostility towards Western encroachment was always present and also parallel with Westernization and secularism there were forces at play which searched to re-assert Islamic social and political values. Especially after the tenth century, Islam has always resisted change as it is deeply incorporated in the fabric of traditional Muslim societies and is a total way of life. Thus any change in economic, political, social and educational systemsmust involve a religious sanction. At the time when several reformative movements arose to adapt Islam to modern needs, there were also traditionalists such as the Wahabbis, the Senussis and Ikhwān etc., though not very effective at that time, who viewed the changing trends with considerable alarm and were bitterly opposed even to those elements of Western culture which were not undesirable such as technology, sanitation and medicine. (22) They feared that once the people startedusing Western material things, their thinking and behaviour would inevitably be influenced and thus a new moral order would be ushered in

which would break the old values and norms. Although the traditionalists and '<u>u</u>lemā' did not have any profound knowledge of the modern world and seemed to be very narrow minded in their outlook, they, in fact, proved themselves to be the custodians of Islam and its traditions. They seemed to appreciate fully that the real challenge of modernization pertained to male-female relationships, family and its laws since they appear to be at the heart of the Islamic system.

> "This traditional man-woman relationship is the cultural baseline from which all change in the direction of Westernization and modernization must start out".(23)

Once the complete modification of family laws is achieved, all the other Islamic laws will automatically be influenced. This is why the most debated issue in the Muslim world is the family system of Islam and women's position in it.

Until a few years ago it seemed that the influence of the reformists or modernists was far greater than that of the traditionalists and among intellectuals the revival of Muslim traditions was thought to be an impossible proposition. As discussed in Chapter five, many Muslim governments, including that of Pakistan, supported the reformists by adapting family laws to modern requirements. Nonetheless, at present it seems that Islam has once again reappeared as the most powerful and motivating force within the Muslim mind and soul. A widespread revival of Muslim culture seems to be appearing even in the countries where modernism and secularism were enforced by law. Since at present Islam is representing a vital social force characterized by, inter alia, a great resistance to change, this rise of religious interest cannot be overlooked or considered merely a temporary

emotional reaction. It seems that the way in which the adoption of Western innovations was carried out has proved to be far from satisfactory to the Muslim mind and heart. Although Kemal Ataturk succeeded in enacting secular laws in Turkey, yet the influence of Islam over public affairs seemed to diminish only during his tenure of presidency in the 1920's and 1930's. Soon after his death there was a wide-spread revival of Muslim traditions and it became obvious that he could not fully eliminate the influence of Islam from the heart of the people. From birth until death, the life of the majority of Turks still continues to be punctuated and enlightened by Islam and its traditions. The same is true for Iran where despite all the secular tendencies and efforts of the Shah to modernize Iran, a great attachment to Islam and its traditions in one way or the other has always persisted. Although during the nineteenth and the twentieth centuries many foreign ideas such as nationalism, socialism, marxism, individualism and secularism penetrated into traditional Muslim culture, Islam also remained as an overwhelming reality in Muslim life penetrating into every aspect, individual or collective.

When for the first time in the nineteenth century, Muslims experienced political humiliation at the hands of non-Muslims they reacted bitterly. As stated earlier, several movements such as Istiqlāl in Morocco and Ikhwān in Egypt, stood for the re-establishment of the full reign of the sharī'ah over the everyday life of Muslims. The existence of such movements clearly proved the continuing hold of religion upon Muslims' social, economic and political

life. After the Second World War, the resistance to change gained considerable momentum giving rise to many doubts in Muslim minds about Western values and they stopped their blind admiration of the West. Once having experienced the Western way of life, Muslims, especially the younger generation, seem to be less infatuated with it than before and have rather developed a fear of losing their own identity. They seem to realize that the only way to retreat to Islam is to rediscover it in all its integrity and completeness rather than adopting a defensive attitude.

The latest awareness among Muslims of their own identity, which is still in the process of being developed, seems to be caused by Western irreligiousness and moral bankruptcy. (24) The indifference of Western people to their religion has become a vital reason to reject whatever Western civilization offers. Muslims, who have been maintaining their traditional patrilineal, patrilocal and patriarchal system effectively on the basis of religion, cannot afford such an indifference to religion because it tends to break down the traditional family. In fact, in traditional Muslim society, the family and religion have been mutually strengthening each other. Thus if coolness to religion would break up the traditional family structure, the crucial change in the family would directly affect religion which mainly exercises its hold on the individuals through the patrilineal, patrilocal and patriarchal family. One of the reasons why the patriarchal family is still largely found in rural areas may be that it is sanctioned and supported by religion. Social customs are interwoven

with Islamic law so coherently that any change in them would offend many religious leaders. Therefore, Muslims seem to view with caution the breakdown of their traditional culture and highly prized moral order under the influence of Westernization. It is as if they have realized that once Westernization is allowed into the family-the very heart of Islamic social structure, it would not only bring about the decline of the paternal authority and thus break up the joint family system which now bolsters the patriarchal authority, but would also weaken the overall hold of religion.

III. CONCLUDING REMARKS

As a matter of fact, it is not only the changing circumstances which have posed a great threat to traditional Muslim culture, but also the inner sense of inferiority among Muslims which has resulted in the blind admiration and imitation of the West and the ultimate breaking of Muslim traditions. Changes always occur in any human society and Muslim society is no exception. In fact, during the early days of Islamic culture, a number of changes did take place which were integrated into the system. For example, the sayings and doings of the Prophet, documented in the Abbasid period, could have incorporated also many changes which had occurred during the gap of two centuries. The documents reflect not only the situation at the time of the Prophet, but also the situation at the time of writing. This collection might have been influenced by the old Meccan, Medinite, Jewish and Bedouin practices and also

by the Byzantine, Persian, African and Indian practices. The same is true about Islamic law. For example, Abū Ḥanīfah, preserving the Kufa traditions, allowed women to marry on their own without the intervention of their guardian, while Mālik from Medina did not allow them to marry on their own since it was not commonin Medina. (25) Such a difference of opinion would have grown from the particular localized socio-cultural circumstances existing in Kufa and Medina. Similarly, Islam has never been the only ideal example for Muslims as far as social practices are concerned. On the contrary, the laws have been made according to the habits and needs of the time. For example, although the basis for veiling is derived from the Qur'ān, yet the veiling of Indian Muslim women is very much different from the veiling of Persian women which in turn is different from Arabian ḥijāb. So also in the case of mahr, the entire procedure of mahr is very different in Pakistan as compared to that in some Arab countries, or Saudi Arabia.

A lot of debate and clamour about the legitimacy of ijtihād, which was widely exercised until the tenth century, is not because it is prohibited in Islam. Instead, it is the fear of further change in Islamic teachings which has caused a great resistance towards its practice. Thus at present, the time of cultural crisis in the Muslim world, the most important thing for Muslims would be the realization of their own identity, culture and religion. They also need to understand Western values thoroughly so that a comparison of them may be made with the Muslim values and norms. An honest comparison will then clearly reveal the contrasting

values of the West and Muslim world. For example, whereas Islamic values insist greatly on segregation between the two sexes, maintained in the form of separate apartments for women in and outside the home, the Western social life is based on the intermingling of malesand females. The concept of pre-marital chastity, which has greatly lost its value in the Western social system, is highly maintained in the Islamic world. In the West, the whole education system is based on the concept of making the child confident and independent as soon as possible, while in the Muslim world the entire system of education and socialization is based on the purpose of making the youngsters obedient to their parents, family and family traditions. In Muslim culture, the older a person is the more he/she is honoured, while in the Western culture the age is a disadvantage and an older person is not regarded, generally, as very important in the society. In traditional Islamic culture, material worldly success is not viewed as the only goal in life and is well controlled by piety, while in the West worldly success is highly valued and is measured by materiality. Although women in the Muslim world have been granted some legal safeguards to protect their economic and political rights, they are still considered incapable of holding any major office or job outside the family and their main task in life is to be an obedient housewife and the mother of several sons; while in the West, particularly in the Communist countries, women are not expected to sit idly at home, especially when they do not have responsibility for children. In Western values, polygamy is highly reproached and is considered as a grave violation

against women's rights, while in the Muslim culture, though not very much welcomed, it is still regarded as men's privilege. Lastly, in Western culture, clothing and fashions are meant to increase women's charm and make them more attractive and tempting, while in the Muslim world Islamic values are entirely against the exposing of women's charm and ornaments and thus instigate the purdah institution which effectively hides women's charm.

Furthermore, Muslims must appreciate the implications of using Western innovations. After experiencing a great upheaval, under the influence of Westernization, in the traditional Muslim social, economic and political spheres, it is no longer difficult to understand that the acceptance of Western technology and industrialization would certainly bring in its wake the penetration of Western social forms and behavioural patterns. It is perhaps not possible for any Muslim country to follow the Western path without losing its own identity. It is not just possible to buy the weapons and modern techniques and yet preserve old traditions and norms. This means that the price of cognizance and power in the modern world is a transformation to an entirely new outlook. As has been stated earlier, it was not only the discovery of technology which decided the way in which the Western societies have developed but also the philosophy and ideas which paved the way for the discoveries and ultimately changed the old values. Therefore, one can not be certain that the acquisition of these new techniques in Muslim countries will not set in motion the whole social machinery and that it will not bring about changes in the

traditional social system of Islam.

> "Since every action is linked in some way with social and moral values, the habitual use of Western techniques implies a conscious or unconscious adjustment of personal attitudes." (26)

If one understands the social structure of Islam in its totality,it becomes obvious that it can never allow itself to become a mere modifier. To a certain extent, ijtihād or re-interpretation of Islamic law can be justified. For instance, by putting different arguments, one may prove that monogamy is the rule of the Qur'ān and polygamy is merely permitted under special circumstances. However, it is not possible to remove the permission altogether even if one does dare to ignore the traditional sharī'ah. Similarly, attempts can be made to remove some injustices perpetrated by the husbands in the case of divorce, such as, the removal of ṭalāq al-bid'ah and the appointment of an arbitratory council. But one can not, of course, take away the right of divorce from men as it is their privilege. Also in the matter of veiling, although one may prove that covering of hands and face is un-Islamic, yet how can one deny the several verses in the Qur'ān which clearly approve of decent dress for women so that it can properly hide their beauty and jewellery; and also the verses which ask them to stay at home and avoid unnecessary intermingling with the opposite sex. Permission for unveiling and working outside the home, in fact, is not only a violation of all traditional values which strikes against the fundamentals of the Islamic social system, but is also bound to appear as a challenge to the age old accepted traditional patriarchy. One may always put the

blame on Islamic shar$\bar{i}$'ah in so far as it has become more strict towards women with the passage of time and men have exploited many laws of the shar$\bar{i}$'ah. However, one can not overlook the fact that, in one way or the other, Islamic shar$\bar{i}$'ah is based overall on the Quranic principles, especially with regard to the status of women and their sexual freedom. Several strict limitations on the public participation of women in traditional Muslim societies have been directly or indirectly linked with the teachings of the Qur'$\bar{a}$n and Ḥad$\bar{i}$th. For example, seemingly, the absence of women from public prayers is entirely a social matter, whereas the fact seems that it is not only the social norms which stop women from going to the mosque but also the disapproval of, and the restrictions imposed by, the Prophet which make the participation of women in public prayer impossible. The Prophet, in fact, did not explicitly stop women from going to the mosque for prayers and even advised men not to stop their wives if they wished to go. However, he preferred women to say their prayers at home and on some occasions promised a greater reward if women said their prayers at home. (27) This indirect disapproval of the Prophet was exploited later by men to the extent that in most of the Muslim countries women do not go to the mosque at all. In fact, Islam, which claims to be a total way of life rather than a mere religion, can not compromise with many modern values. As stated earlier, in the modern world there exist lesser tendencies towards religious doctrines. Thus, once modernization is allowed into the Muslim world, the religion would lose its universal acceptance, covering every sphere of Muslim life, economic, political, social and religious. Examples

can be taken from Western democracy. If this system is to be introduced into Muslim countries, the first step to be taken will be to allow women to take part in politics just as men, otherwise the whole philosophy of democratic or people's government collapses. Unless women, who generally constitute half of the population in almost every country, have proper education, scope and freedom to play an active role in national politics, no Muslim country can possibly establish Western democracy. And this is the point where the clash between modern values and Muslim values starts.

In the West when things changed rapidly during the nineteenth and the twentieth centuries, Western patriarchs, in fact, could not sufficiently appreciate the implications and the consequences of such changes. However, Muslims, no matter how much they are overwhelmed by Western advancement, have options to think of before they decide to copy the Western way of life. It is indeed not difficult for them to realize the increasing freedom and confidence of Western women and comprehend the real causes of such freedom. In the West, it is not only within the family that women as wives and mothers have been granted several rights, but also outside the family they have their say in legal, economic and political matters. They are also, generally, free to move in public the way they wish to and also to wear whatever they like. Strangely enough, the overall attitude of Western men regarding the status of women in society has also changed considerably. Exceptions

apart, the generality of men seem to have given up their strict patriarchal and biased attitude towards women; instead they have accepted them as their real counterparts in life. They seem to have broad minds in accepting wives who are not virgins which is otherwise unforgivable in the strict patriarchal system and may often involve the death penalty. The state too is fairly liberal in its attitude and treats men and women practically on the same footing, providing equal safeguards for both as individuals.

Thus modernization is not as simple and amiable as might be understood. It consists of a whole complex of interrelated changes involving not only technological and industrial innovations, but also ideological, philosophical and intellectual adjustments. In the West, it was a gradual process of change which simultaneously adapted people's attitudes,especially towards women. This is why, despite the rapid decline of patriarchal values, people in general are quite content and satisfied with the new heterosexual relations. Such satisfaction and confidence in the modern system in these countries is perhaps due to the fact that all this transformation happened gradually and imperceptibly. Nevertheless, in Muslim countries the situation is different. Although on a governmental level, several reforms have been introduced in the social, economic, educational and political spheres, people are not yet ready for any radical changes. They are also not ready to sacrifice their religion, which definitely bolsters patriarchal values, for the sake of being "modern" or "civilized". Perhaps this is the reason why, after a forceful and compulsory modernization in the

country, the Iranian people seem to have retreated into their old values. As has been seen in Chapters five and six, modernization did not start in Iran from within; it was instead borrowed from outside. Naturally people, who were not fully prepared for radical changes and were not willing to compromise with the idea and philosophy accompanying modern innovations, were faced with confusion and disturbance. Thus it seems that unless Muslims are prepared to change their outlook and attitude, the compromise with Western values is unlikely.

> "Reformation in Islam means changing a total way of life, the culture and the social structure of the Muslim systems. But once that integrated pattern of values and relationships is altered, each part of it loses its original significance and meaning, it can be transmuted and integrated into a new form of life. Reformation in Islam inescapably touches not only Allah's relation to man, but also man's relation to a social system and to the values that hold it together." (28)

Muslim women, therefore, must give proper thought to the basic aforesaid considerations before they demand radical changes in their status. Having made clear in their minds the basic points of Islamic social policy, they should develop the confidence to fight for their rights and participate in the women's groups which are already building up in several Muslim countries. Nevertheless, women's organizations must keep in view the social framework of Islam, and not of the West, within which they can be granted certain rights and freedom but, of course, not that type of freedom which has been awarded to Western women.

It should be made clear also that if the Islamic social system is not compatible with Western values, it does not

indicate the defeat of Islam since the Islamic system has its own values which can not be destroyed. The Islamic social system can not grant women emancipation in the Western sense without imperiling the very existence of its structure. It is worth pondering that it is not only the Islamic system which seems to be so reluctant to grant women liberation or, in other words, grant them sexual self determination, but every religion or worldly system based on patriarchal principles reacts in the same way. It is not too long ago when Pope John Paul II, while visiting the United States, declared abortion, divorce and sexual freedom of women illicit and contrary to the spirit of Christianity. This strict attitude of patriarchal religions towards women does not seem to indicate a very bright future for the female kind particularly when the societies are still male orientated and are ruled by their policies.

> "While Muslim exploitation of the female is clad under veils and buried behind walls, Western exploitation has the bad taste of being unclad, bare, and over-exposed." (29)

One final note may be added. The most recent strong reaction against Westernization and secularism in many Muslim countries, particularly in Iran, seems to indicate that, at last, Muslims have come to realize that after borrowing Western institutions they cannot avoid the inward reaction towards Muslim cultural values. The re-adoption of traditional veiling in Iran and some other Muslim countries, in fact, is a token of resistance to foreign and Western influences that have threatened the traditional Muslim culture. How far this re-assertion of Islam and its values will be continued and will be effective is unpredictable, especially at this stage

when Western technology is making progress rapidly. Therefore, it will not be easy to sweep away all Western contributions. One must also consider that a few steps and actions taken by some Muslim governments, such as in Pakistan and Iran, in favour of the traditional shari'ah do not prove that there is a great revival of Islamic law and that the traditional Muslim culture, with all its religious sanctity, has proved itself stronger than the Western values. Such reforms may be the product of utilitarian and political considerations as was the case in Turkey during the late 1940's and 1950's and, more recently, in Pakistan when during Bhutto's regime due to political crises in 1977 alcohol was banned, perhaps to pacify the opposition. However, among a significantly large section of the Muslim population there seems to be an obvious re-assertion of the traditional attitudes of Muslim culture and recently there has been a marked reverse trend towards more traditional dress and outlook, especially among the younger generation of the Muslim world.

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