

**The differences in the legal and social rights of women  
as practised in the Islamic holy books and social reality.**

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## **Abstract**

My dissertation aims to examine the clear divide on the legal and social rights of Muslim women, highlighting the time period of the early life of the Prophet Muhammad and his contributions and going to the contemporary times of post Suharto Indonesia. The issues of women's legal rights are heavily focused, subject matters include their rights in relation to marriage, choosing their husbands, the right to divorce, inheritance and the custody of their children are among the subject matters covered. In addition, their social rights are also covered along with legal rights to show that Muslim women during the early ages of Islam were synonymous with obedience and control at the hands of their male counterparts.

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## **Introduction**

The rights of women in Islam has always been a contentious topic to debate and discuss, it has more often caused a divide in people that believe that women have all their rights that were provided by the prophet Muhammad and those who believe that while in Islamic Law it may dictate that women should be equal and have all their rights, it has not necessarily played out that way in the modern world, where women in Islamic governed places generally are seen as inferior to their male counterparts. In my dissertation I will be covering the differences in the legal and social rights of women in Islam, I want to explore that as aforementioned Islam may dictate that women are equal in terms of Islamic Law; however, the social reality of most Muslim women does not necessarily project or portray them as equal in terms of their legal and social rights. In order to examine the legal and social rights of Islamic women, it is important to cover where Islamic Law originated, to do this it's important to look at the life of the prophet Muhammad during the 7<sup>th</sup> century during the prophet's first revelation and his contributions to the way that Sharia Law was followed following his death and how Sharia is carried out in contemporary times. It is also important to highlight the holy books of the religion of Islam which are: the Quran and the Hadith. These holy books are extremely significant as Muslims believe that the Quran was revealed to the Prophet Muhammad by God himself, while the Hadiths are writings attributed to the actions and words of the Prophet Muhammad and therefore are a major source in the way that the religion of Islam should be carried out in terms of the law and moral guidance for Muslims. In addition to covering the life of the prophet Muhammad, it's important to highlight the legal and social rights that women have under the religion of Islam, examples of such rights that will be covered in my dissertation is that of the legal rights of women in their marriage, whether they are allowed to work within the marriage, their right to divorce their husbands if they are discontent within their marriage as their husbands can divorce them at the drop of the word while they may not have that right, their right to obtain custody of their children in the case that the marriage falls apart, a woman's right to be supported financially in the case of divorce

and finally whether women have rights that would protect them from domestic violence within their marriage, practices such as the rape of a wife by her husband. By examining the rights of Islamic women both legally and socially it will highlight that while the religion of Islam may preach that women within the religion are to be treated as equal to that of men, in reality that idea does not translate into the contemporary world. The social reality of what an Islamic woman is expected to portray herself and one that she lives in reality could not be more different.

## **The origin of Islamic/Sharia Law and the early contributions of the Prophet Muhammad.**

In order to cover the rights of Islamic women it is imperative that the origin of Islamic Law is highlighted. The origin of Sharia Law is rooted with the Prophet Muhammad according to secular history but to a devout Muslim it is believed that the religion of Islam existed long before the Prophet Muhammad. The Prophet Muhammad was born approximately around 570 A.D. and he is believed by many Muslims to be the final Prophet that was to carry out the religion of Islam to its followers and he continued to receive revelations throughout his life until his death<sup>1</sup>. The meaning of the word Islam means Submission, it refers to the believer's submission to Allah, it is the dependency to an unlimited power that man must submit his will too<sup>2</sup>. The concept of submission is prominent "in all manifestations of Islam"<sup>3</sup>, in its ideas, ethics and ways in worship. The dependency is the most prominent feature of the religion of Islam as highlighted in Goldziher's book *Introduction to Islamic Theology and Law* that "Islam is the most cogent example for Schleiermacher's thesis that religion is rooted in a sense of dependency"<sup>4</sup>. Goldziher continues in his book that a focus should be pointed at the factors that played a role in the development in the religion of the Islamic faith, as throughout time the religion of Islam has gone through significant changes and become what it is in the contemporary time period, such factors would include the development of a system of law and a set of principles set by the religion. It is significant to cover the contributions of the Prophet Muhammad as it was he who began the foundation of the religion of Islam, the religions rules such as how to conduct one's self properly, how to worship, as it was believed that he experienced a revelation, to carry out the religion of Islam by Allah himself. The development of Islam's dogmatic has roots in many different factions, in Goldziher's "Introduction to Islamic Theology and Law", the dogma of the religion of Islam has roots in Hellenistic thoughts, while the legal system is rooted in Roman Law and the organisation of the religion originates in the Abbasid Caliphate, a dynasty that ruled over the

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<sup>1</sup> "Islam" [https://www.history.com/topics/religion/islam#section\\_10](https://www.history.com/topics/religion/islam#section_10) [Accessed 11/04/19]

<sup>2</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P3-4

<sup>3</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981)

<sup>4</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P4.

Islamic Empire, which demonstrates an adaptation of Persian politics<sup>5</sup>. These areas highlight that the religion of Islam has demonstrated the ability to assimilate foreign ideas within the religion. The prophet Muhammad did not create new ideas for the religion of Islam nor did he build upon the already existing ideas of the religion since his revelation from Allah, however this does not mean that contributions were of no value to the development of Islam. Goldziher states that in historical evaluation “originality within the contents of the Prophet Muhammad revelations were not a key contention”<sup>6</sup>, the Prophets messages were a compilation of religious ideas and regulations and they were suggested to him by other contacts and the suggestions were rooted with Jewish and Christian origins<sup>7</sup>. The Prophet Muhammad’s ideas took inspiration from foreign elements, as he realised that they were necessary to organise the way of life under the religion of Islam and also the will of God. It was the prophet Muhammad’s strong conviction that he realised that he was to be an instrument in the divine revelation by Allah. The root of Sharia Law not only originates with the Prophet Muhammad but also within the Islamic holy book the Quran, as the prophet declared that the holy book was a piece of distinctive work, this is in fact the case of followers of the religion of Islam recognize that the contents of the Quran is how they should conduct themselves in order to adhere to God; which highlights that idea of submission to the will of God. The Quran lays down the foundation of Islam as it is believed by devout Muslims that Islam in its entirety should be carried out. This was essential to the development of Islam as the prophet Muhammad faced many adversaries and by surpassing adversaries that it strengthened the religion of Islam and therefore, the Arab people’s belief in him<sup>8</sup>. The need for support was essential for pushing Islam’s development further as the Arab people were not under a united front as they were broken into different tribes, they were not a religious group and places of worship merely existed as a form showing that local cults once had a loose link to one another in some shape or form<sup>9</sup>. Unification under one single community which held the same

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<sup>5</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P4.

<sup>6</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P5.

<sup>7</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P5.

<sup>8</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P12.

<sup>9</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P12.

ethical and religious standing was one of the Prophet Muhammad's goal, as he aimed to bring together different branches of cults that adhered to the religion of Islam. Islam's holy book; the Quran taught its followers that they should be brought together and maintained by their mutual sense of dependency on Allah, the one only God. *"O you who believe! Fear God as is His due, and do not die except as Muslims. Hold fast, all of you together, to Allah's rope, and do not separate. Remember Allah's beneficence to you, for you were enemies but He composed your hearts so that by His favour you have become brothers"*<sup>10</sup>. From the teachings of the Quran it emphasises the idea of dependency on Allah which is where the definition of the word Islam is derived from, it also emphasised that the fear of God gives one-man precedence over another man and that one's genealogy and tribal consideration would have no effect<sup>11</sup>. The unification of a single community which all followed one set of ethical and religious adherence put an end to barbarous actions that were carried out by different cults and tribes and the period of "Jahiliya", "a term used to which means the time of pre-Islamic period and also "ignorance" of monotheism and divine law, the term Jahiliya also means any system of government and ideology which is based on values but not on those that refer to God"<sup>12</sup>. Goldziher in "Introduction to Islamic Theology and Law" states that there were five points that were used as frame for the development of the religion of Islam, they are;

*"Profession of faith in the one God, and acknowledgement that the Prophet Muhammad is the messenger of God, the ritual of prayer, such as practices which show elements from Christianity with practices such as prostration and genuflection, alms, which involved the matters of voluntary charity and later a fixed payable amount to the needs of the community, the practice of fasting, which took place on the tenth day of the first month and finally the pilgrimage to the house of God located in Mecca"*<sup>13</sup>.

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<sup>10</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P13.

<sup>11</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P13.

<sup>12</sup> "Jahiliyyah", Oxford Islamic Studies online. <http://www.oxfordislamicstudies.com/article/opr/t125/e1157>, [Accessed 29/04/19]

<sup>13</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P14.

From these five elements it is evident that the foundations of the Islamic faith incorporated foreign elements from different religions such as Christianity and Judaism. The Christian elements of the Islamic holy book came about to the Prophet by way of “apocryphal traditions and heresies that were scattered across in the eastern church”<sup>14</sup>. On the other hand, the Islamic elements of the Prophet Muhammad’s teachings were derived from eastern Gnosticism<sup>15</sup>. The term Gnosticism is used to denote a “variety of movements or trends in various Near Eastern religions that emphasizes esoteric knowledge as a prerequisite for salvation”<sup>16</sup>. The Prophet Muhammad was receptive to foreign ideas that different religious groups practiced although he did not emulate certain things such as; imposing dietary laws on the Jewish people as a form of punishment due to their disobedience, meanwhile the dietary laws that were imposed on the Jewish people were not carried out under the religion of Islam and its followers, as God is Islam believes that Muslims should not restrain themselves from indulging in the good things in life<sup>17</sup>, as these laws were put upon by God on the Israelites. Other than the Jews and Christians, the prophet Muhammad kept a close observation on Zoroastrianism. The prophet Muhammad from observing Zoroastrianism was to deny that the Sabbath was no longer to be a day of rest as originally intended, the Islamic holy book; the Quran names Friday as the day of the week where Muslims assemble for worship and the Quran accepts the concept of the world being created in six days but as opposed to the Christian doctrine where God rested on the seventh day, the religion of Islam firmly rejects the notion that God rested on the seventh day<sup>18</sup>. Due to the seventh day not being allocated as the day of rest within the Muslim faith, it was accepted that after the day of assembly people would go and partake in their everyday business. While the Prophet Muhammad set out the foundations to which followers of the religion should live by there were those who opposed the characteristic of extreme dependency and submission to the will of God, that the religion of Islam

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<sup>14</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P14.

<sup>15</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P14.

<sup>16</sup> “Gnosticism”, Oxford Islamic Studies online. <http://www.oxfordislamicstudies.com/article/opr/t125/e731> [Accessed 29/04/19]

<sup>17</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law*, (New Jersey: Princeton University Press, 1981), P15.

<sup>18</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P15.

and its conception is perilous because of its submission; which goes back to the very definition of the word Islam and also because the religion rejects the notion of “Immanence”; this is the doctrine that holds the belief that the divine (God) is manifested within the mortal world whereas the notion of “Transcendence” in contrast is the belief that the divine’s power is entirely independent from the mortal world. It is because of the extreme nature of submission and dependency of the religion of Islam that some would levy the criticism that because followers of the religion are subject to an unchallengeable set of beliefs that it limits and prevents the relationship between Allah and those who practice and adhere to the religion of Islam from being drawn closer, the follower is prevented from drawing from God and forming a personal relationship while God is limiting his followers from being brought into his mercy through faith and good deeds. Goldziher references theologian A. Loisy in “Introduction to Islamic Theology and Law that: “It may be said of every religion that it has an absolute value in the consciousness of its adherent, and a relative value in the mind of the philosopher and the critical observer”<sup>19</sup>. Loisy reiterates that adherence to religion is significant but also that followers of the religion are also free thinkers and are able of critical thought as opposed to blindly obeying the religion that they align to. It is this train of thought that has been put forward in the case of criticism of the religion of Islam and the effect on its believers as it has been levied against them to hold them accountable for “moral defects or instances of intellectual backwardness that in fact stem from the situation of the peoples among whom Islam has spread”<sup>20</sup>. When proving the moral and religious worth of Islam the citing of language as evidence is often used to forward an argument as critics will often point out that the absence of certain language therefore makes the teachings of Islam as morally bankrupt. A point of contention to this argument would be that Islam lacks the ethical concept of is now called “conscience”, Goldziher highlights in “Introduction to Islamic Theology and Law that; “It has been offered in evidence that neither in the Arabic itself nor in any other Muhammadan language is there a word which properly expresses what we mean by conscience”<sup>21</sup>.

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<sup>19</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P16.

<sup>20</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P16.

<sup>21</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P16.

This can be misleading criticism of the Muslim faith, just because the language is missing from the prophet's teaching does not necessarily mean that the followers of the religion do not have the ability to express their conscience. Once again this leads to the criticism that is levied against the Islamic religion that the extreme reliance and submission to the will of God somehow prevents those who are devout to the religion from forming their own critical thoughts and do not just blindly adhere to the prophet's teachings. The concept of "conscience is highlighted by Goldziher, he puts forward that in the book "Forty Traditions of al-Nawawi which is a book with concise essentials of religion for the true Muslim"<sup>22</sup>, it reads "In the name of the prophet. Virtue is the sum of good qualities. Sin is that which perturbs the soul and which you do not want other people to know about you"<sup>23</sup>. This relates to the concept that one should use their conscience in order to avoid immoral acts and perform good deeds, the ability to distinguish what is moral and immoral and therefore adhering to the will of God. Goldziher continues that Wabisa ibn Ma'bad relates that; *"Once I came to the prophet and he said: 'You have come to ask me about virtue'. I said 'Yes'. He said: 'Question your heart'"*<sup>24</sup>. The questioning of the heart in this context relates to a "fatwa"; which is an "Authoritative legal opinion that is given out a mufti that is in response to questions put forward by an individual who is seeking counsel or by a court of law seeking advice in legal matters, however the response and opinions that is given by the *fatwa* is neither binding or enforceable so that advice can be heeded or not"<sup>25</sup>, Ma'bad continues *"Virtue is that which brings heart and soul tranquillity and sin is that which throws perturbation into the soul and makes the heart flutter, no matter what people may say"*<sup>26</sup>. *"Lay your hand on your chest and question your heart. Whatever disquiets your heart you should keep from doing"*<sup>27</sup>. This again highlights the concept of conscience as those who adhere to the religion of Islam are taught that they should make a conscious decision to carry out deeds that is good in the eyes of

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<sup>22</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P17.

<sup>23</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P17.

<sup>24</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P17.

<sup>25</sup> "Fatwa", Oxford Islamic Studies online. <http://www.oxfordislamicstudies.com/article/opr/t125/e646> [Accessed 30/04/19]

<sup>26</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P17.

<sup>27</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P17.

their God and that have a conscience allows an individual the ability to think critically about how they conduct themselves that will not disobey their beliefs. In order to adhere to the will of God a true Muslim will live their life that will obey the requirements and conditions of the Islamic faith, as the religion of Islam is not only a set of beliefs but also a law, a law in which is requires its followers to performing ceremonial acts<sup>28</sup>. The purpose of ceremonial acts and pilgrimages according to the holy book; Quran is that it keeps the prior traditions of heathen Arabs and it serves as a remembrance to Allah through ceremonial worship “We Allah have established sacrificial rites for every nation so that they may remember the name of Allah over the sustenance He has granted them”<sup>29</sup>. The Quran stresses that not only should Muslims spend an adequate amount of time in devoting their minds into Allah but also it must be accompanied by the act of performing ceremonial sacrifices in order to adhere to Islam. The Quran state that: “Their flesh and blood do not come to Allah; your fear of God comes to him”<sup>30</sup>, the holy book reiterates that devotion of the mind and couple with ceremonial worship will appease Allah and also adhere to the religion of Islam. It is important to note that while the prophet Muhammad preached his revelations by adhering to the will of God by the performance and ceremonial acts along with having a sense of duty to look after the less fortunate, it would be a mistake to view Islam as a religion that only encompassed teachings that were moral and good, as it also contains passages within the holy book which in the contemporary period can be seen as extreme, one such example but not limited to is the view on Allah and those who are non-believers: “If you love God, follow me, and God will live you and forgive your sins, however God does not live the unbelievers”<sup>31</sup>. While the Quran is considered by followers of the Islamic faith as the most important source it only contains the first two decades of the evolution of the religion and those who base their opinions of the religion itself based solely on the Quran would be greatly mistaken as the development of Islam continued long after the death of the prophet Muhammad in 632 A.D. Despite only covering

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<sup>28</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law*, (New Jersey: Princeton University Press, 1981) P18.

<sup>29</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law*, (New Jersey: Princeton University Press, 1981) P18.

<sup>30</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law*, (New Jersey: Princeton University Press, 1981) P18.

<sup>31</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P24.

two decades of the religion of Islam, the Islamic holy book is and has remained an integral part of the religion's history even within the contemporary period, the work of the Prophet Muhammad and his followers are held in high regards by the followers of Islam within the contemporary time due to their strong conviction to the speech of God. It goes without saying that developments to that the religion underwent after to death of Muhammad were constantly referred back to the Islamic holy book. The further development of Sharia Law and how it relates to women in particular will now be highlighted, how women are viewed in the eyes of Sharia and what life was like for women who lived under Sharia.

### **The development of Sharia and how it affected the lives of Women who lived under it.**

Islamic Law otherwise known as Sharia Law under its definition is: “God’s eternal and immutable will for humanity, as expressed in the Quran and Muhammad’s actions through the Sunnah, which is considered ideal Islamic law by all followers of Islam. The Quran only contains approximately ninety verses which directly and specifically address questions about Law and dispute that occurs within legally as it relates to Islam, Sharia is often referred to in order to resolve legal issues as the verses of God is incorporated into the legal system”<sup>32</sup>. During the lifetime of the Prophet Muhammad he had envisioned that the religion of Islam would reach beyond the borders of his homeland, the religious ideas were only contained with the Quran and not practiced as a social reality and questions were raised as it relates to how followers of Islam were to live their lives on the daily that would adhere to the spirit of the religion. After the death of Muhammad in 632 A.D. it was only then that the development of Islam was ushered forward by subsequent generations, such developments include; “The unfolding of Islamic thought, the fixing of the modalities of Islamic practice and the establishment of Islamic institutions”<sup>33</sup> was the result of the development carried out after the death of Muhammad as the state of Islam at the time of death of the Prophet was incomplete. It is important to highlight where Islamic Law originated and they would be the Islamic holy, the Sunnah and the Prophet Muhammad. The Quran to most Muslims is the revelation of God himself and it is considered to be the ultimate word of Allah and his revelations are thought of as his divine will to which man is to follow: “Here is a plain statement to men, a guidance and instruction to those who fear God”<sup>34</sup>. When consulting the Law, the Quran is often used as primary material as it is the source of Islamic values. While the Quran contains “prescriptions about matters that would rank as legal in the strict, narrow sense of the term, these injunctions, only comprise of eighty to ninety verses and the majority of the Quran contained passages which relates to broad, general moral directives which is used as a

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<sup>32</sup> Oxford Islamic Studies online, ‘Shariah’. <http://www.oxfordislamicstudies.com/article/opr/t125/e2168> [Accessed 02/05/19]

<sup>33</sup> Ignaz Goldziher, *Introduction to Islamic Theology and Law* (New Jersey: Princeton University Press, 1981), P32.

<sup>34</sup> John L. Esposito, *Women in Muslim family law* (New York: Syracuse University Press, 1982), P3.

guide by Muslims in order to live their life to the full aspiration in relation to the religion of Islam”<sup>35</sup>. The revelation of the Quran occurred during the lifetime of the Prophet Muhammad, approximately over a period of twenty-three years with a purpose of attempting to meet the needs of Islamic societies in places such as Mecca and later Medina. Over the course of this time it provided these societies with an Islamic ideology and therefore it allowed for places which did not follow or have an Islamic ethic to be supplemented with one. The implementation of Islamic values was significant in the development of an Islamic legal system in places such as Medina, however the structures that the Islamic legal doctrine replaces previous customs that were in place previously and new rules were implemented. Even with the old traditions replaced it did not measure up to Islamic standards, once such example of this is covered in John L. Esposito’s book “Women in Muslim family law”, Esposito relates that “the uses of alcohol and gambling were not prohibited and thus previous customs prior to the implementation of Islam continued to be practiced”<sup>36</sup>. Quranic verses further reinforce that gambling is viewed as a sin in the eyes of Allah:

*“They ask you [Prophet] about intoxicants and gambling: say, ‘There is a great sin both, and some benefits for people: the sin is greater than the benefit.’ They ask you what they should give: say, ‘Give what you can spare.’ In this way, God makes His messages clear to you, so that you may reflect on this world and the next”<sup>37</sup>.*

The uses of alcohol in particular is of importance to the religion of Islam as it was later prohibited for those who followed the religion to offer prayers while in a state of intoxication as it relates in the Quran that: *“You who believe, do not come anywhere near the prayer if you are intoxicated, not until you know what you are saying, nor if you are in a state of major ritual impurity though you may pass*

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<sup>35</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P3.

<sup>36</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P4.

<sup>37</sup> M.A.S. Abdel Haleem (translator): *The Qur'an* Al-Baqara: 2:19-20

*through the mosque*”<sup>38</sup>. These passages within the Quran reiterates the importance of worship within the presence of Allah and He does not wish to see what he deems as a sin, in this particular context the act of being intoxicated within the place of worship. In addition to the Quran as a source of Islamic Law, the other significant piece of the source of Shariah was that of the Sunnah of the Prophet Muhammad, the Sunnah was a compilation of writings that were attributed to the actions of the Prophet Muhammad during his lifetime. Throughout the history of Islam, the Quranic passages were given interpretations through the use of the Sunnah which gave the passages within the Quran a definitive meaning and how they should be carried out in social reality. This was so, as during the Prophet’s lifetime when he led Islam through its early stages of development, followers of Islam would often turn to him for his guidance and also to make decisions on their behalf. In its simplest form the “Sunnah of Muhammad is rooted within the Quran which instructs its followers to obey and follow the Prophet”<sup>39</sup>. The Sunnah of the Prophet Muhammad is spilt into three distinct parts, which are his verbal teachings, his actions and lastly his silent approval of certain actions that he had knowledge of. The prophet’s teaching and actions are found with the Hadith; the Hadith is the “Report of words and deeds of Muhammad and other early Muslims, which is held as an authoritative source of revelation and second only to the Quran. Hadith were collected, transmitted and communicated orally for a period of two centuries after the Prophet’s death and after that began to be compiled in written form and codified”<sup>40</sup>. After the death of the Prophet Muhammad there emerged a large number of Hadiths collected, which resulted in a mass diverse of writings attributed to Muhammad. This inevitably led to the problem as to which writings to the Prophet Muhammad were authentic and which were fabricated, the attempt to recognize which Hadiths were authentic led to the process of hadith criticism. Due to the nature of criticising certain Hadiths, several criteria were set in place when it came to deciding which Hadiths reflected truly on the actions of the now deceased

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<sup>38</sup> M.A.S. Abdel Haleem (translator): *The Qur'an* Al-Nisa’: 4:43

<sup>39</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P5.

<sup>40</sup> Oxford Islamic Studies online, ‘Hadith’. <http://www.oxfordislamicstudies.com/article/opr/t125/e758> [Accessed 03/05/19]

Muhammad; the criteria included: “that the writer of the Hadith in question had to be an adult who followed the religion of Islam, the writer must not have committed any actions that would have landed them in legal trouble, they had to possess a moral reputation and finally, they had to be sound of mind”<sup>41</sup>. All these characteristics which heavily used when judging the authenticity of the Hadith in question, as it was very important that the composer of the text shed a light on the prophet that was painted an accurate portrayal of the teaching of the Prophet. The second significant way in which Hadiths are judged is by the way the content of the text is written or “*Matn*” which is the: “Content or text of a Hadith report, along with its chain of transmitters, one of the two main parts of a hadith report”<sup>42</sup>, due to the number of Hadiths composed after the death of the Prophet, there emerged only a few Hadiths which have enjoyed a high reputation for being the most credible Hadiths which honoured the teachings and actions of the deceased Prophet, these Hadiths are: “the Sahihs of al-Bukhari (d. 870) and that of Muslim (d. 875)”<sup>43</sup>. Now that the roots of Shariah Law have been covered it is important to look at how the Quran made reforms to in order to improve the status of women within society along with the values of the Muslim family. Within the Quran the three main components that it aimed to tackle and reform were the issues of marriage, inheritance and divorce, these issues maintain a high position within Shariah as the Quran reflects a sense of concern for the role and status of women within Muslim society, it is important to look at the status of women in pre-Islamic Arabia in order to see how the lives of women were changed due to the incorporation of reform. Marriage for women in pre-Islamic Arabia was more of a formality as opposed to a consensual loving relationship with a husband of her choosing, the woman would therefore become the property of her husband as opposed to being his wife and an equal within the marriage. After the marriage she would follow tradition by moving with her husband to his tribe and while there she would bear his children. It very much portrays an image of women in pre-Islamic Arabia that they

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<sup>41</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P6.

<sup>42</sup> Oxford Islamic Studies online, ‘Matn’. <http://www.oxfordislamicstudies.com/article/opr/t125/e1468> [Accessed 03/05/19]

<sup>43</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P 6-7.

were merely used as a currency as the tribe of the woman once she was married conceded their rights over her and furthermore the woman once she bore her husband's children would relinquish her rights over them by way of a dower which further reinforces the idea that women were seen as a way to progress economically and also for reputation maintaining purposes. Not only are women treated as unequal within their marriages but also pre-marriage their behaviour was very much limited by her family as a strong emphasis was placed on her chastity as it was contingent on her family's reputation and also signifies a woman's fidelity which would therefore make her appear more appealing for a potential husband. It was clear that within pre-Islamic Arabia that women were very much subjected under their male figure whether it be her husband or her father, the purpose of women were solely used as a means to improve economically by way of the dower that a woman received when she left her husband tribe<sup>44</sup>, the custom of marriage designated women as nothing more than mere property under their male figures and to be exploited for economic gain. The low status of women regarded within Quranic verses: *"When one of them is given news of the birth of a baby girl, his face darkens and he is filled with gloom. In his shame he hides himself away from his people because of the bad news he has been given. Should he keep her and suffer contempt or bury or bury her in the dust?"*<sup>45</sup>. This shows that not only were women and girl held to a low regard within society but its roots go further as the thought and carryout out of female infanticide was an idea that was often flirted with within the male figure of the family, it again reiterates that women and girls were only used to prosper economically by way of the dower. The situation of the woman within a marriage was not much better as one would think being married off was good for the family, the woman also had to deal with her husband should he wish to take to commit bigamy. This was another way which shows that the woman within a marriage was not seen and treated as an equal within a marriage as she has no input on whether her husband could take another wife, she simply had to coexist with her. Within a Muslim marriage the man may have up to four wives simultaneously while the woman within the marriage is

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<sup>44</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P14.

<sup>45</sup> M.A.S. Abdel Haleem (translator): 'The Qur'an' Al-Nahl: 16:58-59

not allowed to take another husband. This shows the power imbalance within a Muslim marriage. Quranic verses highlight that unlimited polygamy is permitted: “If you fear that you will not deal fairly with orphan girls, you may marry whichever women seem good to you, two, three, four. If you fear that you cannot be equitable to them, then marry only one, or your slave”<sup>46</sup>. Due to the patriarchal structures that women in pre-Islamic Arabia lived under, the wife within the marriage is only permitted to marry one husband simultaneously to ensure that any offspring that she bears within the marriage; the children’s paternity is unquestioned and established. This is another way in which the woman is not treated as an equal partner of marriage that despite she bearing her children, she has no right over to them as they belonged to the family of her husband, furthermore a woman’s second marriage is rendered completely void and any children that born as a result of that marriage were excluded from inheritance as they are considered illegitimate and cannot be acknowledge as legitimate at a later date<sup>47</sup>. The subject of inheritance is another factor in which women are treated unjust, the customs of pre-Islamic Arabia in regards to the issue of inheritance is that it was utilised to maintain property within tribes in an effort to maintain the tribe’s strength and power, naturally inheritance is passed down along male members of the family and members who could fight and defend their possessions. Those who were excluded from the process of inheritance were: “underaged males, widows who were regarded as part of the estate and finally daughters who were no longer part of the family due to their marriages”<sup>48</sup>. Although there was an attempt to correct the issues of women being barred from inheritance, for instance within the Islamic community, emphasis on inheritance was placed within the family unit, the relationship between husband and wife and the relations between the children and their parents. By shifting the focus away from the family’s tribe unto the family unit allowed for more focus within a smaller group of people and therefore it crucially raised the status of women within society<sup>49</sup>. Through the Quran the rights of inheritance was granted to the

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<sup>46</sup> M.A.S. Abdel Haleem (translator): ‘The Qur’an’ Al-Nisa’: 4:3

<sup>47</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P20.

<sup>48</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P39.

<sup>49</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P39.

husband, wife and their children and in addition it permitted a number of close female relatives the right to inheritance who prior to this were prohibited so; they were granted inheritance to what is known as “Quranic heirs” where the deceased’s immediate family were granted a share of the estate should they be male. Female family members were granted a portion of the inheritance; however, they were only awarded a share that equal to one-half of that of their male family members<sup>50</sup>. While the Quran may have helped to raise the status of women in relation to inheritance, these reforms did not replace the existing legal practices and system as the Quranic reforms co-existed with the already implemented system within pre-Islamic Arabia. As aforementioned one way in which inheritance is divided within a Muslim family is that of the process of “Quranic Heirs”, under this system of inheritance the family inherits the amount as stated within the Quran: *“Concerning your children, God commands you that a son should have the equivalent share of two daughters. If there are only daughters, two or more should share two-thirds of the inheritance, if one, she should have half”*<sup>51</sup>. Once again the Quranic verses dictate that females within the family are to receive an unequal amount of an estates share as opposed to their male family members and because this is specifically stated within the Islamic holy book which is regarded as the word of God himself, there is no higher authority that can call into question the Quranic verses therefore leaving women at a disadvantaged state. The subject of divorce is yet another issue where women did not enjoy an equal standing, during pre-Islamic Arabia the right for a woman to divorce her husband was non-existent, whereas a husband within a marriage had the ability to divorce his wife at the drop of a hat, he simply had to utter the words and he would be divorced from his wife. This is what has come to be known as Talaq within Islam; the term denotes a Muslim man’s right to divorce his wife by the simple act of proclaiming it so. This level of power that men have over women in terms of marriage puts them at more of an advantage as the husband’s duty is to provide for their wife/wives therefore women are at an extreme disadvantage as they very much depend on their husbands for socio-economic security. Furthermore, women who

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<sup>50</sup> John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P39.

<sup>51</sup> M.A.S. Abdel Haleem (translator): ‘The Qur’an’ Al-Nisa’: 4:11

desire can do so by entering a process known as “Khul”, the Islamic term denotes: “Removal, usually used in the context of divorce within Islamic Law, the process entails that a woman may obtain a divorce by way of returning her dowry and also conceding any other financial obligations to her husband, unlike divorce that are initiated by husbands, this process initiated by the wife is irrevocable”<sup>52</sup>. Naturally women again are in a disadvantaged stage, despite being able to obtain a divorce it also comes with a financial catch; as aforementioned men enjoy significant socio-economic rights over their wives as they are their primary caretaker within the marriage by way of providing for them and therefore by divorcing their husband, the woman is put in a position where she has no money as she is required to return her dowry to her spouse’s family. Within the subject of divorce of divorce, another component where women are at a disadvantaged state is the method of a divorce is granted in the name of the woman, whereas men can divorce by the simply act of utterance, women on the other hand have to endure a waiting period which is known as “iddah”; the term denotes: “the waiting period a woman must wait after the death of her husband or a divorce, it is during this time where the woman cannot remarry. The waiting period in the case of a divorce is a period of three months, while the death of husband’s waiting period is four months and ten days”<sup>53</sup>. The waiting period exists so that in the case that pregnancy should occur with the three months of the “Iddah” that the paternity of the child is assumed to be the husband and therefore the responsibility to provide for that child falls unto him. The practice of “Iddah” is preached within the Quran; “Divorced woman must wait for three monthly periods before remarrying, and,, if they really believe in God and the Last Day, it is not lawful for them to conceal what God has created in their wombs: their husbands would do better to take them back during this period, provided they wish to put things right”<sup>54</sup>. The Quranic teaches that women should wait a fixed period of time should they wish to divorce their husband, again this portrays an image that the woman is not an equal partner within the sanctity of

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<sup>52</sup> Oxford Islamic Studies online, ‘Khul’. <http://www.oxfordislamicstudies.com/article/opr/t125/e1301> [Accessed 04/05/19]

<sup>53</sup> Oxford Islamic Studies online, ‘Iddah’. <http://www.oxfordislamicstudies.com/article/opr/t125/e971> [Accessed 05/05/19]

<sup>54</sup> M.A.S. Abdel Haleem (translator): ‘The Qur’an’ Al-Baqara: 2:28

marriage, while the Quran does preach that husbands should attempt to reconcile with their spouse during this period of “Iddah” the fact that they have to ability to end their marriage by simply saying to word divorce puts them in a higher position of power in a union which is supposed to see both husband and wife at an equal level of respect. It is clear that the lives of women in pre-Islamic Arabia very much put them in a disadvantaged state; they were represented fairly under the law, the prime examples of that being; marriage, divorce, inheritance and custody. Women were viewed as a means to progress economically and maintain a family’s reputation; this was achieved by the dowry that women received and by controller their actions by ensuring that they remain chaste as to not tarnish their family’s reputation and also ensure that they attract a suitable husband. Quite simply put the women were the property of their husbands as highlighted by Khaled Abou El Fadl in his book “Speaking in God’s name”; he asserts that a wife must obey her husband in all aspects of life; “If he orders her not to leave the home, not to work, not to visit friends, not to cook Indian food, or not to wear her grandmothers nightgown or curlers to bed”<sup>55</sup>, while El Fadl wording may sound humorous it denotes that woman obey her husband in all aspects of her everyday life. While the Quran may preach to treat women as equals, it is obvious that the preaching of equality has not necessarily translated unto to social reality; it is important to see how women are treated within a certain country to highlight that while the Quran may preach equality it may or may not always translate into real life.

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<sup>55</sup> Khaled Abou El Fadl, *Speaking in God’s name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001), P210.

### **The legal and social rights of women in within the contemporary time period**

The legal and social rights of women as covered in the previous sections very much portrays an image that the women were seen as lesser within society as reflected by how they were reflected legally and socially, they were disadvantages within their marriages as due to their Husband holding all the power over them; first and foremost they did not choose their husbands, they had to obey their husband's every whim, the ability to work was not an option for them, custody of their children was automatically bestowed to her husband's family. Not only were women disadvantaged legally but in terms of social rights; their right to inheritance was not on the same level, their male counterparts would receive more share of their inheritance while they gained on one half to that of their male family members. The role of women during pre-Islamic and early Islamic times was synonymous with submit and control and most of this inequality was often found and taught within certain Quranic verses. Khaled Abou El Fadl denotes that; "The Quranic discourse does not play the primary role in determinations of spousal obedience. The primary role is played by traditions attributed to the Prophet, the most notable of these being the one in which the Prophet reportedly says, "it is not lawful for anyone to prostrate to anyone""<sup>56</sup>. It is clear that there is a contradiction between what is preach and what is practiced in social reality; on one hand the teaching of the holy book Quran and the Prophet Muhammad as aforementioned that it is unlawful for any one person to prostrate themselves before another, but in contrast to that, while it may not explicitly state for a wife to prostrate themselves before their husband; the implication of obedience is very evident as women are required to obey their husbands in all aspects no matter how mundane it may entail, as detail by El Fadl entail that: *"If the husband wants to have sex, she should promptly submit. If she wishes to fast, other than in the month of Ramadan, she must obtain his permission. Furthermore, according to some traditions women must obey their husbands even when they are wrong and unjust"*<sup>57</sup>. These traditions very much indicate that women in relation to men were viewed as inferior as they were subject to extremely

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<sup>56</sup> Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001), P211.

<sup>57</sup> Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001), P210.

strict rules in regards to their everyday life, this notion is reinforced by Quranic teachings, in the holy book it asserts that: *“Husbands should take good care of their wives, with God has given to some more than other and with what they spend out of their own money. Righteous wives are devout and guard what God would have them guard in their husband’s absence”*<sup>58</sup>. The Quranic verses indicate that man was created to be the protect and maintainers of woman which very much pushes the idea that when man and woman were created, that God viewed women as inferior as he created one gender to excel the other. Once again, this highlights that the preaching of equality bestowed upon the Prophet Muhammad by God did not necessarily translate within the real world. In order to show the impact on how the role and status of women as evolved over time, it is necessary to narrow how Muslim women fared in a certain country. The country that I have chosen to examine would be Indonesia as the country his home to the largest amount of Muslim with an estimated figure of 207 million who adhere to the religion of Islam<sup>59</sup>. Ever since the post Suharto-era in 1998 where Indonesia’s president Suharto resign from his presidency, Islam within Indonesia experience a monumental social and nationally as the country underwent significant alterations. Much like pre-Islamic times, the practice of polygamy was a common occurrence within most Indonesian Muslims while on the other hand the practice of Polyandry was prohibited. Within Indonesian Muslims most believed that the practice of Polygamy was a part of Sharia, this was more often than not used as a justification by males in order to allow the practice to continue and by look at Quranic verses it is understandable that one would come to that conclusion. Furthermore, the Prophet Muhammad is understood by most Muslims for having a second wife and also that he was the second source of Sharia, so naturally his actions are held in high regards<sup>60</sup>. Nurmila argues that the context of the Quranic verses which contained the subject of Polygamy was aimed towards orphans after the many Muslim men were defeated in the Uhud War in 625 CE<sup>61</sup>, after the war it left many wives and children widowed and orphaned; therefore

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<sup>58</sup> M.A.S. Abdel Haleem (translator): ‘The Qur’an’, Al-Nisa’: 4:34

<sup>59</sup> ‘Islam in Indonesia’, <https://www.indonesia-investments.com/culture/religion/islam/item248?> [Accessed 06/05/19]

<sup>60</sup> Susan Blackburn, Bianca J Smith and Siti Syamsiyatun, eds, *Indonesian Islam in the new era* (Australia: Monash University Press, 2008), P23.

<sup>61</sup> Susan Blackburn, Bianca J Smith and Siti Syamsiyatun, eds, *Indonesian Islam in the new era* (Australia: Monash University Press, 2008), P23.

the remaining Muslim men who survived were appointed to be guardians to manage the wealth of the widows. However, there were men who wanted the wealth for themselves and therefore tried to mix their own wealth with theirs or marrying them when they reach the age of puberty in order to gain their wealth. The train of thought here was that by marrying the orphans they would not be required to pay a dowry and they could treat their new wives however they pleased as they no longer had anybody to protect them<sup>62</sup>. While there were those who had ill intent for marrying orphans, the Quran teaches that: “Give orphans their property, do not replace [their] good things with bad, and do not consume their property with your own – a great sin”<sup>63</sup>. The Quranic verses continue that if a man cannot be fair to the orphans, it instructs men to only marry one orphan as this will avoid bias; by looking at the verses at face value it would suggest that a man only having one wife would prevent him from doing harm and injustice as the Quranic verses instructs him to avoid misdoings take only a single wife. Despite the Quran preaching that a man should only take one wife, it is an unfortunate truth that the same principle preached was not the case within social reality, one could argue that women within polygamy marriages were just victims although in some cases the women within the marriages were just trying to make their marriages work such was the case with a woman named: Arsa, her husband Jajang and his second wife Lia as highlighted in Nina Nurmila in: “Indonesian Islam in the new era”. Arsa recounts that she and her husband Jajang were married for four years when he decided to take another wife; Lia, Jajang reasoning for taking another wife was due to his high sexual desires and especially during the time of Arsa’s menstruation period and after she gave birth. Naturally Arsa was not happy with her husband polygamy but she endured within the marriage which shows the level of agency that women had in their marriages<sup>64</sup>. In the case of Arsa she endured her husband’s polygamy and in addition co-existing with his second wife Lia, although she recounts that she enjoyed Lia’s company there was still a sense of weariness between the three of time and felt

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<sup>62</sup> Susan Blackburn, Bianca J Smith and Siti Syamsiyatun, eds, *Indonesian Islam in the new era* (Australia: Monash University Press, 2008), P24.

<sup>63</sup> M.A.S. Abdel Haleem (translator): ‘The Qur’an’, Al-Nisa’: 4:2

<sup>64</sup> Susan Blackburn, Bianca J Smith and Siti Syamsiyatun, eds, *Indonesian Islam in the new era* (Australia: Monash University Press, 2008), P34-35.

that her privacy was being entrenched on; but Arsa wanting to be a devout women refused to ask for a divorce from her husband<sup>65</sup>. This once again reinforces that despite Quranic verses teaching that women are to be looked after and treated equally and that only one wife should be taken by a man, it very much contradicts what is practiced in the Arsa's situation. The level of respect that women receive is very much indicated by the fact the Jajang did not consult his Arsa that he would take another wife, but rather he just assumed that the practice of polygamy was still his right as a man, again furthering the concept that the man held all the power of women in Muslim societies. In addition to the subject of marriage, the issues of a woman's role within the house and the practice of veiling are examples of subjects matters that were changed. Quranic verses dictate that women should remain within the household as the purpose of the is to not work as that is the job of her husband: "Stay at your home, and do not flaunt your finery as they used to in the pagan past; keep up the prayer, give the prescribed alms, and obey God and his messenger. God wishes to keep uncleanness away from you, people of the [Prophet's] House, and to purify you thoroughly"<sup>66</sup>. The Quran may teach that women should maintain themselves within the house, many Indonesian hold the same sentiment as aforementioned it is the duty of the husband to provide for their families and that the woman has no obligation to work. Rachmah Ida in her chapter "Muslim women and contemporary veiling in Indonesian *sinetron*" quotes the scholar Williams: "*We are not superwomen....so if I want to work then I must compensate for my absence by providing a maid to do my housework. Islam does not dictate that a wife must do all the housework... The husband does not do any of the domestic work*"<sup>67</sup>. This point of contention holds the opinion that it is the responsibility of the man to provide and earn to ensure financial security for his wife and family. On the other hand, one could argue that the equal sharing of work whether it be housework and the husband's occupation is important as both the man and the woman have an equal level of responsibility. Williams again offers a point of contention for

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<sup>65</sup>Susan Blackburn, Bianca J Smith and Siti Syamsiyatun, eds, *Indonesian Islam in the new era* (Australia: Monash University Press, 2008), P35.

<sup>66</sup> M.A.S. Abdel Haleem (translator): 'The Qur'an', Al-Ahzab: 33:33

<sup>67</sup> Susan Blackburn, Bianca J Smith and Siti Syamsiyatun, eds, *Indonesian Islam in the new era* (Australia: Monash University Press, 2008), P51.

this argument that: *“You have to look at the issue with [a] wider sense of the meaning of Islam in Indonesia... We are conscious of the threat of being uprooted by modernisation and rapid social change... Personally, I believe that the Prophet demands interpretations from followers as opposed to blind adherence”*<sup>68</sup>. The concept of blind adherence to the will of Allah can be traced back to the very definition of Islam, it emphasises that those who follow and adhere to the religion of Islam should be uphold to values of the Prophet and God himself but also to never lose a sense of free will, to be able to critically think about ones action and therefore avoid blindly adhering to God even if one feels immoral. By examining the lives of women within a certain country it brings up issues that while Quranic texts found within the holy book and the Sunnah, there is still a clear contradiction in what is preach by holy texts and what is practised within social reality, that the lives of women are held to one to a high standard in theory but in reality not every Muslim woman can profess that they were treated equally under the Religion of Islam.

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<sup>68</sup> Susan Blackburn, Bianca J Smith and Siti Syamsiyatun, eds, *Indonesian Islam in the new era* (Australia: Monash University Press, 2008), P51.

## **Conclusion**

By covering the development of the Islamic faith, it is evident that there is a clear contradiction in what the Islamic holy book of the Quran and Sunnah preach about women and the manner in which the teachings are carried out within social reality. The Islamic holy books teach that women within Muslim society on paper may have all their rights intact, the unfortunate reality for most Muslim women is that the teachings of the prophet Muhammad about women being equal to their male counterparts has not necessarily translated into the real world. Women in pre-Islamic times and in the early developments of Sharia were subject to being deprived of some legal and social rights that in the eyes of the west would be seen as atrocious. Women were disadvantaged within their marriages as they were subject to polygamy and their divorce rights were extremely limited as opposed to their husbands; in order to gain a divorce, they would forfeit their dowry, their only source of financial independence while their husband simply have to utter the word divorce and it would be so. The role and status of women very much became a synonymous with obedience and control, as men held significant control in their lives no matter what aspect; whether it be their husbands within the marriage or their fathers limiting their actions, such as placing an emphasis on their chaste in order not to tarnish their family's reputation. Without a doubt, what is preached with the religion of Islam and what is practiced in social reality, it does not always match up when it comes to the legal and social rights of women within Islam.

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