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Social Security of Women in Islam

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ABSTRACT

The notion of social security is founded on the principles of social justice and fundamental human rights to a fair standard of living. Social security is founded on the notion that certain people in the society cannot afford to deal with certain fundamental economic hazards on their own, and that there will always be individuals whose own resources and efforts fall short of meeting their basic necessities. Among those people, “women” are one of them. This research paper examines the original Islamic viewpoint and judicial attitude on Muslim women’s social security. Islam gives women social security in the form of Maher, Maintenance and share of Inheritance. Under Muslim Law, a woman has the unfettered right to Maher, maintenance, and share the Inheritance. This study examine and determine the actual position of Muslim women and the extent to which she is protected under Islamic law. The paper highlight the current societal situation and what Quranic ordains exist on women’s social security, notably Maher, Maintenance, and Inheritance. With this in mind, a review of major judgments in the areas of Maher and maintenance, all of which are connected to Muslim women’s social security, has been made.

Keywords: Social Security, Muslim Women, Maher, Maintenance, Property Rights

I. INTRODUCTION

In the current situation, life’s insecurity has reached an all-time high. Social security has grown more crucial to protect society and its citizens from such risks. In general parlance, it is a State-funded programme that makes available a measure of economic security to the general populace. Social security is a sound investment that will pay off in the long run.

The Islamic notion of social security is derived from various verses of the Holy Quran and Ahadith, which command Muslims to assist their

impoverished and needy brothers and sisters in the faith who are not able to meet their fundamental human necessities. Islam also guarantees social security to women by different means. However, in modern times, several misconceptions concerning women in Islam have arisen. One of the most interesting topics is the social security of women in Islam. It is stated that Islam does not recognise gender equality and the social security of women; thus; as a result, the woman’s position in society is denied. However, the fact is that the Holy Quran itself recognises a woman’s right to social security through

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different means. Since the dawn of the human race on this planet, women have served as man's closest kin in the roles of mother, daughter, sister, and wife. She has played an important part in the family throughout the decades. Despite this, she was treated as inferior and denied fundamental human rights for thousands of years. Thus Islam secures rights to maher, maintenance and property of women and prohibits its unlawful acquisition, and establishes the following rules: "From what is left by parents and those nearest related there is a share for men and women, whether the property, be small or large a determinate share."³

Meaning and Concept of Social Security

The term "security" is derived from the "Latin" term "se-curus." "Se" denotes "liberation," and "curus" imply "uneasiness." So the term "security" means deliverance from unease or a benign condition devoid of perils or fears. The English term "security" has a comprehensive meaning, including "to be protected," "to feel safe," and is also used to describe a condition without any worries or risks.

The concept of social security is not new; in fact, the Almighty Allah Himself laid the foundation for it in the Holy Quran. The Islamic notion of social security is derived from verses of the Holy Quran and Ahadith, which command Muslims to assist their impoverished and needy brothers and sisters in the faith who cannot meet their

fundamental human necessities. In this respect, the Holy Quran in Surah-al Baqara says that:

*"They ask you as to what they should spend. Say: Whatever good you spend should be for parents, kinsmen, orphans, the needy, and the wayfarer; and whatever good you do, Allah is all aware of it."*⁴ Quran further states that: *"Those who spend their wealth night and day, secretly and openly, they have their reward with their Lord, and there is no fear for them, nor shall they grieve."*⁵ *"By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give of a truth God knoweth it well."*⁶

An extensive number of Hadith further persuasively intricate this significant aspect: *"He is not a Momin in a true sense that eats his fill, while his neighbour next door, goes hungry."*⁷ *"Do favors on the people of the Earth, Allah will do favor to you in the Heavens."*⁸ *"The one who closes doors on his neighbor, fearing for his family and wealth, is not a Momin"*⁹

In Islam, there are lots of instruments of achieving social security such as Nafaqah, Kaffarah, Waqf, Tanahud - Pool of Resources (Asha'irites), Mirath, Al-Ithar, Sadaqah, Udhiyyah, Diyafah, Ariyah, Fidyah, Dam, Zakah, Ghanimah, Fay, Aqilah and Nizam al-Taqa'ud (Public Pension System) etc. The period of "Umar ibn al-Khattab" is regarded as the blazing time in the history of the Islamic social security system. Economic and social

³ Holy Qur'an, IV: VII.

⁴ Al-Qur'an II: CCXV.

⁵ Al-Qur'an, II: CCLXXIV.

⁶ Al-Qur'an III: XCII.

⁷ Al-Sunan al-Kubra 19049.

⁸ Sunan -al-tirmidhi, Abwabul-Birr-was Sillah, Hadith No.1896.

⁹ Al-Bahaqi, Bab -Fi-Ikram-ul-Jarr, Hadith No.9206

uprightness triumphed, and everyone in the State was provided with his due share.

If we talk about the Western notion of social security, it is a human creation. Regarding social security, Dreze and Dr Amartya Sen said that “the basic idea of Social Security is to use social means to prevent deprivation and vulnerability to deprivation.”¹⁰ Varahgiri Venkata Giri opines that “Social security, as currently understood, is one of the dynamic concepts of the modern age which is influencing social as well as economic policy. It is the security that the State furnishes against the risks which an individual of small means cannot, today, stand up to by himself or even on private combination with his fellow countrymen.”¹¹

The concept of social security has no uniform definition, which is universally recognised worldwide. Many international organisations and scholars have attempted to explain the concept. According to a definition set out by the *International Labour Organisation*: “Social security is the security that society furnishes through appropriate organisation against certain risks to which its members are exposed. These risks are essentially contingencies of life which the individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with his fellows.”¹² *William Beveridge* has described the term social

security as “a means of securing an income to take the place of earnings when they are interrupted by unemployment, sickness or accident to provide for the retirement through old age, to provide against loss of support by the death of another person or to meet exceptional expenditure connected with birth, death, or marriage. The purpose of social security is to provide an income up to a minimum and also medical treatment to bring the interruption of earnings to an end as soon as possible.”¹³

II. POSITION DURING THE PERIOD OF AL-JAHILIYA

The pre-Islamic period well-known as the period of “Al-Jahiliya”, means the period of obscurity, barbarousness, and obliviousness from the guidance of Almighty Allah, which comes directly from the Holy Quran. It was the time prior to the birth of Prophet Muhammad (PBUH) and the upswing of Islam.¹⁴ The history of human civilisation shows that woman was viewed as the world’s personification of depravity, humiliation, and vice. A man was so ashamed by the birth of his daughter that he could not raise his head in disgrace.

The position of women in pre-Islamic Arabia may be recapitulated as follows: **Firstly**, The share of the Inheritance was not given to women both from parents and spouse. **Secondly**, Women were considered as material items. The guardian

¹⁰ Ahmed E. and Jean Dreze, *Social Security in Developing Countries* 5 (Oxford University Press 1999).

¹¹ V.V. Giri, *Labour Problem in Indian Industry* 269 (Asia Publishing House 1972).

¹² I.L.O., *Approaches to social Security: An International Survey*, Geneva 83 (1942).

¹³ William Beveridge, “Social Insurance and Allied

Services” Report presented to Parliament in (December, 1942) at p.120. See also Julian Fulbrook, *Law at Work; Social Security* 16 (Sweet and Maxwell 1980).

¹⁴ Available at https://en.wikipedia.org/wiki/Women_in_pre-Islamic_Arabia (last visited on October 8, 2021).

of the woman had the right to determine the fate of women. If a man died without paying his dues, the creditor would own the deceased man's wife as reimbursement. **Thirdly**, There was no restriction on the number of marriages for men. He could marry as many women as he desires. **Fourthly**, women did not have the option to choose their spouse. Her guardian could hand her over to any person according to his choice. **Fifthly**, Fathers were depressed and horrified at the birth of a female child. The Holy Quran depicts a very realistic picture of the feelings of the parents on the birth of his daughter of that time in its own persuasive style:

“When news is brought to one of them, of (the birth of) a female (child), his face Darkens, and he is filled with inward grief! With shame does he hide Himself from his people, Because of the bad news, He has had! Shall he retain it on (sufferance and) contempt or bury it in the dust? Ah! what an evil (choice) They decide on ?”¹⁵

Sixthly, Women were exposed to unthinkable atrocities like they could not eat certain types of foodstuff. **Seventhly**, there was the existence of different forms of marriage practices. The utmost prevalent and discerned kinds of marriage were marriage via capture, covenant, Mutah or impermanent marriage, marriage by purchase and Inheritance.¹⁶

However, the Arabian practices have been changed on the coming of Islam, and Islam gave

women certain liberties.

III. SOCIAL SECURITY OF WOMEN IN ISLAM

The woman is responsible for the upbringing and nurture of future generations. As a result, she must be carefully safeguarded in all parts of her life; thus, she can carry out her responsibilities without interruption. In Islam, an unmarried woman and a divorced or widowed woman must be cared for by her male family members. According to certain scholars, any destitute, poor, or infirm relative, particularly a woman, must be taken care of by the relatives who have the financial resources to do so.¹⁷ Islam has accorded the woman immense economic and social rights to raise her status and endowed such legal and moral safeguards in its system that are not given in any other social system. Islam fully recognised the women's right to her estate, money and other properties. The right not changed with her status, whether as single or married. She keeps her full right to mortgage, lease, sell and buy any or all of her properties. The scholars have made a sincere effort to examine the condition of Muslim women while keeping in mind their social security in the pursuit of Islam, for which the study has rigorously adhered to three significant areas of Muslim women's security, namely Maher, Maintenance, and Inheritance. Under Islam, a woman have social security in the form of Maher,

¹⁵ Al Quran XVI: LVIII-LIX

¹⁶ NIAZ A. SHAH, WOMEN, THE KORAN AND INTERNATIONAL HUMAN RIGHTS LAW: THE EXPERIENCE OF PAKISTAN 32 (Martinus Nijhoff 2006).

¹⁷ Dr Ibrahim B. Syed, Social Security in Islam, available at: https://www.irfi.org/articles/articles_251_300/social_security_in_islam.htm (visited on October 8, 2021)

Maintenance and Inheritance. A brief overview of these concepts are as follows:

1. MAHER

The word Maher is derived from the "Hebrew" word "mohar" and the "Syriac" word "mahra", which signifies 'bridal gift'. The word denotes a gift that is given voluntarily and not under any contract. However, in Muslim law, it is a gift from the bridegroom to the bride, and becomes her property. Maher is the obligation of the groom towards the bride paid by him at or after marriage. Though the Maher in Islam is often money, it can also be anything the parties agree to the marriage, i.e. jewellery, goods, dwelling house, or other property.

Tyabji opined that "Maher or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties or by operation of law."¹⁸ While, *Baillie* says, "dower is the property which is incumbent on a husband, either because of its being named in the contract of marriage or by virtue of contract itself....Dower is not the exchange or consideration given by the man to the woman for entering into the contract but an effect to the contract imposed by the law on the husband as a token of respect for its subject, the woman."¹⁹

It may be either specified or not. Once the consummation has taken place, the husband cannot resile from it. However, the wife can give

a dower gift to her husband, and if she does so, the husband and his heirs are free from the Maher debt.²⁰ In this respect the Holy Quran states that "And give the women (on marriage) their dower as a free gift; but if they of their own good pleasure remit any part of it to you take it and enjoy it with right good cheer."²¹

Earlier was the view that the wife is regarded as the property and the dower to be her price, and hence it is a consideration for the conjugal association. This view regarding the nature of Maher can be found in para 12 of the case of *Abdul Kadir v. Salima*.²² In this case, Justice Mahmood looked at the Maher as a consideration for the marital intercourse under Muslim law and concluded that the right to refuse the husband until the maher amount is not paid relates to a vendor's lien on the goods sold and her submission to her husband bear a resemblance to the delivery of the goods to the vendee.²³ Another view regarding the nature of dower is that it is an indispensable occurrence and important characteristic of marriage, with the effect that the woman is entitled to proper dower from her husband even if no dower is specified. It is also seen as a sign of truth, a woman's asset, and a gift.

Kinds of dower: - The Islamic Jurists broadly classified dower into two kinds. First is a Specified dower, known as "Al-mahrul-Musamma", and the second is an unspecified or

¹⁸ Faiz Badruddin Tayabji, Principles of Muhammadan Law, 109 (D.B. Taraporevala Sons 1913).

¹⁹ Neil B. F. Baille, A Digest of Moohummudan Law, 91 (Smith Elder and Co. 1865).

²⁰ Donald J. Tugby, *The Social Function of Mahr in Upper Mandailing, Sumatra*, 61 American

Anthropologist, 634 (1959).

²¹ Al- Quran IV: IV.

²² (1886) ILR 8 All 149.

²³ Iqbal Ali Khan (ed.), *Mohammedan Law*, 151 (Central Law Agency 2012).

proper dower, also known as Al-mahrul-Mishal. The specified dower is a sum agreed upon by the parties to the marriage at the time of the marriage ceremony or later. It occurs when a contract determines the dower amount at the time of marriage. This dower fixation can be done at any time, before, during, or after the marriage. It can be reduced or enhanced after the marriage. However, both parties to the marriage must consent to such change. Based on when does the Maher money have to be paid and in what proportion? The specified dower has been categorised into the following types: -

- a) Prompt Dower
- b) Deferred Dower

The Arabic term equivalent to prompt dower is Mahr-i-Muajjal. It comes from a root that means “to accelerate or to proceed.” As a result, Mahr-i- Muajjal is defined as “something which has been expedited or given priority in time.” This form of dower is to be paid on demand of the wife. The wife may realise the part of this dower at any moment before as well as after consummation of marriage. The equivalent Arabic term of deferred dower is Mahr-i-Muwajjal. It means delayed, deferred, or postpone. The deferred dower is to be paid on the termination of the marriage by either divorce or death. During the continuance of the marriage, it has not become prompt due to the wife’s desire. However, any arrangement about the recompense of deferred dower before the termination of the marriage will be lawful and obligatory. Although the wife cannot claim the

sum of deferred dower, except otherwise agreed, the husband can give it as “prompt dower” and pay or transfers the assets in place of it.

In *Abdul Rahman v. Mst.Inayator* It was decided that no definite rule could be established for fixing the sum of proper dower. It will have to be decided after taking into account several factors. The following factors must be taken into account while determining the amount of proper dower:

- Her father’s family position
- Her educations.
- The husband’s condition and status.

Rights of Women on Non-Payment Of Dower

(i) **Right to Claim Dower as a Debt:** - The Maher, i.e. dower, is a kind of debt; however, it is not secured debt. It is similar to any other “unsecured debt”, and the woman will have to queue with her husband’s other creditors. In the case of *Kapoor Chand v. Kadar-unnissa*,²⁴ the Apex Court laid down the following principles regarding the claim of a wife as unsecured debt:-

- (a) The widow is treated the same as any other husband’s creditor; hence, she cannot claim priority over other creditors for the debt of dower.
- (b) The widow’s claim for the debt of dower takes primacy over heirs’ claims, but she cannot later retract her assent if she fails to assert for dower debt and permits someone to take the share of his Inheritance from the deceased’s estate spouse.

²⁴ 1953 AIR 413.

(c) The heirs of the deceased spouse are not individually accountable for the widow's dower obligation, and the amount can be recovered proportionally from their share of the estate.

(ii) Right of Retention: - Even after her husband's death, a widow might claim her dower from his estate. In this regard, the widow is granted a right well-known as the right of retention of the widow. The act of withholding what one possesses in his hands under some right is called the right of retention. This right of retention will continue until her dower is paid off, either by her husband's heirs or by the usufruct of the property she owns. The widow can simply keep possession and appropriate the profits arising out of the estate till her dower debt is paid or satisfied, and if she is unlawfully dispossessed, she has the right to reclaim property under the Specific Relief Act 1963. In place of dower, the widow in possession of her deceased husband's property is obliged to account for the rents and profits she receives from the estate to her husband's other heirs. However, it should be noted that this right of retention does not allow her to sell, mortgage, and gift or otherwise alienate property to pay off her dower debt.

(iii) Right to Refusal of Conjugal Rights: -

Prior to the marriage is consummated, the wife has the right to deny cohabitation with the husband unless and until he gives her "prompt dower on demand". It is important to note that a husband has the right to cohabit with his wife, and she cannot refuse without cause. On the other hand, if the dower is not paid promptly before the

marriage is consummated, the wife has the legal right to decline cohabitation. As a result, a Muslim wife may refuse to stay with her husband and have sexual contact with him if the dower is not paid on time.

2. MAINTENANCE

In Muslim law, the term "maintenance" is known as "Nafaq". It refers to food, clothing, and lodging. Maintenance is a notion that was created to help persons who were unable to care for themselves. In marriage, the husband should support and provide for his wife. *Hedaya* defines maintenance as "all those things which are necessary to the support of life such as food, cloth and lodging, many confine it solely to food."²⁵ According to *Fatwa-I-Alamgiri*, "maintenance comprehends food, raiment and lodging, though in common parlance it is limited to first".²⁶ While *Mulla* says: "Maintenance includes food, raiment and lodging."²⁷

Islam imposes a duty on a Muslim male to provide maintenance to the following persons: - (i) his wife, (ii) his descendants, (iii) his ascendants, (ii) his collateral. However, here, as the topic of the research article concerns only with the women, so the women who are entitled to maintenance will be discussed:-

(i) Right to Maintenance of Wife: - It is the term which stands for providing the necessities of life to the wife, being a necessary concomitant of marriage. It is the right of the wife. Maintenance provisions aim to thwart destitution and save destitute wives or separated women who cannot

²⁵ Hamilton, *The Hedaya or Guide*, 140 (1957).

²⁶ *Fatawa-I-Alamgiri*, Vol. I, 732

²⁷ Sir Dinshaw Fardunji Mulla, *Mulla Principles of Mohamedan Law* 346 (Lexis Nexis 2017).

support themselves. Islam imposes a duty on a person to support his Muslim wife regardless of her earnings. Thus under Muslim law, a wife is allowed to claim maintenance from her husband in the following ways: (i) Under the Personal Law- Because of the status resulting from a lawful marriage (ii) Under an Agreement - As a result of a pre-marital accord between both the parties to the marriage or between their parents. (iii) Under the Code of Criminal Procedure.

(ii) Right to Maintenance of Daughter: - Islam also grants a right to a daughter to be maintained until marriage. As is evident from the Holy Quran and Hadith on correct nutrition, education, training, marriage arrangements, and equal treatment of daughters and sisters, she brings good news of salvation from Hell and attainment of Heaven. As the ultimate purpose of the believer is to succeed on the Day of Judgment. This goodness contains everything he desires for a believer. With the enticement of adequate care for the daughter, it is also established that she is not worthless or valueless in the world's eyes but rather the most valuable boom of nature.

(iii) Right to Maintenance of Mother: - The children are solely responsible for her upkeep, and no one else is involved. Children from privileged backgrounds are obligated to support their poor parents, even if the latter may be able to support themselves. Even if he is in dire straits, a son is obligated to support his mother if she is poor, even if she is not infirm. The parents have a legal right to be supported by a son or daughter who has appropriate financial resources.

(iv) Maintenance of Divorced Muslim Women:- A Muslim woman whose marriage is dissolved due to the divorce may claim her right to be maintained under any of the following laws: “(a) Muslim Personal Law, (b) Code of Criminal Procedure, 1973 and (c) The Muslim Women (Protection of Rights on Divorce) Act, 1986”.

(a) Right under Muslim Personal Law

The legislation governing the maintenance of Muslim divorced women can be found in Holy Quran's Chapter 65 verse 6: “Let the women live (in Iddah) in the same style as ye live according to your means: annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) in them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf.”²⁸ As a result of the Aayat mentioned before, it is apparent that Muslim law has never attempted to take away the right of Muslim widows, even if it appears to be restricted to the Iddat only; however, it lasts till the woman gives birth if she is pregnant. The interpretation of the Holy Quran's verses clearly demonstrates an excessive sympathetic attitude toward women and orphans; it cannot be assumed that the divorced wife was intended to be left in the lurch after the Iddat time.

²⁸ Al- Quran LXV: VI.

(b) Right to Maintenance of Divorced Muslim wife under Criminal Procedure Code, 1973

A divorcee is entitled to be maintained provision under Muslim law; however, this only lasts until the expiration of the Iddat period expire. “A woman who has been divorced or has taken a divorce from her husband now has the right to be maintained under Section 125 of the Criminal Procedure Code until her remarriage or death. A woman who has been divorced by or obtained a divorce from her husband and has not remarried is referred to as a “wife” under Section 125(b) of the Code. The Court has had to consider often whether Section 125 of the Code of Criminal Procedure applies to Muslim divorced wives or not”. In the well-known case of *Mohd. Ahmed Khan v. Shah Bano Begum and others*²⁹, the Supreme Court ruled that divorced Muslim women were entitled to maintenance after the iddat period had expired.

(c) Right under the Muslim Women (Protection of Right on Divorce) Act, 1986

The decision of Shah Bano became the centre of intense dissension. Many Muslims objected to the decision, believing it was an infringement on their religion and right to follow their own personal laws.³⁰ So they protested loudly against the judgment. Thus the Parliament of India passed the Act of 1986, which invalidated the Supreme Court decision in Shah Bano, entitled “*Muslim Women (Protection of the rights to*

divorce) Act, 1986.” Attenuating the Apex Court’s verdict, the Act authorised the maintenance of a divorced woman to remain per Islamic law, i.e. only during the iddat period. “The Muslim Women (Protection of Rights on Divorce Act) Act, 1986”, contains seven sections. Section 3 entitles a divorced woman to (a) fair and reasonable provision (b) maintenance, (c) maintenance and provision for children (d) an amount equal to Maher and (e) all properties which were given to her whether before, at or after the marriage. However, the maintenance and provision are to be provided and made in respect of women by her husband within the period of iddat only.

Under section 5 of 1986 Act, the wife is not entitled to assert for maintenance under the provisions sections 125 - 128 of the Code of Criminal Procedure, 1973 unless both the parties, i.e. former husband and the divorced woman, indicate their intention by affidavit or any other form, of their willingness to be governed by the Criminal Procedure Code. Section 4 of the 1986 Act provides that after the period of iddat, a divorced wife who has not remarried and is unable to support herself can sue her family, including her children and parents. Such family members shall be obliged to provide maintenance to her in proportion to the share they would receive on her death under Muslim law. If any relations cannot pay maintenance, the Waqf Board of a state may be ordered to pay it.

²⁹ AIR 1985 SC 945.

³⁰ Subhashini Ali, “Shah Bano judgement was a landmark in our social and political history” *India Today*, December 26,

2005, available at [\(1985:Shah_Bano_case_-_Cover_Story_News_-_Issue_Date:_Dec_26,_2005_\(indiatoday.in\)\)](http://1985:Shah_Bano_case_-_Cover_Story_News_-_Issue_Date:_Dec_26,_2005_(indiatoday.in)) (visited on October 14, 2021).

In the *Danial Latif and others v. Union of India*,³¹ case all the petitions challenging the Constitutionality of the Act of 1986 were clubbed together in the PIL, i.e. Public Interest Litigation filed under Article 32 of the Constitution of India by Danial Latif and others. The Apex Court, by upholding the Constitutionality of the Act, dismissed the writ petitions and arrived at the following conclusions:

- (1) The husband must make reasonable and equitable provisions for her future. Under Section 3(1) (a) of the 1986 Act, the spouse must arrange for a fair and reasonable provision that extends beyond the iddat time.
- (2) The obligation of a husband to maintain his divorced wife is not restricted to the iddat period. It would last for the rest of the divorced wife's life unless she remarries.
- (3) A woman who is still unmarried and cannot support herself after the period of iddat can sue her relatives, including her children and parents. If any relatives, children, or parents cannot pay, the Magistrate may order the Waqf Board to pay maintenance.
- (4) Indian Constitution's Articles 14, 15, and 21 are not violated by the Muslim Women Act, 1986.

IV. PROPERTY RIGHTS OF WOMEN IN ISLAM

Inheritance is known as "*Mirath*", and its branch of Muslim Law is called as "*ilm al-faraid*," meaning thereby "the science of the ordained

quotas."³² The right to property of women is very well recognised under Muslim Law. Surah Nisa, verse 7 of the Holy Quran, clearly established women's right of Inheritance. It says that "*FROM WHAT IS LEFT BY PARENTS AND THOSE NEAREST RELATED THERE IS A SHARE FOR MEN AND A SHARE FOR WOMEN WHETHER THE PROPERTY BE SMALL OR LARGE A DETERMINATE SHARE.*"³³ Concerning Inheritance, Islam made various improvements; for instance, (a) Women and cognates were made capable of inheriting (b) even in the presence of male descendants, the right to inherit conferred on the parents and ascendants. (c) As per the general rule, one-half share of a male was given to females due to her lesser duties and responsibilities compared to males. (d) The right to inherit is also granted as husband and wife.

Women have been given a share of the Inheritance in Islam. Women were deprived of that share before the arrival of Islam. Whether a woman is a mother, wife, daughter, or sister, she is entitled to a portion of the deceased's estate. Her share is determined by the deceased's degree of relationship to her and the number of heirs. It is her share, and no one has the authority to take it away or to disinherit her.

Wife:- "*And to them belongs a fourth of what you leave behind if you die childless; and if you have any child then to them belongs one-eighth of what you have left behind.*"³⁴ According to Islamic law, if the husband dies without a child or a son's child, the wife is entitled to 1/4 of the estate. However, if there is a child or son's child,

³¹ (2001) 7 SCC 740.

³² Joseph Schacht, (2nd edn.) "*Mirāth*" *Encyclopaedia of Islam* (Brill Academic Publishers 1991).

³³ Sura IV: VII.

³⁴ Al- Quran IV: XII.

how lowsoever the wife's portion will be 1/8th. It is also permissible for a Muslim man to have four wives at the same time. Consequently, if a man has one or many wives, the wife or wives share is 14th or 1/8th of the total, as the case may be, and it shall be distributed equally among them.

Daughter: - Both under Sunni and Shia law, a daughter is a primary heir; hence she is never left out from taking share in the parent's property. Regarding the right to property of children, the Holy Qur'an states that a male is entitled to a share equal to the share of two females. If there are more than two daughters, they will receive 2/3rd of the Inheritance, and if there is only one, she will receive 1/2.³⁵ Under the Hanafi School of law, a daughter becomes a residuary with a son so that in the residue, her share will be half of the son.

Mother: - The mother's share, like the daughter's, is stipulated in the Quran. On this point, the Qur'an states: "And for his parents, each one's share is one-sixth of that which he left if he had children. However, if he had no children and the parents inherited from him, the mother's share is one-third. Furthermore, if he had siblings, the mother's share is one-sixth." Thus the mother is one of the important Quranic sharers. She can never be excluded, but according to the situation, her share of Inheritance fluctuate. When there is a child or a son's child, or two or more brothers or sisters, whether full, consanguine, or uterine, the mother is entitled to one-sixth of the Inheritance. If only

a husband or wife, both parents, and no child or child of a son and no more than one brother or sister, the mother will get 1/3rd of what is left after the husband or wife's part is satisfied.

Son's daughter: - If the deceased has no child, either son or daughter, then the daughter of the son will be a sharer. If there is just one son's daughter, she will receive 1/2 portion of the estate; however, if there are two or more son's daughters, they would receive 2/3 of the Inheritance. She will, however, become a residuary when an equal son's son becomes available. It is worth noting that if there is a son, the son's children will not get anything. "If there is no son, higher son's son, or equal son's son and only one daughter or higher son's daughter, the daughter or higher son's daughter will inherit 1/2, and any son's daughter will inherit 1/6th."³⁶ However, if more than one daughter has taken their 2/3rd share, the son's daughter shall be left out and get nothing. In the presence of an equal son's son, the son's daughter does not inherit as a sharer and becomes residuary.

Full Sister: - If no child, son's child how lowsoever, father, true grandfather or full brother exists the full sister will get 1/2 if one and collectively 2/3rd if two or more. With full brother, she will become residuary. Under Shia law, a sister is a class II heir, and she can only inherit in the absence of class I heirs. Her share is 1/2 if she is alone and 2/3 if there are two or more. With a brother, she becomes a residuary.

Consanguine Sister: - The share of Inheritance of a consanguine sister is 1/2 if she is alone and

³⁵ Al- Quran IV: XI.

³⁶ Iqbal Ali Khan, *supra note* 23, at 385.

2/3rd if they are two or more. She is entitled to inherit only if there is no child, son's child how lowsoever, father, true grandfather how high soever, full brother or full sister. The consanguine sister becomes a residuary with the consanguine brother. It should be noted that she will inherit as a sharer 1/6th if there is only one full sister and one consanguine sister. Under Shia law, the consanguine sister is Class II heir. The position of a consanguine sister is the same as a full sister.

Uterine Sister: - In only two cases, the uterine sister has the right to inherit. First, if the deceased has no child or son's child, how lowsoever. Second, if neither the father nor true grandfather exists. The share of Inheritance to which the uterine sister is entitled is 1/6th if there is only one sister, but their share will be 2/3rd of the estate if they are two or more. Under Shia law of Inheritance, the uterine sister is a class II heir. The uterine sister inherits 1/6th when one and 1/3rd when two.

Grandmother: The share of true grandmother in the deceased's estate is 1/6th whether she is one or more, whether paternal or maternal. If there is no father, mother or true intermediate grandfather, she will be entitled to her Qur'anic share, i.e. 1/6th. It was reported from Qabisah bin Dhu'aib who said Allah's Messenger appointed a sixth (1/6) to grandmother if no mother is available to inherit before her

V. CONCLUSION

The mothers are responsible for their children's intellectual, spiritual, and physical development

in addition to cooking for them. A generation's many-sided requirements cannot be met by an uninformed, feeble, illiterate daughter. The modern State should engage in all activities required to promote the community's economic and social well-being.³⁷ Economic autonomy is critical for women's empowerment. Along with economic independence, women's whole development requires specific attention, including striking a balance between their rights and obligations. Today's ground realities include secret polygamy, complete illiteracy, career disparities, and economic marginalisation. To sum up, it is critical for both the Muslim and Western worlds to make major advances in developing and implementing the relevant social security system to expand the number of receivers and meet the social needs of their citizens. In contrast to the Muslim World, which, while having wonderful teachings and historical precedent, has wretchedly failed to develop an entrenched social security system in society, the West is undeniably evolved and far ahead.

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³⁷ Ram Jawaya Kapoor v. State of Punjab, A.I.R. 1955

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