

# Women's Rights in the Islamic Perspective

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## Abstract

*Women in Sharey'ah play an essential role in the Muslim community. In the relationship among men and women, Sharey'ah adopted the theories of integration and justice rather than theories of competition and equality. This leads Sharey'ah to distribute human rights between men and women depending on their nature and personal need. However, many stereotypes and misapprehensions concerning women's rights in Sharey'ah have appeared owing to a lack of understanding of the objectives of Sharey'ah's rules. This article demonstrates women's rights and the Sharey'ah's objectives behind these rights, including Alqamah, political participation, marriage and inheritance. The article then goes on to explain why there is a variation between women's rights in Sharey'ah and the reality of some Muslim communities.*

**Keywords:** Sharey'ah, Alqamah, Qur'an, Nafaqa, ma'arofe.

## A. Introduction

The rights and obligations of men and women in *Sharey'ah*<sup>1</sup> are guided by primary Islamic sources, which are the Qur'an, Hadith, Ijma and Qiyas. In addition to these sources, cultural traditions play a significant role in Muslim communities and have, in many cases, conflicted with *Sharey'ah*. These conflicts concern many aspects of the lives of Muslim women, such as *Alqamah*, political participation, marriage, and inheritance. The conflicts have resulted in a misunderstanding of how *Sharey'ah* handles women's issues. *Sharey'ah* is devoted to establishing a great community, in which its people completely practise their own rights pursuant to *Sharey'ah's* perspective of human rights.<sup>2</sup> *Sharey'ah* imposes various regulations on both men and women. Some of these are the same, while others are not. These differences between women's and men's rights and obligations are

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1 *Sharey'ah* is the code of law derived from sources, including the Qur'an, the Hadith and the jurisprudence of Islam scholars, which cover all parts of Muslim life, such as civil and criminal justice, and regulating individual, personal and moral conduct.

2 G.A.-S. Aly, *al-Ḥuqūq al-siyāsīyah wa-al-iqtisādīyah lil-mar'ah fi al-Islām*, Dār al-Kalimah lil-Nashr wa-al-Tawzi', al-Qāhirah, 2013.

based on their nature and social responsibilities.<sup>3</sup> Accordingly, *Sharey'ah* seeks justice, not equality. This notion leads some non-Muslims to believe that women's rights in *Sharey'ah* and Muslim communities are controlled and dominated by men.

This article will focus on the explanation of the objectives behind *Sharey'ah's* determination of women's rights and obligations. Understanding *Sharey'ah's* objectives is essential for everyone who seeks to understand the distinction between men's and women's rights. The article depends on *The Textual Translation of The Quran The Supreme*<sup>4</sup> in translating the Holy Qura'n's text.<sup>5</sup>

## B. Women Rights

*Sharey'ah* has many unique distinctions with regard to women's rights that other religions do not have. First, *Sharey'ah* preceded the Western nations, including Europe, in recognising the independence of a woman's personality. A woman in *Sharey'ah* has never needed a husband's signature to accept a check or a form of security.<sup>6</sup> A woman in *Sharey'ah* keeps her family name after she marries, and, unlike the practice in other countries, her husband cannot change her family name. A woman in *Sharey'ah* keeps all of her possessions after marrying, and her husband has no right to control them.<sup>7</sup> *Sharey'ah*, in general, gives women the same right of inheritance that it gives to a man.

Second, *Sharey'ah* provides all rights to a woman that are harmonious with her personality, ability and her primary role in life. For example, no financial duties to earn money outside the home are imposed on a married woman because of her many burdens at home such as childbearing and rearing. *Sharey'ah* instead imposes the financial duties on the husband, thereby honouring the wife's role within the household as will be explained in the *Alquamah* section.<sup>8</sup> Many scholars, such as Samuel Smiles, have demonstrated that a family will suffer when the mother leaves her role in the household and the ill effects that result socially and economically.<sup>9</sup> Nevertheless, women have the *right*, under *Sharey'ah*, to work outside the home.

3 F. Howeidy, *Islam and Women's Rights*, United Nations Development Programme, 2005, p. 2, available at < [www.arab-hdr.org/publications/other/ahdr/papers/2005/howeidy.pdf](http://www.arab-hdr.org/publications/other/ahdr/papers/2005/howeidy.pdf) >.

4 A.F. AlMubarak, *The Textual Translation of The Quran The Supreme*, 2011.

5 According to the author of *The Textual Translation of The Quran The Supreme*, each word in the Qur'an is intended for itself to convey a specific message. The Qur'an does not have word-deficits or word-surpluses nor does it have synonyms. It is sacred and unique. It is for all of humanity. Accordingly, it must be translated *verbatim and taintless*.

6 Aly, 2013.

7 Aly, 2013.

8 If the husband died and the wife has finance capability, then she can spend on herself with no obligation towards other family members such as son or daughter. If the husband died and the wife has no finance capability, the family members who are financially capable, either son or daughter, will be obligated to spend on their mother. See <<http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=FatwaId&Id=134456>>.

9 M. Alsebai, *Women Between Jurisprudence and Law*, Al Warrak Publishing, Beirut, 1966, p. 198.

Third, *Sharey'ah* legislation is based on the equality of men and women. All of the texts in the Qur'an and the Hadith indicate that the Muslim nation is united, including the vital elements, which are men and women, and that men and women have their own independent personalities and respectful weight in the Muslim community. For example, the Qur'an indicates that the origin of mankind is oneself.<sup>10</sup> All males and females descended from a single individual, who is Adam. It is a primary principle in *Sharey'ah* that all mankind, which means men and women, are equal and have the right to live and the right to live with *Karamah*.<sup>11</sup>

### I. *Women and the Alquamah Concept*

Within the household, *Sharey'ah* gives the wife rights and imposes on her duties. It gives her more rights than the husband as a way of veneration and consideration of her natural status as a female. *Sharey'ah* imposes duties on the husband towards the wife as a way of preserving the wife's basic rights and to provide a suitable climate to permit the wife to exercise her duties successfully. *Sharey'ah* also imposes on the husband the moral duty constantly to be the protector, sustainer and maintainer.

*Alquamah* linguistically means iterative protector/sustainer and/or maintainer in the sense of constantly providing to maintain or vice versa.<sup>12</sup> The Qur'an identifies *Alquamah* as a duty imposed on the husband consistently and continuously to protect, sustain and/or maintain his wife. *Alquamah* is a method of organizing the relationship between a husband and his wife within the household, where the husband's mission is to lead the household. The *Alquamah* mission is subject to many rules and restrictions, because it gives the husband a measure of control over his wife, which will be demonstrated in the coming paragraph. Also, this article will demonstrate why the Qur'an assigns this responsibility only to men. At the end of this section, the article will shed light on common inquiries related to *Alquamah*, such as absolute control and the role of women in the household. At the same time, *Alquamah* is a set of rights that empowers women after their miserable situation prior to the advent of Islam.<sup>13</sup> In fact, it is a set of assurances for her whole life.

The Glorious Qur'an showed that there are two main reasons why *Alquamah* imposes upon men the duties to be responsible for financial obligations and for a moral household.<sup>14</sup> Men were built with certain natural qualities that are different from those of women physically and socially, which enabled men to become responsible for *Alquamah* duty.<sup>15</sup> Men are the stronger gender and physically the more appropriate to work hard, as they do not suffer from many burdens related

10 AlMubarak, 2011, 2:1.

11 *Generously and gratuitously bestowed countless boons benefits.*

12 AlMubarak, 2011, 2:34.

13 See M. Usmani, *The Miserable Condition of Women Before Islam*, Shariah Program, 2011, available at < [www.archive.today/4CIbS](http://www.archive.today/4CIbS)>.

14 AlMubarak, 2011, 2:34.

15 *Financial and Moral Responsibilities of the Household*, <[www.womeninislam.ws/en/misconceptions\\_household-responsibilities.aspx](http://www.womeninislam.ws/en/misconceptions_household-responsibilities.aspx)>.

to menses, pregnancy, delivery, nursing and childcare of early age.<sup>16</sup> Women, however, are the weaker gender because of their natural constituency.<sup>17</sup> They were created “biologically, emotionally and socially for their essential role as kid bearer and housewife”.<sup>18</sup> They, indeed, are endowed with more intuition and emotional intelligence than men.<sup>19</sup> The literature is rich in evidence showing the differences among males and females. For example, Edward O. Wilson, a Harvard professor and the father of sociobiology, wrote that “women tend to be higher than men in verbal skills, empathy and social skills, among other things, while men tend to be higher in independence, dominance, spatial and mathematical skills, rank-related aggression, and other characteristics.”<sup>20</sup> This study shows that the nature of men and women is different and needs to be considered in many situations.

Many have thought that *Alquamah* is a form of absolute authority exercised by the husband over the wife and over others as well. Many have also thought that *Alquamah* even grants the husband permission to assault and beat the wife and to control her personality and her money. Ultimately, some believe that men are permitted to override women’s rights and skills in managing the household. These understandings of *Alquamah* are mistaken and share the same lack of knowledge about *Alquamah*. If those who assert these falsehoods would study, read or even ask *Fugaha* about *Alquamah*, they would certainly have a different view. The Holy Qur’an demonstrates the *Alquamah* notion in two different places<sup>21</sup> and indicates the essential principle of equality among men and women without favouring men over women. The Holy Qur’an shows only that the rights of women over men are similar to those of men’s duties over women.<sup>22</sup> Although *Alquamah* is a sort of control by the husband over his wife, it is subject to many rules and restrictions and requires certain ways of performing. *Nafaqa* (maintenance) is one of the primary principles of *Alquamah*, which provides that the husband is responsible for the material well-being of the wife, such as food, clothing and housing. Furthermore, the husband, under the *Alquamah* concept, undertakes to supervise the wife’s education and caring continuously. If the husband is unable to handle this duty, the wife has the right to order *Khula* to have the court terminate the marriage contract. The husband is the primary leader of a household, and his leading can be exercised only within the boundaries of the household. The wife’s responsibility, in exchange for the husband’s maintenance and protection, is to provide physical companionship and to respect and obey his requests, but she reserves the right to reject the husband’s requests if they conflict with religious tenets.<sup>23</sup> In addition to these rules, Islam has embodied a full

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 E.O. Wilson, *Sociobiology: The New Synthesis*, Harvard University Press, Cambridge, 1975.

21 Qura’n 1:228 & 2:34.

22 Qura’n 2:228.

23 F.Z. Rahman, ‘Gender Equality in Muslim-Majority States and Shari’a Family Law: Is There a Link?’, *Australian Journal of Political Science*, Vol. 47, No. 3, 2012, pp. 347, 349.

package of life morality principles in all of its rules and regulations and explained it to achieve the main purpose of *Alquamah*, which is a successful ideal household that enables building good communities. For that, the husband can fulfil the *Alquamah* notion of consorting, espousing his wife by *ma'aroofe*, which means popularly acceptable and not *Sharey'ah*-disapproved maxims. For instance, the husband shall not frown without a reasonable basis, nor be rude or harsh while talking to his wife. The husband should always treat his wife fairly considering her basic rights in life and shall not exploit his wife's obedience. In *Alquamah*, the husband is forbidden from transgressing his wife either materially or morally. Ultimately, the concept of *Alquamah* is to show the significance of the husband's role in leading the household while taking into account the interests of the most important member in that household, 'the wife' as many of the *Sharey'ah* texts confirm that. For example, Prophet Muhammad (peace and blessings be upon him) said, "The best of you are those who are best to their wives, and I am the best of you to my wife" (At-Tirmidhi).

In summary, *Sharey'ah* has protected, sustained and maintained women by giving the husband duties towards his wife and by imposing these duties on husbands in exchange for her essential role and nature. For that, *Alquamah* is a form of honouring women and recognising their valuable contributions. Islam did not simply pass legislation; it has also demonstrated the morality while pursuing this process. Women's natural feminine role is completely honoured and protected.<sup>24</sup> Because of the burdens, pains and pressures of menses, pregnancy, nursing and continual childrearing, women frequently need many periods of confinement for rest.<sup>25</sup> They can refuse to accept extra financial and vocational obligations to sustain and maintain the household.<sup>26</sup> All of these worries influence a wife's mental state, which "will be reflected in her life, attitude and behavior".<sup>27</sup>

## II. Women and Political Participation

The participation of a woman in politics is one of her basic rights in Islam, because all Muslims agree that all duties imposed in the Qur'an and Hadith apply to both men and women, except the duties that the Qur'an and Hadith specifically assign only to women or men.<sup>28</sup> One of the major duties imposed on men and women is to develop themselves, the region of their abode and the Earth, which is called *Eamar*.<sup>29</sup> Reforming the nation's affairs is a duty imposed on both genders. Islamic history is rich with evidence reflecting the significant role of women in this process in the past and the present. In the past, *Sharey'ah* recognised women's independence. *Albayah*, for instance, was not for men only, but women went alone to the Prophet Mohammed and plighted allegiance to him on

24 *Financial and Moral Responsibilities of the Household*, <[www .womeninislam .ws/ en/ misconceptions\\_household-responsibilities.aspx](http://www.womeninislam.ws/en/misconceptions_household-responsibilities.aspx)>.

25 *Id.*

26 *Id.*

27 *Id.*

28 M. Rashid Riḍā, *Nidā' lil-jins al-laḥif fi Ḥuqūq al-nisā' fi al-Islām wa-Ḥazzihinna min al-iṣlāḥ al-Muḥammadi al-'amm*, 1st edn, al-Maktab al-Islāmī, Bayrūt, 1975, p. 18.

29 Qur'an 11:61.

the Islamic principles, which shows their independence in practising their rights. If women's rights were confiscated, then they could not do *Albayah*. If they were like slaves for their husbands, the men's *Albaya* would be representative for them. Islam also shows how women's consolation is valuable and important. One of the best examples that shows the permissibility of the women in participating in political matters is in the Qur'an, where it talks about Balqis 'Saba'a King', who was a female ruler. The Qur'an praises the intelligence and wisdom of Balqis in ruling the kingdom of Saba'a, which shows that women are not only entitled but certainly also able to take leadership roles. In the end, all of the *fugha* agreed that the *Sharey'ah* does not stand in the way of women participating in politics, but there was disagreement over the manner of participation and whether women can hold the ruler's position. One of the most critical events in Islamic history was overcome by a woman's deep insight and great wisdom.<sup>30</sup> Ultimately, when looking at the political rights for women, if women were prevented from practising their political rights, this would not mean that the *Sharey'ah* deprives women of their political rights; it would mean only that some Muslim communities are not yet ready to allow women to participate in matters of politics.<sup>31</sup>

*Sharey'ah* provides the option to work and to practise rights in developing the community. Women can work in many fields that are suitable to their feminine nature. For example, Muslim women in battle were not fighters but instead handled other suitable missions, such as caring for the wounded. A woman has the right to open and own her own business. The best example of this is the wife of Prophet Muhammad, who was one of the biggest traders in her community. The prophet was the main assistant in her business.

### III. Women and Marriage

In the perspective of Islamic law, a man and a woman are a couple, and they should live in peace and love in good faith, with respect for each other. Because there are numerous legal issues related to this relationship, Islamic law regulates it. The most important rule that should be known before discussing women and marriage in Islamic law is that having sexual intercourse outside of a legal marriage is taboo and forbidden, and its punishment is severe. Sexual intercourse between a man and a woman is permitted only if they are married to each other. Consequently, marriage is highly recommended, and there are several Ayah (verses) and Hadith (traditions) that state this concept. In addition, there is a rule that a husband is financially responsible for supporting his family. Even a rich wife is not required to pay from her own money anything for the household expenses. In addition, no one can force a woman to be a first or a second wife. She reserves the right to refuse to marry anyone. The final rule is that she can include in the marriage contract a term that prevents the husband from marrying another woman while they are married.

Islamic law gives men and women different rights related to marriage. The women's rights include, but are not limited to, choosing her husband, financial

30 H.A. Al-Rifaie, *Islam and Woman Veneration*, Dar Al-Elm, Jeddah, 2005, p. 26.

31 Aly, 2013, at 159.

support by her husband (*Nafagah*), having sexual intercourse with her husband, Mahr (wife gift), making terms in the marriage contract and Khula (terminating marriage). These rights are protected by Islamic law, and no one can extinguish them.

One of the most misunderstood concepts related to Islamic law is polygamy. Islamic law permits men to have more than one wife, theoretically up to four at the same time. Islam did not introduce polygamy. It was legal in different religions and societies prior to the birth of Islam. In Islamic law, there are significant terms that must be attended to when a man desires to practise polygamy. These terms are as follows:

- 1 There is no term in the first marriage contract that prevents the husband from marrying more than one woman during the marriage.
- 2 The second woman has to agree to be a second wife.
- 3 The husband must be able to provide the wives physical strength, loyalty and honour equally, as the Qur'an calls it 'Aladel'.
- 4 The husband must be able to support the wives financially (*Nafagah*).
- 5 The husband must be able financially to host the wives in two different houses.
- 6 The first and second wives must not be related to each other.

These terms make polygamy difficult except for those who seriously desire to have more than one wife. Consequently, few men marry more than one wife. For instance, in Saudi Arabia, only 0.64% of men have more than one wife.<sup>32</sup>

One may ask why Islamic law permits men to have more than one wife.

Islamic scholars have concluded that permitting men who meet the above-stated terms to have more than one wife meets the following objectives:

- 1 In general, there are more women in the population than men in the world. For instance, according to the Census, 143.4 million women and 138.1 million men were counted in the United States in 2000.<sup>33</sup> If a man is permitted to marry only one woman, then 5.3 million women will not have a partner. Of course, in earlier societies, the numeric ratio was also influenced by frequent wars. Another factor that decreases the number of males who are able to marry is the inability of some of them to support a family financially. As stated above, men are alone financially responsible for supporting their families. If a man is unable or unwilling to support his family, he is not able to get married. The factor increases the number of women who do not have a partner. The 5.3 million women mentioned above have three choices: (a) they can live without a husband and children; (b) they can have an illegal relationship with a married man or otherwise outside of marriage (c) they can get married to a man who already has a wife. From the Islamic point of view, the third

32 E. Alzamel, *The Percentage of Polygamy in Saudi Arabia Is Less Than 1%*, 2008, <[www.essamalzamel.com/?p=124](http://www.essamalzamel.com/?p=124)>.

33 D.I. Smith & R.E. Spraggins, *National Atlas of the United States*, 2000, <[http://nationalatlas.gov/articles/people/a\\_gender.html#t1](http://nationalatlas.gov/articles/people/a_gender.html#t1)>.

- choice is the best solution for women. It is also the best solution for society, which prefers legal and stable relationships between men and women with clearly regulated rights and obligations before, during, and after the marriage.
- 2 Recent studies show that the first desire of a woman is to become a mother. In contrast, the first desire of a man is to have sexual intercourse.<sup>34</sup> How can these two desires be fulfilled in a society in which there are more women than men? The reasonable answer is to permit a man to marry more than one woman. By this solution, men can have sexual intercourse legally, and their wives can become mothers.
  - 3 Many children do not have a father because of death or divorce. In such cases, fatherless children live with their mothers, other family members or in orphanages. From the Islamic law perspective, it is important that every child should have a father and a mother to take care of them. The best way to care for a fatherless child is to have the child live with the mother and a stepfather instead of with a single parent or in an orphanage. To illustrate, when the father dies, the brother will generally take care of the nephews as a stepfather, but he cannot do that if he has a wife. Because *Sharey'ah* permits the man to have more than one wife, the brother is permitted to be his nephews' stepfather to take care of them.
  - 4 If a woman is poor or ill, no man, in general, will marry her. *Sharey'ah*, however, encourages men to help and support these women, and the best way to do so is to marry them and to be financially responsible for them. By being permitted to marry more than one woman, he can marry poor or ill women to take care of them.
  - 5 Polygamy reduces the divorce percentage. When a husband wants to marry another woman, he must either divorce his wife or take the second woman as his second wife. If he chooses to divorce his wife, the percentage of divorce will increase and his wife will become partnerless. The second scenario, however, will help to reduce the divorce percentage by allowing the man to marry more than one woman. *Sharey'ah* has adopted the polygamist approach and considers the interests of the others and the current wife as well; at the same time, *Sharey'ah* discourages divorce, which is a threat to the current wife and children and to society.
  - 6 One of the Islamic philosophies is to encourage men to increase the population of a society. The fastest method to fulfil this philosophy is to permit men to marry more than one woman if the men meet the *Sharey'ah* conditions already mentioned.
  - 7 Recent studies demonstrate that, in the United States "men think more about sex", and "men seek sex more avidly".<sup>35</sup> In addition, the statistics show that 59.9% of men have engaged in infidelity during their current relationship, while 40.1% of women have engaged in infidelity during their current rela-

34 S. Alhussin, *Polygamy and Human Rights*, 2012, <<http://rowaq.org/?p=231>>.

35 R. Sine, *Sex Drive: How Do Men and Women Compare?*, 2013, <[www.webmd.com/sex/features/sex-drive-how-do-men-women-compare](http://www.webmd.com/sex/features/sex-drive-how-do-men-women-compare)>.



tionship.<sup>36</sup> These studies indicate that some men need more than one woman with whom to have sexual intercourse, and they will have it whether it is legal or illegal. *Sharey'ah* made a path for these men and reserved their rights, with strong conditions, to fulfil their desire under the eyes of the law by permitting them to marry more than one woman.

- 8 Every wife has the right to have a term in the marriage contract that restricts the husband from marrying a second woman. In addition, a woman has the right to refuse to become a second wife. These rules demonstrate that a woman has gained independence under the *Sharey'ah*, because she can choose whether to become a second wife or not. When a wife permits the husband to marry a second woman, a reasonable question raised is what is the purpose of preventing men, under many laws and regulations, from getting more than one wife when his wife gives him approval to have a second wife? What is the difference between an open marriage in a jurisdiction that permits an open marriage and polygamy with the wives' approval? The significant point is that polygamy in *Sharey'ah* is under the eyes of the law, and it has to apply marriage rules and procedure, while an open marriage does not have any rules and can be done with unlimited women. With these rules and objectives of *Sharey'ah*, the situation might not be solved if morality has no role to play, even under other laws and regulations. *Sharey'ah* imposes morality on men and women to maintain long-term relationships and to prevent such exploitation. The husband in Islam knows that if he treats his wife by *ma'arofe*, the reward will be significant in this life and in the hereafter. The *Sharey'ah* provides many morality structures in many events of married life, such as working, eating, speaking, sleeping, travelling, teaching and even in sexual matters. Morality is built in with *Sharey'ah* rules to maintain respected values among the couples in their married lives.

These are the objectives of polygamy that Islamic scholars have derived. However, as mentioned above, the difficult requirements that must be met before a man can have more than one wife decreases the percentage of polygamy.

#### IV. Women and Inheritance

In the inheritance context, *Sharey'ah* recognised the right of a woman to inherit after being denied such a right for a long period in many nations before the advent of Islam; some nations even today do not recognise such a right.<sup>37</sup> Many have understood that a man in *Sharey'ah* always deserves the greater portion than a woman through inheritance, which basically reflects a lack of understanding of the texts of the Qur'an. It is true that under Islamic law, there can be a distinction between the shares of a male and a female heir. However, the Qur'an recognises only four situations in which a female will get only half the portion of a male through inheritance; at the same time, there are seven situations in which a

36 K.P. Mark, E. Janssen & R.R. Milhausen, 'Infidelity in Heterosexual Couples: Demographic, Interpersonal, and Personality-Related Predictors of Extradyadic Sex', *Archives of Sexual Behavior*, Vol. 40, No. 5, 2011, pp. 971-982.

37 Howeidy, 2005, at 6.

female deserves the same portion as a male; indeed, there are six listed situations in which a female deserves a greater portion than a male.<sup>38</sup> Consequently, there is no room for the argument that inheritance in *Sharey'ah* confiscates or deprives women's rights; instead, it has preceded the other nations in recognising their rights in this matter.

When *Sharey'ah* gives the male twice as much of the inheritance in some situations, it considers the primary role of the male in the household and places an obligation on him to take care of his sister or other female relative.

### 1. *The First Consideration*

The first consideration is the degree of kinship between the heirs, whether male or female, and the deceased. The closer the heir is to the deceased, the larger the portion of inheritance the heir will receive. In contrast, the farther from the deceased, the smaller the portion of inheritance the heir will receive. The deceased's daughter, for instance, will receive more than the deceased's father or mother.

### 2. *The Second Consideration*

The second consideration is the heir's position in life. The newer generations, who are preparing to provide for themselves and their families, will, in general, receive a larger portion of the inheritance than older generations. For instance, the deceased's daughter will receive more than the deceased's mother does even though they are both females. A daughter will inherit more than the deceased's father.

### 3. *The Third Consideration*

The third consideration is the heir's financial obligations to others, which are mandated by Islamic law. This is the only consideration that distinguishes men from women. In Islamic law, the father is financially responsible for his daughter, and the husband is financially responsible for his wife. In the absence of the father and the husband, each individual is financially responsible, depending upon the percentage he/she will receive from his/her heritage.

With regard to inheritance, *Sharey'ah* is concerned about the extent of financial responsibility. If the heirs are a son and a daughter, the son has financial responsibility to his wife and their children, while the daughter's husband has financial responsibility for her and their children. Also, when the son and daughter are not married, the son is financially responsible for his sister. Consequently, the son needs more money than his sister to take care of his financial obligations. Therefore, the male receives twice as much as the female. This distinction between male and female is not because of gender, but because of the financial obligations. This is the reason why Islamic law, in certain circumstances, gives males more than females.

38 S. Sulṭān, *Mirāṭal-mar'a wa-qaḍīyat al-musāwāt*, Nahdat Miṣr, 2004.

### C. Women's Rights in *Sharey'ah* and Muslim Communities

*Sharey'ah* recognised the essential role of a woman in many levels and situations. The women in *Sharey'ah* are described as the twin halves of men (Ahmed, Abo Dawood and Alalbany), which means that they bear the same duties as the man except as is specified in the *Sharey'ah* texts. Both men and women are required by *Sharey'ah* to be as *khalifa* (*iterative successor*)<sup>39</sup> in this Earth and to support each other to construct the universe. A woman in Islam can do anything to develop the community except what the *Sharey'ah* specifies cannot be done.

Women are a significant part of every Muslim community. *Sharey'ah* encourages its believers to respect and to take care of women, whether they are mothers, sisters or daughters. *Sharey'ah* commands kindness, respect and obedience to the parents and explicitly underlines and gives priority to the mother in many Qur'an and Hadith texts. A mother is three times as worthy of her son and daughter's good companionship as their father. "A man came to the Prophet Muhammad and said, 'O Messenger of God! Who among the people is the most worthy of my good companionship? The Prophet (peace be upon him) said: 'Your mother.' The man said, 'Then who?' The Prophet said: 'Then your mother.' The man further asked, 'Then who?' The Prophet said: 'Then your mother.' The man asked again, 'Then who?' The Prophet said: 'Then your father.'" (Bukhari, Muslim). For a daughter, the Prophet Muhammad (peace be upon him) said: "If anyone has suffered at all respecting these girls and treats them well, there will be a covering for him from Hell."

However, three factors have negatively impacted women's rights in Muslim communities: custom and social restrictions, lack of awareness of Islamic women's rights and a lack of statutes.

According to Islamic law, there are three sorts of custom. The first are customs that are consistent with Islamic law, such as respecting old people. Islamic law considers these to be customs. The second are customs that are inconsistent with Islamic law, such as denying women a right to education or inheritance. This custom is forbidden and taboo in Islamic law. The third sort are the customs to which Islamic law refers. For instance, the amount of maintenance that a husband must pay to his wife. This factor is important to regulate a variable standard.

The second sort of customs in Islamic law is the main factor that affects women's rights in Muslim communities. The majority of Muslim communities have customary or social restriction against Islamic women's rights. These customs and traditions affect the lives of women to the extent that many of them believe it is part of Islamic law. However, any customs and traditions that restrict Islamic women's rights are forbidden and taboo, and individuals who deny these rights are subject to punishment.

The second factor that affects Islamic women's rights is the lack of awareness of Islamic women's rights. In general, Muslims are willing to follow Islamic rule whether they like it or not, as long as they believe that a certain rule is really part

39 AlMubarak, 2011, 35:39.

of Islamic law. However, the problematic issue is that Muslims, whether male or female, often do not know what women's rights are. In many cases, a man, on the one hand, will prohibit his wife or daughter from doing something on the basis of his mistaken belief that Islam prohibits female believers from doing this thing. On the other hand, women do not know that they have a right to do things that men prohibit them from doing. This accumulated misunderstanding leads Muslim communities to restrict and even deny a large part of Islamic women's rights.

The third factor that constrains women's rights is the lack of statutes. The majority of Muslim countries do not have statutes that define and protect women's rights from being seized by men. This void creates great difficulties in defining women's rights and allows individuals to seize women's rights without penalty. If a man does not know his wife's rights, or if he knows but prefers custom to Islamic law, or the wife does not know her rights, the statutes would resolve such issues by clarifying women's rights and by stopping individuals from seizing women's rights by imposing serious penalties.

#### D. Conclusion

Within the *Sharey'ah* criteria, mankind (man and woman) is the Khalifa (*iterative successor*) of Allah on Earth.<sup>40</sup> There can be no doubt that mankind has been honoured over other creatures by being assigned the mission of constructing the Earth and ensuring justice and peace, and this veneration includes both men and women.<sup>41</sup> The Qur'an also demonstrates that Allah has created man and woman and assigned to them equally the mission of sustaining and multiplying the human race, making them know each other, cooperating between themselves and establishing the family, which is considered the primary "basis of the human communities without any discrepancy based on gender, color or race".<sup>42</sup> Neither gender has any advantage before Allah; the only criteria considered will be performing good deeds and realising the virtues of both men and women<sup>43</sup>: "O, you the mankind: verily We created you of male and female and We made you nations and tribes to you mutually acquaint/introduce <sup>44</sup> (*one another*), verily *akramakum* (*of you: the most hospitality-accorded and honor-bestowed*) *enda* (*by munificence of/ by Rule of*) Allah (is) *at'qakum* (*whoever of you is most pious/ reverential guarded against Allah's displeasure*)."<sup>45</sup> *Sharey'ah* confirms the equal basis among men and women, where they play complementary roles in pursuing the primary mission of inhabiting and constructing the Earth.<sup>46</sup> In addition, consultation, discussion and advice are mutual responsibilities between man and woman under *Sharey'ah*.<sup>47</sup> By the

40 Al-Rifaie, 2005, at 23.

41 *Id.*

42 *Id.* at 24.

43 *Id.*

44 You mutually introduce one another, *i.e* for the purpose of knowing each other.

45 AlMubarak, 2011, 49:13.

46 Al-Rifaie, 2005, at 25.

47 *Id.*

wisdom and advice of a woman, Um-Salamah, Muslims could overcome one of the most critical moments at the beginning of Islam's history, which is the 'Hudaybeyyah Peace Treaty'.<sup>48</sup>

As veneration to women, *Sharey'ah* characterised her with advantages over man in recognition of her two primary imposed missions:

- a "The responsibility of preparing herself to be a legal, spiritual and sensual home for her husband, to retire to here and clear, in the shadows of her femininity and her soul, merciful emotion and love, clear his worries, struggle and endeavors of his obligations which were not assigned to the woman, as Allah mentioned,"<sup>49</sup> "And of His *Aya'te* (*miracles/signs/proofs*) (*is*) that [*He*] created for you of your selves spouses/ mates<sup>50</sup> to *taskon* (*repose/quiet/ be-intimate*) you to [*her*]; and [*He*] made between you affection and a mercy; verily in *tha'leka* (*afar-that-it*) surely (*are*) *Aya'te* (*miracles/signs/proofs*) for a people rethinking."<sup>51</sup>
- b "For her taking the burden of pregnancy and risks and suffering of giving birth, the responsibility of maternity and bringing up the children and following up their education and preparing them to bear life's responsibilities. It is a responsibility which any other responsibility appears small in comparison."<sup>52</sup>

In return for these two great missions, *Sharey'ah* gave the woman advantages over man by reducing her duties without confiscating the rights of both wife and husband. For example, *Sharey'ah* exempted "the woman from the burden of higher leadership and its" obligations, among which is monitoring life's affairs.<sup>53</sup> *Sharey'ah* instead imposed these obligations on the man, and the man reserves the right to ask for the woman's help, if the woman can give the hand "voluntarily, and within her consent, and without any hardship or a burden beyond her capability".<sup>54</sup> "The men (*are*) *qawwamona* (*iterative protectors/sustainers*) over the women by what favored<sup>55</sup> Allah some (*of*) them over some and by what they expended of their possessions."<sup>56</sup> As another example, *Sharey'ah* exempted the woman from the burden of expenditures in marital life and imposed the whole of this mission on the husband's responsibility, "starting from the dowry and cost of marriage to the house expenditure and the needs of the wife and children, without touching the wife's wealth or belongings". The *Sharey'ah* indeed has given an extraordinary financial privilege to woman over man, because it is considered an

48 *Id.* at 26.

49 *Id.* at 27.

50 *Spouses/mates* includes 'he' and a 'she'.

51 AlMubarak, 2011, 30:21.

52 Al-Rifaie, 2005, at 27.

53 *Id.*

54 *Id.*

55 Some see among the merits of such 'favour' as: men are *generally more rational, better administrators*, Allah's *Prophets* and *Messengers* are all men, by what they *provide* (e.g. dowry) and *maintain* for all other needs for the family! See AlMubarak, 2011, 4:34.

56 AlMubarak, 2011, 4:34.

aggressive act and assault if the husband asks for anything from the wife's personal belongings.<sup>57</sup>

57 Al-Rifaie, 2005, at 29.