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**UNIVERSITY OF CAPE TOWN**

**FACULTY OF LAW**

LLM in Human Rights

Minor Dissertation

**Working Women in Cape Town: Reconciling Religious  
Beliefs and Modernity**

By

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**STATEMENT**

The present Research dissertation/ research paper is presented for the approval of Senate in fulfillment of part of the requirements for the LLM in Human Rights Law in approved courses and a minor dissertation/ research paper. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of the LLM in Human Rights Law dissertations/ research papers, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation/ research paper conforms to those regulations.

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## ABSTRACT

A patriarchal reading of the *Qur'ānic* verse 4:34 implies the subordination of wives to their husband within their families. The fundamental duty of the husband to support his wife materially has led to the entrenched notion of male protection of women. In exchange for such protection, the wife has the reciprocal duty of obedience to her husband, which may lead to the restriction of her right to work, amongst other rights. In contemporary societies where women are increasingly participating in the maintenance of the family, different interpretations of the verse are now becoming more influential than the patriarchal view. Allowing women access to equal opportunities on the labour market and to receive equal remuneration will not only contribute to the overall improvement of society but could also lead to the effective implementation of gender equality as required by international legal standards and religious doctrines.

**Keywords:** gender equality, spousal maintenance, patriarchal interpretations, right to work.

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## PREFACE

النساء سورة - <sup>1</sup> Qur'ān 4:34 Surat An-Nisā' (The Women)

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ  
 وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَإِلَّا فَضَّلَ اللَّهُ لَكَ مَا خَلَائِفُكَ  
 حَفِظَتْ لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّي تَخَافُونَ نُشُوزَهُنَّ  
 فَعِظُوهُنَّ بِطَوَّابٍ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنْ  
 أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا  
 كَبِيرًا



<sup>1</sup> Source: <http://quran.com/4/34>, Accessed on the 12 February 2013.

An english translation is incorporated in the body of the dissertation.

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## 1. INTRODUCTION

Universal human rights confer to each and every individual an inherent value and dignity that can be removed or lost only in particular and very rare circumstances. Although universal human rights are international by nature, they depend on the fertile grounds of national states to be effectively implemented and promulgated.<sup>2</sup> One of the main canals of implementation and promotion is through the family unit, which represents the heart of any functioning civil society. It has an important role for the socialisation of individuals and is directly linked to the balance and equilibrium of the community and country.<sup>3</sup> Therefore, the values determined and perpetuated within the familial context are reflected in the evolution of society and vice versa.

Unfortunately, it is within this crucially important familial nest that women tend to suffer the most from discrimination and inequality and their presence outside its boundaries is still being questioned under certain social and religious paradigms. Despite the increasing numbers of educated women entering the labor markets and shouldering the financial responsibilities of families, the conventional philosophies and stigmas attached to gender stereotypes still have a strong and persistent hold on the lives of women within their families, work places and societies.<sup>4</sup>

The aim of the present research is to analyse the views of working women of Muslim faith in Cape Town with regard to the religious precept of their husbands being their providers and maintainers. The traditional Islamic law obligation of husbands to maintain their wives is derived from the *Qur'ānic* verse 4:34, which reads as follows<sup>5</sup>:

‘Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband’s) absence what God

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<sup>2</sup> Carsten Smith, “Human Rights as the foundation of society” in Peter Lodrup & Eva Modvar (eds.), 2004, *Family Life and Human Rights*, Gyldendal: Oslo, 15-16.

<sup>3</sup> K.B Agrawal, “Family life and human rights” in Lodrup Peter & Modvar Eva (eds.), 2004, *Family Life and Human Rights*, Gyldendal: Oslo, 19-20.

<sup>4</sup> Amira El-Azhary Sonbol, “The Genesis of Family Law: How Shari’ah, Custom and Colonial Laws influenced the development of Personal Status Codes” in Anwar Zainah (ed.), 2009, *Wanted: Equality and Justice in the Muslim Family*, Sisters in Islam: Selangor, 179.

<sup>5</sup> Yusuf Ali Abdullah, 2000, *The Holy Qur’an*, Wordsworth Editions Ltd.: Hertfordshire, 23  
The dissertation chooses this particular version translated by this author because it is considered to be the most faithful rendering available in English.

would have them guard. As to those women on whose part ye fear disloyalty and ill conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance).<sup>6</sup>

The above verse has served as the basis for inequality between wives and husbands within Muslim societies for many centuries. As feminist author and Islamic law specialist Amina Wadud explains, ‘both the feminine aspect of voice within the text and the female voice about the text have been marginalized or erased in mainstream Islamic intellectual history’.<sup>6</sup> Therefore, the intended aim of the research is to offer a voice to working Muslim women in Cape Town on the *Qur’ānic* the verse 4:34 relating to spousal maintenance.

The information presented in this dissertation is primarily derived from one-on-one interviews and desktop research. The desktop research is reflected in chapters three to six while the one-on-one interviews and the analysis thereof is contained in chapter seven.

The first part of the dissertation presents the theoretical aspects of Islam and its sources. The norms and principles of Muslim personal law are presented in relation to marriage and gender equality and the views of different religious authorities on verse 4:34 are offered. To understand the present state of affairs in Islam, a historical account of the appearance and evolution of the religion within society is given. Thereafter, a chapter is dedicated to the place of women within Islam with an overview of the feminist current that has emerged over the decades. The presence of such currents since the beginning of Islam is underlined and an explanation is offered about how patriarchal views have contributed to the oppression of women within Islamic societies. The dissertation then focuses on the definition of marriage according to Islamic rules and presents the different verses relating to relationships between men and women. The main verse 4:34 is introduced as the central verse alongside the theory of natural differences. The concepts of protector and maintainer as well as the notion of *qiwama* (the husband’s authority) and *nafaqah* (maintenance)

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<sup>6</sup> Amina Wadud, 2004, “Qur’an, Gender and Interpretive possibilities”, *Hawwa*, vol. 2(3): 316-336, 321.

are explained. Different interpretations of the verse are underlined, ranging from gender-friendly perspectives to patriarchal ones.

The second part of the dissertation focuses on the right of a woman to work. After a theoretical presentation of the right, its application within a Muslim society is explored where the cultural norms and patriarchal teachings imply the exclusion of women from the public sphere. The right to choose is equally underlined. Taking into account the constant economic and social transformation of societies due to the influence of democratisation and extensive consummative markets, the structures available for women on the labor market are becoming more competitive and demanding each day. The language of rights may therefore be helpful in restoring the balance between the genders, especially in the field of work and financial gains within a patriarchal society.

The third part of the dissertation is formulated around empirical results collected from the field research, which are contained in chapter seven. The content of the interviews are analysed and regrouped before being compared to the previous theoretical sections. The situation in South Africa is presented and the question as to whether Muslim married women are subjected to the sole authority of their husbands in daily life is addressed. Moreover, the analysis offered in chapter seven provides an interesting observation around the question of reconciling religious beliefs and the right of women to work. Indeed, these two themes appear to be completely apposite to one another as the one submits women to patriarchal rules and the other encourages women to be emancipated and become independent. The themes illustrate the ever present dichotomy of restricting women in the private sphere of their homes as opposed to working and being visible in the public sphere. Furthermore, women participants in the project were questioned on the significance of the verse 4:34 to demonstrate which interpretation of the verse is most commonly understood among them. While taking into account the contemporary living conditions of the participants, an attempt is also made to try to reinterpret the verse within the context

of modernity and the human right of women to work.<sup>7</sup> The meaning and impact of the right of women to work on an equal basis to men is further elaborated upon.

The objective of the dissertation is to demonstrate if Muslim women in Cape Town accept, reject or ignore the role imposed on husbands as their providers and maintainers. The dissertation accordingly provides practical insight as to how these women reconcile their daily activities and personal initiatives with their religious beliefs.

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<sup>7</sup> Johannes, Morsink, 1999, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, University of Pennsylvania Press: Philadelphia, 158.

## 2. THE ORIGINS AND NATURE OF ISLAM

Kirmanj identifies three kinds of Islam. He describes the first as being represented in the *Qu'rān* and the *Sunnah*, which are subject to differing interpretations. The second is called 'Islamic jurisprudence' because it represents Islam as seen and interpreted by early Muslims and reproduced in the *Sharī'a*. A third type of Islam is identified as 'historical Islam' because it refers to the 'history of Muslims and their rulers, their influence on the *Sharī'a* and its implementation and the relationships between Muslims and non-Muslims throughout history.'<sup>8</sup>

Facchini, a French lecturer and prominent author, explains how the history of Islam is "not only the story of a spiritual adventure" but also one of "political and military adventure".<sup>9</sup> In Facchini's article, Prophet Muhammad who brought the message of Islamic to seventh century Arabia is depicted as both a religious and military leader who won wars and governed society through the application of rules received directly from God. Based on his research, Facchini asserts that the religious and political aspects were simultaneous and integral components of the foundations of Islam.<sup>10</sup>

### 2.1. Origins of Islam

The religion of Islam appeared as a new doctrine in the life of Arabs during the seventh century.<sup>11</sup> It particularly brought about dramatic changes to the status and role of women as determined by the pre-Islamic societies.<sup>12</sup> During pre-Islamic Arabia (also referred to as *Jahilliyah* or the 'Age of Ignorance'), women were considered as unworthy as slaves were and were denied any rights or position within society.<sup>13</sup> The Age of Ignorance describes the state of degeneration of the pre-Islamic society where there were no societal norms in place. In fact, the Arab society was composed of a

<sup>8</sup> Sherko Kirmanj, 2008, "Islam, Politics and Government", *Totalitarian Movements and Political Religions*, Vol. 9 (1): 44.

<sup>9</sup> Francois Facchini, 2010, "Religion, law and development: Islam and Christianity: Why is it in Occident and not in the Orient that man invented the institutions of freedom?", *European Journal of Law and Economics*, Vol.29:118-119.

<sup>10</sup> Idem.

<sup>11</sup> Fatima Tanzeem, 2007, *Marriage Contract in Islam*, Deep & Deep Publications PVT.LTD: New Delhi, 12.

<sup>12</sup> Idem, 31.

<sup>13</sup> Asghar Ali Engineer, 2005, *The Qur'an, Women and Modern Society*, New Dawn Press: United Kingdom, 122.

plethora of tribes, each maintaining their own tribal traditions and rules.<sup>14</sup> The shift in this reality appeared gradually with the introduction of Islam and its new set of rules, laws and moral principles.<sup>15</sup> Islam introduced women as legal entities<sup>16</sup>, thus endowing them with rights they had not previously enjoyed. They were therefore recognised as equal partners to men in families and society in general.<sup>17</sup> Most of the conditions triggering recognition of rights for women resulted from the customs and traditions of the pre-Islamic society. For example, prior to the advent of Islam, women were not considered in the line of succession and were prevented from inheriting their families' legacies. They were not allowed to freely choose a husband and were subjected to the latter's total authority as soon as they were wed. Although they constituted labor force and worked in their households or on fields, women were not remunerated for their efforts. Women were, in fact, considered burdensome to the family, which led to a high rate of female infanticide.<sup>18</sup>

Although Prophet Muhammad is known to have progressively revealed the word of God to his followers over a period of 23 years,<sup>19</sup> which improved the position of women, Islam's process of improvement for the status of women stopped shortly after his death and continued to degrade steadily after the death of the last of the Rightly-Guided Caliphs.<sup>20</sup> The term 'Caliph' designed the successor to the messenger of God who was elected by the community to create and maintain the conditions that would allow Islam to be fully implemented within society.<sup>21</sup> Due to the social context of patriarchy, men alone became responsible for the propagation and interpretation of the *Qu'rān* and *Sunnah*. This resulted in the exclusion of women's participation in the public and intellectual realms of society and a slow but constant disintegration of their rights under male dominance.<sup>22</sup>

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<sup>14</sup> Idem.

<sup>15</sup> Idem.

<sup>16</sup> Idem.

<sup>17</sup> Ronak Husni & Daniel L. Newman, 2010, *Muslim Women in Law and Society: Annotated translation of al-Tahir al-Haddad's Imra'tuna fi 'I-sharia wa 'I-mujtama*, Routledge: New York, 35.

<sup>18</sup> Muhammad Iqbal Siddiqi, 1984, *The Family Laws of Islam*, Kazi Publications: Lahore, 14.

<sup>19</sup> Note 6, Amina Wadud, 2004, 319.

<sup>20</sup> Idem.

<sup>21</sup> <http://www.missionislam.com/knowledge/The%20Rightly-Guided%20Caliphs.htm>, accessed on the 29 March 2013.

<sup>22</sup> Shaheen Sardar Ali, 1998, "Women's Human Rights in Islam: Towards a Theoretical Framework", *Year Book of Islamic & Middle Eastern Law*, vol.4: 150.

Islam first appeared on the African continent during the seventh century when troubles in Arabia forced part of its people to flee to Ethiopia. Thereupon, both Islam and Arabic, the language of the *Qur'ān*, spread throughout Africa. Today, African Muslims constitute one fifth of the world's Muslim population.<sup>23</sup>

## 2.2. Nature of Islamic rules

The two main sources from which all Islamic rules are derived are the *Qu'rān* and the *Sunnah*.<sup>24</sup> The *Qu'rān* constitutes the indisputable primary source within the Islamic worldview and heritage and as such, has led to revolutionary changes in the Muslim empire at all levels.<sup>25</sup> The totality of the verses must be read and understood in relation to each other because the *Qu'rān* is considered an integral whole and the process of isolating the verses would fail to convey the message of God.<sup>26</sup> The *Sunnah* is a recollection of the actions and sayings of Prophet Muhammad throughout his life. It is meant to serve as an example of how to live in perfect accordance with the word of God. For this reason, both the *Qu'rān* and the *Sunnah* are relevant in forming a Muslim's beliefs and daily behavior.<sup>27</sup> In cases where the *Qu'rān* and the *Sunnah* are not applicable, 'the community is directed to exert reasoning to deduce the law'.<sup>28</sup> Therefore, the techniques of *Ijma* (consensus), *Qiyas* (analogy), *Istihsan* (the public interest), *Istihab* (presumption of continuity) and *Urf* (local custom) would require that jurists exercise a degree of individual reasoning (*Ijtihad*).<sup>29</sup>

After the death of Prophet Muhammad, two main currents of thoughts namely, *Shia* and *Sunni* came into existence. Their separation was based on a difference of political opinion that subsequently led to doctrinal differences.<sup>30</sup> Within the *Sunni* tradition,

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<sup>23</sup> Margot Badran (ed.), 2011, *Gender and Islam in Africa: Rights, Sexuality and Law*, Stanford University Press: Chicago, 2.

<sup>24</sup> Semira Al Hadi, 2008, "Women and Islam" in Heinrich Boll Foundation, 2008, *Reflections: Documentation of the Forum on Gender*, Heinrich Boll Foundation, number 16: 78.

<sup>25</sup> Note 6, Amina Wadud, 2004, 320.

<sup>26</sup> Azizah Yahia al-Hibri, 2001, "Muslim Women's Rights in the Global Village: Challenges and Opportunities", *Journal of law and Religion*, Vol.15 (1/2): 60.

<sup>27</sup> Note 17, Semira Al Hadi, 2008, 78.

<sup>28</sup> Irshad Abdal-Haqq, "Islamic Law: An overview of its origin and elements" in Hisham M. Ramadan, (ed.), 2006, *Understanding Islamic Law: From Classical to Contemporary*, AltaMira Press: United Kingdom, 18.

<sup>29</sup> Idem.

<sup>30</sup> Women Living Under Muslim Laws International Solidarity Network, 2003, *Knowing Our Rights: Women, Family, Laws And Customs In The Muslim World*, Creative Design: London, 29.

four schools of law can be identified: *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali*.<sup>31</sup> Each school of thought had variations according to the cultural, political and socio-economic contexts in which they developed. However, they had one very important thing in common and that was their evolution within a patriarchal value system. Over the centuries, these different schools of interpretation have expanded throughout the world and have led to the present diversity of Muslim laws.

### 2.2.1. Distinction between *Sharī'a* and *Fiqh*

The extensive corpus of Islamic law is separated into two main categories: *Sharī'a* and *Fiqh*. *Sharī'a* literally means 'the path or road leading to the water'<sup>32</sup> thereby implying that it is the way of life. It is considered as the ideal and eternal law defined in God's will and revealed to Prophet Muhammad.<sup>33</sup> Other than being a set of moral guidance given to humanity, it may also be interpreted as the basis of specific legal rules on which social organization is based.<sup>34</sup> However, Khaled Abou El Fadl warns that '*Sharī'a*, for the most part, is not explicitly dictated by God' and that human interpretation is needed for its production and execution.<sup>35</sup>

*Fiqh* on the other hand, literally means 'understanding'<sup>36</sup> and is the result of the efforts of humans in an attempt to discern and extract legal rules from the sacred sources of Islam including the *Qu'rān* and the *Sunnah*.<sup>37</sup> *Fiqh*, being in essence of human origin and nature, is considered mundane and temporal and can be subjected to error, whereas *Sharī'a*, being in essence divine and sacred, is considered to be eternal, just and universal.

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<sup>31</sup> Idem.

<sup>32</sup> Ziba Mir-Hosseini, 2009, "Towards Gender Equality: Muslim Family Laws and the Shari'ah" in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*, Musawah/Sisters in Islam: Selangor, 25-26.

<sup>33</sup> Idem.

<sup>34</sup> Shannon Dunn and Rosemary B.Kellison, 2010, "At the Intersection of Scripture and Law: Qur'an 4:34 and Violence against women", *Journal of Feminist Studies in Religion*, vol. 26(2), 12.

<sup>35</sup> Khaled Abou El Fadl, "The Human Rights Commitment in Modern Islam" in Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family*, Musawah/Sisters in Islam: Selangor, 135.

Dr Khaled Abou El Fadl, born in Kuwait, is one of the leading specialists in Islamic Law and is a prominent scholar of Liberal Islam and Human Rights. He is a distinguished professor at UCLA in America.

<sup>36</sup> Idem.

<sup>37</sup> Idem.

A distinction between *Sharī'a* and *fiqh* becomes relevant in the context of analyzing the origins and purposes of certain family laws that are known to have discriminatory effects on women and society in general. Could it be that they derive from *fiqh* and may therefore not reflect the will of God? As Ziba Mir-Hosseini points out, several scholars, specialists and politicians have often equated *fiqh* with *Sharī'a* in popular Muslim discourses.<sup>38</sup> Since the process of understanding the divine rules cannot be done in a vacuum, the results of *fiqh* are consequently tainted by the surrounding cultural and social experiences.<sup>39</sup> As Muhammad Khalid Masud explains, 'this understanding was informed by social thought categories, either in the sense that the *Sharī'a* was revealed in a particular social context or that institutions were built to make *Sharī'a* socially acceptable.'<sup>40</sup> This may explain why certain *fiqh* texts are patriarchal in both spirit and form and have led to the denial of justice and equality that are otherwise intrinsic to the law of God.<sup>41</sup> Since Mir-Hosseini understands the concept of *fiqh* as nothing more than the human understanding of the divine will, she is able to argue for gender equality and justice for Muslim women without having to reject her faith.<sup>42</sup>

In order for any legal theories to become viable, they must resound with and accommodate the existing and concrete social needs of society. As time and context changes, so do social needs and ethics, thus leading to the need for a continued process of adaptation and adjustment of law.<sup>43</sup> The challenge posed by Islamic legal theory is to be able to strike a balance between the application of the different sources of law and their application and absorption by the society.<sup>44</sup> To allow the absorption of legal principals and ideas into the social tissue, religious texts need to be interpreted by the community. Although there is general consensus that the *Qu'rān* constitutes 'the immutable speech of God, the treatment of it as a simple rule book

<sup>38</sup> Note 23, Ziba Mir-Hosseini, 25-26.

<sup>39</sup> Amira El-Azhary Sonbol, "The Genesis of Family Law: How Shari'ah, Custom and Colonial Laws Influenced the Development of Personal Status Codes" in Anwar Zainah (ed.), 2009, *Wanted: Equality and Justice in the Muslim Family*, Musawah/ Sisters in Islam: Selangor, 180.

<sup>40</sup> Muhammad Khalid Masud, "Ikhtilaf al-Fuqaha: Diversity in Fiqh as a Social Construction" in Anwar Zainah (ed.), 2009, *Wanted: Equality and Justice in the Muslim Family*, Musawah/ Sisters in Islam: Selangor, 81-82.

<sup>41</sup> Note 23, Ziba Mir-Hosseini, 25-26.

<sup>42</sup> *Idem.*

<sup>43</sup> Note 24, Shannon Dunn and Rosemary B.Kellison, 33.

<sup>44</sup> *Ibid*, 19.

negates a historical tradition of interpretation in which the *Qu'rān* constitutes one source.<sup>45</sup>

The technique of *fiqh* as described above fits into the process of interpretation encouraged by Islamic legal tradition. Its development across the centuries as well as its diversity suggests that it is a continuous process that allows legal norms to remain relevant to the contemporary social context. Many scholars believe *fiqh* to be a 'social construction of the *Sharī'a*'<sup>46</sup> that allows for the harmonization of social and legal norms.<sup>47</sup>

### 2.2.2. Qur'ānic techniques to achieve social change: *Ijtihād* and gradualism

*Ijtihād* is the process of individual reasoning by qualified jurists applied to the principals of legal theory in order to discover God's divine law.<sup>48</sup> It is part of the practice of *fiqh*<sup>49</sup> and has been present and applied since the beginning of the Islamic religious movement.<sup>50</sup> *Ijtihād* constitutes a secondary source for the formulation of *Sharī'a* and is applied where solutions cannot be found in the *Qu'rān* or *Sunnah*.<sup>51</sup> It is considered to be a God-given duty whereby Prophet Muhammad encouraged the exercise of conscience amongst his companions and proceeded to make provisions for *Ijtihād* in the *Qu'rān*.<sup>52</sup> Since the *Qu'rān* guarantees the right to freedom of conscience, traditional Islamic jurisprudence states that scholars have the right to engage in their own interpretations to develop laws that would suit their jurisdictions more effectively.<sup>53</sup> Moreover, Wadud indicates that the centrality of the *Qur'ān* is based on a principle of continued rebirth and surrender to allow for the evolution and growth of spirituality.<sup>54</sup> Therefore, she asks 'how can the *Qu'rān* get trapped into any

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<sup>45</sup> Ibid, 13.

<sup>46</sup> Note 29, Muhammad Khalid Masud, 81-82.

<sup>47</sup> Idem.

<sup>48</sup> Note 24, Shannon Dunn and Rosemary B.Kellison, 29-31.

<sup>49</sup> Ibid, 14.

<sup>50</sup> Ibid, 33.

<sup>51</sup> Waheeda Amien, 2010, "A South African Case Study For The Recognition And Regulation Of Muslim Family Law In A Minority Muslim Secular Context", *International Journal of Law, Policy and the Family*, Vol.24 (3): 383.

<sup>52</sup> Note 24, Shannon Dunn and Rosemary B.Kellison, 29-31.

<sup>53</sup> Note 19, Azizah Yahia al-Hibri, 42.

<sup>54</sup> Note 6, Amina Wadud, 2004, 334.

fixed moment of historical articulation?’<sup>55</sup>

Early debates amongst scholars of different schools of thought about the role of human interpretation of the divine law led to the ultimate decision of closing the gates of *Ijtihād* during the ninth century.<sup>56</sup> By the term ‘closure of the gates of Ijtihad’, Muslim historians refer to the period where traditional scholars, especially the Sunni tradition, prohibited further use of individual reasoning on the main sources of Islamic knowledge and doctrines.<sup>57</sup> However, with the evolution of religious thought the refusal to utilize *Ijtihād* now appears to be more motivated by political incentives rather than religious ones. In fact, contemporary scholars of Islamic law debate whether the legal tradition did ‘effectively close the gates of individual reasoning during the ninth century.’<sup>58</sup>

*Ijtihād* is a crucial stepping stone to reform Muslim laws in the areas of marriage, divorce and inheritance.<sup>59</sup> The 2005 Arab Human Development Report entitled “Towards the rise of Women in the Arab world”, which is referred to in more detail later in the dissertation, indicates that the slow inclination to change certain personal laws of the Arab countries is due to the heavy and still present influence of the conservative nature of classical Islamic jurisprudence.<sup>60</sup> *Ijtihād* could therefore enable scholars and specialists to understand how the principles of gender equality could be applied within a legal context to the interpretation of verse 4:34.<sup>61</sup> Indeed, as Hadia Mubarak underlines, ‘it is only a position of academic vanity that would lead one to presume he/she can discover the intentionality of God in absolute terms.’<sup>62</sup> The whole mechanism of *Ijtihād* thus represents an innovative and stimulating way of understanding the will of God in an open and non-discriminatory context. For Wadud, in her role as Islamic scholar interested in improving the social conditions of Muslim

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<sup>55</sup> *Idem.*

<sup>56</sup> Note 24, Shannon Dunn and Rosemary B.Kellison, 29-31.

<sup>57</sup> Salih Kesgin, 2011, “A critical analysis of the Schacht’s argument and contemporary debates on legal reasoning throughout the history of Islamic Jurisprudence”, *The Journal of International Social Research*, Vol. 4(19): 157.

<sup>58</sup> Note 24, Shannon Dunn and Rosemary B.Kellison, 14.

<sup>59</sup> *Ibid*, 29-31.

<sup>60</sup> Regional Bureau for Arab States, *The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World*, United Nations Publications: New York, 19. Available at <http://www.arab-hdr.org/publications/other/ahdr/ahdr2005e.pdf>, accessed on the 11.02.13, 14:54.

<sup>61</sup> Note 24, Shannon Dunn and Rosemary B.Kellison, 14.

<sup>62</sup> Hadia Mubarak, 2004, *Breaking the Interpretive Monopoly: A Re-examination of Verse 4:34*, Koninklijke Brill NV: Leiden, 287.

women, *Qur'ānic* analysis is essential to determine to what extent Muslim societies are acting outside the principles and intent of the *Qur'ān* and to pave the way for change and evolution.<sup>63</sup>

The *Qur'ānic* philosophy of gradualism is another legal technique that has led to the incorporation of rules in social behaviors to bring about structural changes in society. It is based on the assumption that human consciousness does not change fundamentally in a short span of time but requires time for individual or social gestation. For example, when Islam wanted to introduce a ban on the consumption of alcohol in a society that was already accustomed to drinking alcohol heavily, it had to be imposed gradually first by implementing rules that prohibited alcohol on certain occasions and in certain areas, which thereafter progressively led to a complete ban. The *Qur'ān* therefore uses a gradual approach to change entrenched customs, beliefs and practices and has a particularly sensitive insight to the human's internal way of functioning.<sup>64</sup>

Islam cannot therefore be regarded as the sole problem behind the discrimination of women across the Muslim world. Cultures play a crucial contributory role as they continue to 'subscribe to *jahiliyyah* (pre-Islamic) values'<sup>65</sup> that Islam had the intention and will to combat, already since the time of the Revelation.

The following chapter presents the issue of gender equality in Muslim communities. The question of whether God has intentionally created an imbalanced power dynamic between a husband and a wife or between genders on a general scale is discussed.

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<sup>63</sup> Amina Wadud, 1996, "Towards a Qur'anic hermeneutics of social justice: race, class and gender", *Journal of Law and Religion*, vol. 12: 43.

<sup>64</sup> Note 19, Azizah Yahia al-Hibri, 55-56.

<sup>65</sup> *Ibid*, 54.

### 3. WOMEN AND GENDER EQUALITY IN ISLAM

Muslim women have been perceived to be victims of societal prejudice, submitted to the will of their husband and patriarchal societies, limiting their rights and restricting their well-being. However, Mohammad Shabir Khan suggests that Islam claims the importance of women within society and has designated the following four women to be the most respected women in its history: Asiya, the wife of the Pharaoh;<sup>66</sup> Mary, the mother of Jesus; Khadija, the wife of Prophet Muhammad; and lastly, Fatima, his daughter.<sup>67</sup> This illustrates a woman-friendly Islam that contrasts with the contemporary prejudicial reputation of Islam being a purely patriarchal religion. Although Prophet Muhammad, considered as the living *Qur'ān*, had a legendary respect for the female gender,<sup>68</sup> Islamic traditions and cultures have not spared women from being subjected to sexism and inequality within their families and communities.

In this chapter, the concept of gender equality is presented from both the Islamic and secular perspectives. In addition, the concept of Islamic feminism is introduced and discussed as a response to the ongoing oppression of Muslim women by virtue of religious and traditional teachings and beliefs.

#### 3.1. Gender equality as a concept

The contemporary status of women in Muslim countries is regarded as one of the lowest in the world because of its still prevailing patriarchal culture.<sup>69</sup> Moreover, the issue of gender inequalities has in the eyes of the world community become an element of division between Islamic and Western worlds.<sup>70</sup> It is considered to be 'at the core of certain Muslim countries' failure to democratize and is linked to a more general lack of tolerance.'<sup>71</sup> Therefore, it becomes useful to understand the concept of

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<sup>66</sup> known also to have saved Moses.

<sup>67</sup> Mohammad Shabir Khan, 2001, *Status of women in Islam*, APH Publishing Corporation: New Delhi, 9.

<sup>68</sup> Laleh Bakhtiar, 2011, "The Sublime Quran: The misinterpretation of Chapter 4 Verse 34", *European Journal of Women's Studies*, vol.18: 434.

<sup>69</sup> Micheal L. Ross, 2008, "Oil, Islam and Women", *American Political Science Review*, vol. 102 (1): 120.

<sup>70</sup> Idem

<sup>71</sup> Idem

gender equality within both the Islamic and secular paradigms.

From a secular perspective, gender equality is treated as a human right and is regarded as an essential pre-requisite for sustainable social and economic development.

Furthermore, gender equality does not concern only women but affects men as well.<sup>72</sup>

At an international level, the notion of equality between spouses receives a great deal of attention within the international human rights system. Indeed, several international conventions state the necessity of maintaining and encouraging equality within the familial sphere. For example, article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) protects women's rights to 'equality in marriage and family relations'.<sup>73</sup> It imposes a duty on States Parties to ensure that both spouses enjoy equal rights and responsibilities during the span of the marriage and at its dissolution. Those rights and responsibilities include the management and disposition of their property. Interestingly, Zainah Anwar remarks that the different provisions of CEDAW pertaining to justice and equality for women within the family and society correspond more to the *Sharī'a* than to actual family law provisions of certain Muslim countries.<sup>74</sup> Indeed, in her opinion, the laws enacted by certain governments do not reflect the essence and intention of the *Qur'ān* and mostly focus on reproducing patriarchal domination. Similarly, the International Covenant on Civil and Political Rights (ICCPR)<sup>75</sup> sets forth the importance of equality in marriage and imposes a duty on States Parties to ensure the application of this principle in local contexts. Moreover, the United Nations Entity for Gender Equality and the Empowerment of Women also defines equality between women and men as the equal rights, responsibilities and opportunities available to both sexes.

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<sup>72</sup> Available at <http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm> accessed on the 28.02.13, 15:34.

<sup>73</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), United Nations document, General Assembly Resolution 34/180, adopted December 18, 1979, entered in force September 3, 1981.

Available at [www2.ohchr.org/english/law/cedaw.html](http://www2.ohchr.org/english/law/cedaw.html), accessed on the 24 September 2012.

<sup>74</sup> Zainah Anwar (ed.), 2009, *Wanted: Equality and Justice in the Muslim Family*, Sisters in Islam: Selangor, 20.

<sup>75</sup> Article 26, The International Covenant on Civil and Political Rights (ICCPR), United Nations Document, General Assembly Resolution 2200A (XXI), adopted December 16, 1966, entered in force March 23, 1976.

Available at <http://www2.ohchr.org/english/law/ccpr.htm>, accessed on 14 February 2013.

On a regional level, article 18 of the African Charter requires States Parties to take the necessary measures to eliminate all forms of discrimination against women.<sup>76</sup> In particular, the African Protocol on the Rights of Women demands the same right to equality between husbands and wives during and after marriage.<sup>77</sup>

In contrast, Muhammad Iqbal Siddiqi compares the principle of equality between secular and Islamic systems. In respect of the latter, he argues that the point of departure is the moral value of the human being whereas in the secular system, he believes it is simply a matter of mathematical equality where a man is considered to be equal to a woman. The fact that no differentiation is made between the roles played by men and women leads all human beings within the secular system to be treated as simple instruments within society, meaning that men and women alike fulfill a mechanical role to serve the society's purposes. There is no adaptation to the nature of their gender and the differences that are entailed. In Siddiqi's point of view, this particular result is unjust and immoral.<sup>78</sup> On the other hand, he considers Islam to be well adjusted to the differences between the respective physical constitutions of men and women, which make it more just and equitable.<sup>79</sup>

Fatima Tanzeem extrapolates on Siddiqi's line of thought by arguing that Islam aims to maintain equality and non-discrimination between the sexes without ignoring their differences, meaning that Islam makes an appreciation of the biological distinction between genders. She explains that a denial of difference between the sexes leads to a 'unisex society' where men and women are forced to fit into one single mold regardless of their gender.<sup>80</sup> She considers the 'unisex' model to be more restrictive and rigid in comparison to the model of division of labor along sex lines.

Furthermore, she defines equality as being distinct from identity and argues that the

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<sup>76</sup> The African Charter on Human and People's Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted June 27, 1981, entered into force October 21, 1986.

Available at [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf), accessed on the 14 February 2013.

<sup>77</sup> Article 6, Protocole to the African Charter on Human and People's Rights on the Rights of Women in Africa, OAU Doc. CAB/LEG/66.6, adopted September 13, 2000, entered in force November 25, 2005, in Johanna Bond, 2005, *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press: Durham, 188-189.

<sup>78</sup> Note 14, Muhammad Iqbal Siddiqi, 34.

<sup>79</sup> *Idem*.

<sup>80</sup> Note 10, Fatima Tanzeem, 73.

*Qur'ān* aims for a society where men and women are complementary and not competitive towards one another.<sup>81</sup>

The views of Siddiqi and Tanzeem are reinforced by the 2005 Arab Human Development Report, which states:

‘Equality between men and women does not mean denying differences. These differences may have emanated from biology but they have been consolidated and exaggerated by inherited culture to the benefit of men.’<sup>82</sup>

The perspective adopted in the above report suggests that respecting and understanding the biological differences between men and women could help advance the implementation of human rights for all citizens. It posits the view that such an approach can empower each of the sexes to acquire and use their respective essential capabilities efficiently and lead to an overall human development valuable for the Arab world in general.<sup>83</sup> The above research therefore affirms the principle of difference between the sexes without implying discrimination or a sense of superiority of one sex over the other. However, the contemporary practice underlines an opposite attitude where the principle of differences between sexes is used as a basis of discrimination.

In view of the presentation above, one can therefore wonder ‘if traditional gender norms stipulate that women should be obedient to their husbands and men should have authority over them, what does this mean for contemporary gender norms?’<sup>84</sup>

### **3.2. Gender equality as a reality**

Amina Wadud observes that the organisation of social orders tends to reflect the positions of privilege for some of its citizens above others. Furthermore, male-centered interpretations of the *Qur'ān* contribute to the establishment and

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<sup>81</sup> *Idem.*

<sup>82</sup> Note 48, *The Arab Human Development Report 2005*, 56.

<sup>83</sup> *Idem.*

<sup>84</sup> Note 24, Shannon Dunn and Rosemary B.Kellison, 26.

maintenance of social hegemonies like patriarchy within Muslim societies.<sup>85</sup> She explains

‘Patriarchy is not just about men, it is about persistently privileging one way of doing things, one way of being and one way of knowing. That way of knowing stems from notions about how the public space operates, based almost entirely on the way men have acted in that space, and the common perception that public space has greater significance than private space.’<sup>86</sup>

In light of the divine origins of the sources of Islamic law, male-centric understandings of the *Qur’ān*, which result in discriminatory Islamic law rules appear to be sacred and consequently become impervious to change.<sup>87</sup> To counter the dominance of patriarchal approaches to Islam, Islamic feminism emerged in the early 1990s and refers to the struggle for equal gender rights in Islam.<sup>88</sup> It encompasses a growing number of women engaged in a new reading of the foundational and canonical texts of Islam from a gender perspective.<sup>89</sup> Margot Badran, an important observer and theoretician of the Islamic feminist trend, defines Islamic feminism as:

‘A discourse of gender equality and social justice that derives its understanding and mandate from the *Qur’ān* and seeks the practice of rights and justice for all human beings in the totality of their existence across the public-private continuum.’<sup>90</sup>

Raja Rhouni explains that the Islamic feminist trend differs from the ‘secularist’ position, which considers Islam as being inherently opposed to women’s human rights and emancipation.<sup>91</sup> In fact, secularists believe that only the international human rights system can guarantee rights for women. In contrast, Islamic feminism seeks to use the language of women’s rights without having to forsake Islam as a religious faith. In fact, the *Qur’ān* serves as the basis for their arguments in favor of women

<sup>85</sup> Note 51, Amina Wadud, 1996, 49.

<sup>86</sup> Amina Wadud, “Islam Beyond Patriarchy Through Gender Inclusive Qur’anic Analysis”, in Heinrich Boll Foundation, 2008, *Reflections: Documentation of the Forum on Gender*, Heinrich Boll Foundation, number 16:101.

<sup>87</sup> Feryal M. Cherif, 2010, “Culture, Rights, and Norms: Women’s rights Reform in Muslim Countries”, *The Journal of Politics*, vol. 72(4): 1145.

<sup>88</sup> Idem.

<sup>89</sup> Raja Rhouni, “Deconstructing Islamic Feminism: a look at Fatima Mernissi” in Margot Badran (ed.), 2011, *Gender and Islam in Africa: Rights, Sexuality and Law*, Stanford University Press: Chicago, 69.

<sup>90</sup> Margot Badran, 2006, *Islamic Feminism Revisited*, 1.

Available at

<http://scholar.google.com/scholar?hl=fr&q=margot+badran+definition+of+islamic+feminism&btnG=&lr> accessed on the 19 February 2013.

<sup>91</sup> Note 75, Raja Rhouni, 69.

rather than perceived as the rationale behind the persecution of and discrimination against women.<sup>92</sup>

Asma Barlas further distinguishes between Islamic feminists and Muslim feminists.<sup>93</sup> In her opinion, the world is more generally acquainted with Muslim feminists and their view of an oppressive Islam due to their misogynistic perception of God. She suggests that it is not surprising that most Muslim feminists reject Islam as a religion.<sup>94</sup> She finds it unsurprising that ‘Muslim feminists don’t believe in a God and nor do they find it meaningful to engage the Qur’an, or even to read it’.<sup>95</sup> As such, her designation of Muslim feminists resembles Rhouni’s definition of secularists. Yet, Barlas points out that one must refrain from confusing the *Qur’ān* with patriarchal readings of the *Qur’ān*, which constitutes the essential difference between the two categories of feminists.

The distinction between the different types of feminism reflects the fact that Islamic and Muslim feminists express themselves differently and use different avenues to convey their opinions, needs and aspirations. Be it through politics, journalism, teaching or writing, they seem to agree that their societies need to be more egalitarian. However, they disagree on the causes for their position of inferiority and have different ways of addressing the issue. For some, the male elite is regarded as the responsible party; for others, it is the structure of the society itself that causes injustice to women. As explained earlier, while some blame religion or certain conventional understandings of religious scriptures, others see religion as a tool for progress. Hence, there is no one unique view of Islamic or Muslim feminism.<sup>96</sup>

Despite progressive declining levels of female participation within the economical and political spheres, Islamic history has witnessed its fair share of active feminism. In the Arab context, many Arab feminist movements came into existence during the early 1900s when the situation worsened to such an extent that women were formally

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<sup>92</sup> Idem.

<sup>93</sup> Asma Barlas, *The Qur’an, Sexual Equality, and Feminism*, University Of Toronto, 12 January 2004. Available at [http://www.asma-barlas.com/TALKS/20040112\\_UToronto.pdf](http://www.asma-barlas.com/TALKS/20040112_UToronto.pdf), accessed on 16 February 2013.

<sup>94</sup> Idem.

<sup>95</sup> Idem, 1.

<sup>96</sup> Note 5, Yusuf Sidani, 506.

excluded from receiving an education and participating in the public sphere. For example, Huda Sha'arawi, a famous contemporary Arab feminist, started her own movement in 1919 within Egypt.<sup>97</sup> Another Arab feminist of the 20th century, Al-Tāhir al-Haddād,<sup>98</sup> demonstrated how interpretations of classical Islamic scholars were undeniably influenced by the traditional practices of their time. From his viewpoint, Islam cannot be held responsible for being an obstacle to women's emancipation and progress and can instead become the key to their freedom. In his famous book, "Our Women in the *Sharī'a* and in Society", he highlights the reason for the West's rapid evolution as the active participation of women as equal partners with men in society, both within the private and public spheres. He therefore stresses the need for full equality between the sexes that would liberate women 'from the homes to which men confine them out of ignorance and misplaced jealousy'.<sup>99</sup>

On the African continent, feminist scholars like Fatima Mernissi have also contributed to the corpus of Islamic knowledge.<sup>100</sup> Mernissi, a Moroccan anthropologist, represents one of the major figures in the realm of Islamic feminism. Instead of choosing passages in the *Qur'ān* that support gender equality, she offers new readings of various verses of the *Qur'ān* by taking into consideration the historical and existing sociological contexts.<sup>101</sup>

By re-contextualizing and re-interpreting *Qur'ānic* verses, Islamic feminists engage in *Ijtihād* thereby enabling contemporary and relevant perspectives to comprehend the verses. By reopening the gates of *Ijtihād*, feminists claim that Islam can undergo a 'transformation from within'<sup>102</sup> as did Christianity over the last few centuries. Through this re-opening the gates of *Ijtihād*, Muslim women do not therefore have to necessarily reject their faith and subscribe to secularism in order to benefit from an improved status within their family and society.<sup>103</sup> Wadud explains that the explicit inclusion of female perspectives and experiences within the understanding and

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<sup>97</sup> Ibid, 499.

<sup>98</sup> He was a famous Tunisian reformist born in 1899 but who died at the age of 36 because of poor health and depression. As a political activist with revolutionary ideas, he wrote many articles on education, women's rights and worker's rights.

<sup>99</sup> Note 12, Ronak Husni & Daniel L. Newman, 25.

<sup>100</sup> Note 16, Margot Badran, 2.

<sup>101</sup> Note 75, Raja Rhouni, 73.

<sup>102</sup> Paul Cliteur, 2011, "Female Critics of Islamism: Liberal or Secular Islam?", *Feminist Theology*, vol. 19(2): 156-157.

<sup>103</sup> Idem.

teachings of the *Qur'ān* can lead to an effective improvement of women and their rights. The traditional discourse can be confronted with new dimensions and consequently influence human interactions.<sup>104</sup>

As far as *Qur'ān* 4:34 is concerned, feminists have had a tumultuous relationship with the verse. Much of the academic writings portray the battle of feminist scholars to come to terms with the essence and meaning of verse 4:34. In the next chapter, an attempt is made to provide a comprehensive analysis of it.

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<sup>104</sup> Note 6, Wadud Amina, 2004, 335.

## 4. MARRIAGE IN ISLAM

As pointed out earlier in the dissertation, marriage can be considered as one of the main starting points of a family. The dynamics within the family determine the role of each family member and contribute to its cohesion, communication and structure. In this chapter, a more detailed concept of marriage within the Islamic tradition is presented and an overview of the main duty of the husband to maintain his wife and children is provided.

### 4.1. Definition of marriage

Marriage in Islam is regarded as a sacred institution and is considered necessary for all Muslim men and women unless justified by valid physical or economic incapacity.<sup>105</sup> The Prophet Muhammad is reported to have advocated for marriage and even declared it a ‘meritorious institution’.<sup>106</sup> The main purpose for marriage in Islam is to regularise sexual relationships between adults to prevent immorality and obscenity and to ensure the procreation of children within a lawful union.<sup>107</sup> The *Qur’ān* describes marriage as involving a mutual relationship of love, comfort, support, protection and mercy between husband and wife. For example, verse 2:187 provides: ‘They (wives) are as a garment to you, and you as a garment to them.’<sup>108</sup>

Marriage in Islam is also a contract. It is described as having a double nature of worship (*Ibadat*)<sup>109</sup> and worldly affairs (*Muamalaat*)<sup>110</sup> and therefore constitutes a

<sup>105</sup> Note 14, Muhammad Iqbal Siddiqi, 28.

<sup>106</sup> Note 15, Shaheen Sardar Ali, 120.

<sup>107</sup> Note 14, Muhammad Iqbal Siddiqi, 29.

<sup>108</sup> Yusuf Ali Abdullah, 2000, *The Holy Qur’an*, Wordsworth Editions Ltd.: Hertfordshire, 23.

<sup>109</sup> Ibadat designs the acts of worship considered as the ‘five pillars of Islam’: a declaration of faith, prescribed prayers (salat), fasting (sawm), legal alms (zekat) and pilgrimage to the holy site of Mecca (hajj).

Recep Kaymakcan, “Religious Education Culture in Modern Turkey” in *International Handbooks of Religion and Education*, Vol.1, 462.

<sup>110</sup> Muamalaat designs the social relations in contrary to the religious relationship to God. It is within this category that status differences between men and women are inscribed and can therefore be changed as it is considered to be of a worldly rather than godly matter.

Shaheen Sardar Ali, *Conceptualising Islamic Law, CEDAW and Women’s Human Rights in Plural Legal Settings: A comparative analysis of application of CEDAW in Bangladesh, India and Pakistan*, 15. Accessed at <http://www.unwomensouthasia.org/assets/complete-study.pdf> on the 30 March 2013.

unique combination of comprising a civil contract and sacrament.<sup>111</sup> The legal essentials for a valid Muslim marriage include:<sup>112</sup>

- a) Proposal and Acceptance
- b) Competent Parties
- c) No legal Disability

The power dynamics within a marriage depend on the rights and responsibilities assigned to each spouse. Those rights and responsibilities can be classified according to two categories: inherent or negotiated.<sup>113</sup> Although they constitute two different categories, in some cases, ‘certain rights which are presumed to be inherent are in fact, negotiable.’<sup>114</sup> Depending on the local legal context, inherent rights are claimable by both spouses. They may also be reciprocal. It may further happen that the rights of one contradict the rights of the other.<sup>115</sup> For example, a woman’s right to work may be contradicted by her husband’s right to control her mobility. Rights that are generally considered inherent include maintenance, sexual rights, cohabitation and rights relating to the children. As such, they can be expanded, circumscribed or limited, but they can never be rejected or undermined.<sup>116</sup> However, as cited earlier, socially, as well as in some legal systems, inherent rights can be subjected to negotiated conditions in a marriage contract and are therefore classified as negotiable inherent rights.<sup>117</sup> This distinction is quite relevant for the present research as it may represent a possible solution for the conflict of rights between spouses. For example, a negotiated clause within a marriage contract may allow the wife to retain her right to work. Other negotiable issues include amongst others the level of maintenance, place of residence, educational options, mobility and travels, division of household chores, access to divorce and limitations on polygyny. Negotiable rights are therefore rights that become crucial in determining the balance of power between spouses and can offer women an important means of addressing the issue of gender inequalities.<sup>118</sup> As

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<sup>111</sup> Ibid, 303, 307.

<sup>112</sup> Ibid, 307.

<sup>113</sup> Note 21, Women Living Under Muslim Laws International Solidarity Network, 167.

<sup>114</sup> Idem, 153.

<sup>115</sup> Idem, 154.

<sup>116</sup> Idem, 155.

<sup>117</sup> Idem, 156.

<sup>118</sup> Idem, 167.

mentioned previously, the process of re-interpretation of the verse might take a little while to change the social perception of men's superiority over women so the concept of negotiated rights may offer an effective interim leeway for women's emancipation.

The specific rights and duties of spouses under Islamic law are discussed next.

#### 4.2. Rights and duties of spouses

In order to establish a successful relationship in marriage, the Sharia'h stipulates that the husband is the shepherd of his wife and children and as such, is answerable to God for them.<sup>119</sup> At the same time, the wife is the shepherdess of their children and her husband's wealth and possessions during his absence.<sup>120</sup>

The fiqh term for marriage namely, *nikah* indicates that the husband, 'by power of the marital contract is guaranteed conjugal rights'. However, he is not 'entitled to ownership of his wife.'<sup>121</sup> As such, the husband cannot claim to have power over his wife but only has a right to sexual intercourse. This notion of sexual possession and legal logic of 'ownership' (*Tamkin*) represents an issue for many feminists. As Mir-Hosseini explains, the underlying notion of a husband's ownership of his wife's sexuality leads to a general assumption that she is a commodity and can be seen as an object of exchange.<sup>122</sup> Furthermore, this same precept of sexual ownership by the husband serves as the foundation upon which rights and responsibilities are defined amongst the spouses.<sup>123</sup>

The rights of the husband involve reciprocal obligations of the wife, which include the following: Firstly, the wife owes complete obedience to her husband with regard to the gratification of his sexual needs. Secondly, she must not allow anyone into her husband's home without his consent. Thirdly, she is obliged to guard her husband's property and honor during his absence.<sup>124</sup> At the same time, Tanzeem points out that

<sup>119</sup> Note 107, Yusuf Ali Abdullah.

<sup>120</sup> Sallie Abdurraghiem (Sheikh, Cape Town), 1986, *The Book on Marriage*, Shaikhs Agencies: Cape Town, 9.

<sup>121</sup> *Ibid*, 3.

<sup>122</sup> Note 23, Ziba Mir-Hosseini, 30.

<sup>123</sup> *Idem*.

<sup>124</sup> Note 14, Muhammad Iqbal Siddiqi, 47.

the wife's duty of obeisance is to all *reasonable* commands of her husband and that the latter may place 'reasonable control over the movement of the wife.'<sup>125</sup>

On the other hand, the duties of the husband are intricately linked to finances. His first obligation is to award the dower (*mahr*) to his wife to secure her financial status during and after the marriage.<sup>126</sup> The second obligation is to provide maintenance to his wife and children within his means and irrespective of her personal state of finances.<sup>127</sup> This includes the provision of food, clothing and lodging. The third obligation is to provide a private residence for the wife.<sup>128</sup>

### 4.3. A husband's obligation to maintain his family

The obligation of a husband to maintain his wife/wives and children has been established in the following religious and legal documents. First and foremost, the obligation is enshrined in the *Qur'ānic* verse 4:34.

Hence, in Islamic law, one of the most important and irreversible consequences of a marriage is the duty of support owed by the husband to his wife from the moment that they marry. As the chapter progresses to show, the maintenance duty is understood to be a unilateral obligation from the husband to the wife and as such, has served as basis to an imbalanced marital relationship.

Secondly, the Universal Islamic Declaration of Human Rights<sup>129</sup> entrenches the *Qur'ānic* obligation for a husband to maintain his wife and children.<sup>130</sup> Its article XIX, entitled 'the Right to found a family and related matters', stipulates that 'every husband is obligated to maintain his wife and children according to his means.' In article XX, the Declaration also notes that every married woman is entitled to 'receive the means necessary for maintaining a standard of living which is not inferior to that

<sup>125</sup> Note 10, Fatima Tanzeem, 44.

<sup>126</sup> Note 14, Muhammad Iqbal Siddiqi, 106-109.

<sup>127</sup> *Idem*

<sup>128</sup> *Idem*.

<sup>129</sup> The Universal Islamic Declaration of Human Rights, September 19, 1981, Paris.

Available at <http://www.alhewar.com/ISLAMDECL.html>, accessed on 14 February 2013.

<sup>130</sup> Note 10, Fatima Tanzeem, 106-109.

of her spouse (...), irrespective of her own financial status, earnings, or property that she may hold in her own rights.’

Al Hadi further argues that the husband has the full responsibility to maintain his wife and children and this responsibility can neither be waived nor reduced with regard to his wife’s personal wealth or a possible income from her work.<sup>131</sup> Indeed, Islam does not impose a reciprocal duty of support on the wife to her husband.<sup>132</sup> She is free to spend her personal income as she wishes without having to honor any financial obligations towards her husband and children.<sup>133</sup> The amount of maintenance is generally determined by the husband’s means and level of income.<sup>134</sup>

If the husband is incapable of supporting his wife, she has the right to demand dissolution of the marriage. If she agrees to enter the marriage and take care of herself, then ‘no harm is done’. However, her right to demand maintenance remains valid throughout the marriage and if the man continues to be unable to maintain her, she may exercise her right to dissolve the marriage.<sup>135</sup>

A wife’s right to maintenance may also be lost if she is disobedient (*nashiza/nushuuz*) to her husband.<sup>136</sup> Disobedience means that she contravenes her duties as a wife and refuses to comply or be cooperative with her husband. For instance, if she leaves the marital home without her husband’s permission or refuses to gratify his sexual needs, these are considered examples of wifely acts of disobedience that could lead to her husband refusing to maintain her on legal grounds. It is thus a growing concern for a woman’s right to work because her right to work may be negated if a husband refuses to grant her permission to leave the marital home. The fact that there is a conditional relationship between a wife’s right to maintenance and her duty to obey her husband undermines the whole concept of maintenance as a beneficial factor for women.<sup>137</sup>

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<sup>131</sup> Note 17, Semira Al Hadi, 85.

<sup>132</sup> Sallie Abdurraghiem (Sheikh, Cape Town), 1986, *The Book on Marriage*, Shaikhs Agencies: Cape Town, 3.

<sup>133</sup> Note 17, Semira Al Hadi, 85.

<sup>134</sup> Note 21, Women Living Under Muslim Laws International Solidarity Network, 217.

<sup>135</sup> Note 102, Sallie Abdurraghiem, 6.

<sup>136</sup> David Pearl and Werner Menski, 1998, *Muslim Family Law*, Sweet and Maxwell: London, 182.

<sup>137</sup> Note 21, Women Living Under Muslim Laws International Solidarity Network.

Azizah al-Hibri suggests that Islamic law allows for a differentiation between financial rights and obligations to provide women with added security in a patriarchal context.<sup>138</sup> By imposing a financial obligation on the husband, the *Qur'ān* concretely contributed to advancing the welfare of women and helped to improve their situation in the context of the seventh century. However, as illustrated above, this financial responsibility also has adverse implications. For many scholars, the husband's duty to maintain has served as a basis to justify men's superiority over women, especially within marital relationships. In fact, by perpetuating the concept of men as heads of the household, it has contributed to the disempowerment of women and kept them locked in a lower status.<sup>139</sup> In addition, such perspective of the husband being the head of the household has led many Arab countries to enter reservations to article 16 of CEDAW, because they do not want to be bound by the stipulation of equality between spouses in familial matters.

Yet, the contemporary economic situation no longer corresponds to the patriarchal society of the seventh century where women needed their husbands to provide for their financial security. Nowadays, many wives are forced to enter the labor market and help their husbands provide for the family.<sup>140</sup> Many social factors such as alcoholism, drug addiction, the practice of polygyny and male unemployment have impacted negatively on the husband's ability to be the sole provider for the family. Moreover, women have been exposed to increased levels of education and skill-building opportunities that enable them to earn an independent income. These reality checks contribute to the final observation that rules defining men as the sole provider of the household, which gives them power over their wives can no longer be relevant and applicable in our contemporary world.<sup>141</sup>

#### **4.4. Verse 4:34 and gender inequality**

As indicated previously, verse 4:34 is used to justify and perpetuate male superiority over women. Under the auspices of having a protective role, men have subjugated

<sup>138</sup> Note 19, Azizah Yahia al-Hibri, 47.

<sup>139</sup> Note 21, Women Living Under Muslim Laws International Solidarity Network.

<sup>140</sup> Note 48, *The Arab Human Development Report 2005*, 191.

<sup>141</sup> Note 114, Women Living Under Muslim Laws International Solidarity Network, 218.

women through their power and authority.<sup>142</sup> Verse 4:34 also provides the basis for major criticism of Islam being seen and understood as justifying sexism and being disrespectful of human rights.<sup>143</sup> It therefore represents the crux of the battle for equality within an Islamic paradigm.

Sheikh Abdurraghiem Sallie and Siddiqi explain the significance of verse 4:34 in physical terms for the establishment of a man's superiority over a woman. They suggest that a husband's superiority over his wife must be understood as only a physical form of superiority. In particular, Siddiqi claims that the concept of men's dominance over women is based on the principle of division of labor. Given their assumed superior physical strength, men are required to perform strenuous work to maintain the financial and social stability of the family. Women, on the other hand, are deemed to be physically fragile and due to their unique physical ability to give birth, they are attributed the work of the house and the upbringing and caring of the children and the household.<sup>144</sup> Thus, the husband has the duty to provide and protect his wife because of the advantage of physical strength that God has given to him. Consequently, the husband is given more rights than his wife, which is fortified by verse 2:228,<sup>145</sup> which reads: 'And women shall have rights similar to the rights against them in justice, but men have a degree over them.' The process of argumentation offered by Sallie and Siddiqi serves to institutionalize traditional gender stereotypes and roles within society.

Siddiqi questions the achievement of fairness and justice in asking 'the one who is already burdened by nature' to shoulder all the heavy duties of society and the family. In his opinion, it would be 'sheer injustice and inequality' to ask women to assume more tasks than what they already have to fulfill because of their natural attribution.<sup>146</sup>

Although Tanzeem accepts the argument of natural differences whereby different roles are ascribed to the sexes, she argues that a husband's duty to maintain is not

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<sup>142</sup> Note 76, Margot Badran, 2006,4.

<sup>143</sup> Note 56, Laleh Bakhtiar, 432.

<sup>144</sup> Ibid,16-17.

<sup>145</sup> Note 93, Yusuf Ali Abdullah, 29.

<sup>146</sup> Idem.

constitutive of his physical superiority. Rather, it is a form of compensation for the wife's responsibility in child bearing. Tanzeem suggests that the theory of natural differences should not be perceived as a form of inequity between sexes but rather as a way of balancing the responsibilities between a man and a woman.<sup>147</sup> In contrast to her male counterparts, Tanzeem uses the same principles of Islamic foundations but offers a perspective that highlights the wife's responsibilities in marriage rather than the husband's.

One of the main consequences of a wife being maintained by her husband is that her role as the family caretaker is reinforced. Hence, she has less or no time to work and acquire her own property because all her energy is directed toward caring for the family. If the marriage ends, the time and energy that went into her caring function remains unaccounted for. She may find herself in a position where she has not been able to acquire property such as assets or salary and she may also not be able to claim for her domestic efforts.<sup>148</sup>

The description of the institution of marriage within the Islamic tradition therefore corresponds with a patriarchal structure. As Agrawal explains, in a patriarchal family, 'the roles, responsibilities, control and distribution of resources are strictly determined by age, gender and generation'.<sup>149</sup> The authority lies with the male figure of the household with regard to the acquisition and distribution of the family's resources and women are expected to be silent in the family affairs. Such a non-democratic situation can often lead to abuse and violation of women's rights. Even nowadays, the family structure in the Muslim world continues to be the first institution that reproduces patriarchal relationships and values through gender discrimination.<sup>150</sup> Since the traditional understanding of a Muslim marriage would restrict women's rights within the family thereby conflicting with provisions of the ICCPR and CEDAW, it is understandable that certain Muslim countries have ratified those Conventions subject

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<sup>147</sup> Note 10, Fatima Tanzeem, 74.

<sup>148</sup> Margaret C. Oguli Oumo, "Property in Marriage Relations-Its legal implications for Women in Uganda" in Bond Johanna, 2005, *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press: Durham, 250.

<sup>149</sup> K.B Agrawal, "Family life and human rights" in Peter Lodrup & Eva Modvar (eds.), 2004, *Family Life and Human Rights*, Gyldendal: Oslo, 20.

<sup>150</sup> Note 48, *The Arab Human Development Report 2005*, 173.

to reservations based on the conflict between gender equality and the provisions of Islamic law on marriage and family relations.<sup>151</sup>

The extent of restriction of women's rights by her familial and marital obligations can be illustrated through the right to work. If subjected to her husband's authority, it may happen that the latter would object to her leaving her duties as a wife and a mother within the private household to assume exterior obligations. The following chapter treats of the right of a woman to work.

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<sup>151</sup> Ann Laquer Estin, "Human rights, Pluralism, and Family Law" in Peter Lodrup & Eva Modvar (eds.), 2004, *Family Life and Human Rights*, Gyldendal: Oslo, 215.

## 5. MUSLIM WOMEN'S RIGHT TO WORK

Across the Arab world, women continue to suffer from severe limitations on their participation in political, economic and social life, access to employment opportunities, high illiteracy and wage discrimination.<sup>152</sup> In comparison to men, they suffer from discrimination in the access, choice and remuneration of a job employment. It is crucial to understand the extent of the influence of gender prejudices on the right to work of a woman.

In most Arab countries, the ever-rising issue of unemployment presents a major concern with regard to economic stability. Unsurprisingly, Arab women are the most affected as their level of unemployment is higher than their male counterparts and constitutes one of the highest in the world.<sup>153</sup> More than ever, young educated women face daily challenges with securing appropriate jobs. Indeed, a large number of women have to resign themselves to low wage jobs, mostly in the agricultural sector, or to other career paths deprived of social security or other benefits.<sup>154</sup> It is important to stress that the high rate of unemployment is not solely due to the inability of Arab States to generate sufficient jobs for all. However, part of the problem resides with the negative impact of entrenched social biases against the employment of women.<sup>155</sup>

The 2005 Arab Human Development Report, which focuses on the rise of women in the Arab world, presents different factors contributing to the poor employment situation. To begin with, the Report states without ambiguity that the traditional view of men as the 'sole provider' of the family plays a pivotal role to blocking the employment of women in the labor market. This equally contributes to the fact that women are being less employed than men despite the increasing number of women who are willing to work.<sup>156</sup> Overall, men tend to be prioritized for accessing work opportunities and on top of that, receive better salaries and conditions of employment than women. As the Report further indicates, such a tendency disregards the fact that women are increasingly contributing to family income or becoming the sole provider

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<sup>152</sup> Yusuf Sidani, 2005, "Women, Work, and Islam in Arab societies", *Women In Management Review*, vol. 20(7): 501.

<sup>153</sup> Regional Bureau for Arab States, *The Arab Human Development Report 2009: Challenges to Human security in Arab Countries*, United Nations Publications: New York, 108-110.

<sup>154</sup> Idem

<sup>155</sup> Idem

<sup>156</sup> Note 48, *The Arab Human Development Report 2005*, 86.

of entire households due to the general downfall of local economies. Furthermore, women's difficult access to the labor market is exacerbated by the increasing rates of reproduction. Women are also still stigmatized by the existence of traditional and conservative labor laws requiring their husband's or father's permission to be able to work, travel or obtain funding from financial institutions. These structural restrictions constitute a major obstacle to Arab women's economic participation.<sup>157</sup>

### 5.1. Definition of the right to work

The right to work is one of the many substantial inalienable rights of human beings.<sup>158</sup> A woman's right to work is internationally recognized in the following legal instruments: The Universal Declaration of Human Rights (UDHR)<sup>159</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Social Charter, the African Protocol on the Rights of Women<sup>160</sup> and the United Nations Convention on the Elimination of All forms of Discrimination against Women (CEDAW).<sup>161</sup> Unfortunately, none of these instruments offer a complete definition of the nature and extent of the right to work, leaving States Parties with the freedom to provide content to the right depending on their national context.<sup>162</sup>

The right to work is viewed as a primary economic right that is absolutely essential for the attainment of social justice.<sup>163</sup> As Carole Cooper explains, by recognizing the right to work as part of the body of human rights, competent authorities would understand the economic and social costs of unemployment and their impact at an individual's personal level.<sup>164</sup>

The fundamental basis of the right to work furthermore does not lie in the mere opportunity that women have to search and obtain a job. Indeed, the right to work

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<sup>157</sup> Idem.

<sup>158</sup> Sandra Fredman, "Engendering Social and Economic Rights" in Goldblatt Beth & Mclean Kirsty (eds.), 2011, *Women's Social and Economic Rights: Developments in South Africa*, Juta & Co.: Cape Town, 30.

<sup>159</sup> Note 107.

<sup>160</sup> Note 76.

<sup>161</sup> Note 72.

<sup>162</sup> Carole Cooper, 2009, "Women and the Right to Work", *South African Journal of Human Rights*, vol. 25: 578.

<sup>163</sup> Ibid, 577.

<sup>164</sup> Idem.

guarantees women access to other fundamental rights through employment, for example, women can access the right of childcare which enables them to combine the possibility of paid employment with child-caring responsibilities.<sup>165</sup>

CEDAW recognizes three major socio-economic rights, namely the rights to work (article 11), health (article 12) and credit, benefits and recreation (article 13). This section focuses on article 11, which imposes certain obligations on States Parties to allow for the full implementation of the right to work.<sup>166</sup> Firstly, it requires the protection of the right to work through proper national legislation. Secondly, it demands that States Parties ensure equal opportunities for training and employment and advocates for equal salaries for work of equal value, equal access to benefits, compensatory schemes and allowances in cases of disability and retirement. Thirdly, article 11 stresses the importance of prohibiting discrimination in the place of work on the basis of marriage, pregnancy and maternity with the introduction of paid maternity leave. States Parties are encouraged to provide proper social support structures to assist parents, especially mothers, to reach a more harmonious balance between family obligations and work responsibilities. Therefore, CEDAW supports the need to provide equality within the workplace, but also ensures that women are sufficiently aware, educated and armed to make use of their rights. Moreover, CEDAW demands the implementation of structural change to solve challenges limiting women to the private sphere. To do so, CEDAW addresses the causal factors for the public/private divide and tackles socio-cultural prejudices triggering the restriction of women to their homes.<sup>167</sup>

To fully eliminate discrimination against women, article 11 should be read in conjunction with article 5 of CEDAW. The latter demands that States Parties take all appropriate measures to modify the social and cultural patterns of behaviors of men and women with a view to eliminating all prejudicial customary practices based on the idea of inferiority or superiority of either sexes or stereotyped roles for men and women. As Spierings et al., point out, there are two major factors that directly impact

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<sup>165</sup> Vikki Turbine & Kathleen Riach, 2012, “ The Right to Choose or Choosing What’s Right? Women’s Conceptualizations of Work and Life Choices in Contemporary Russia”, *Gender, Work and Organization*, vol. 19 (2): 176.

<sup>166</sup> Note 64.

<sup>167</sup> Note 139, 27.

on women's employment globally.<sup>168</sup> The first is the formal economy and the level of economic development of the country and the second is the cultural and social heritage of the country (in the case of Muslim countries, the second factor is directly linked to the region and history to which the country belongs). Sandra Fredman argues that there should be further development in CEDAW's statements.<sup>169</sup> She suggests that the wording in this specific context is crucial to increase CEDAW's impact. Fredman believes that it would be inadequate to simply add equality as a socio-economic right. However, another relevant technique could be to transform the existing socio-economic rights through the principle of equality.<sup>170</sup>

The preamble of CEDAW further expects that 'the role of women in procreation should not be a basis for discrimination'. It is accompanied by a requirement to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women for the upbringing and development of their children. However, the fact that CEDAW emphasizes maternity rights without corresponding rights for fathers could lead to the assumption that it is women who are primarily responsible for childcare.<sup>171</sup>

In contemporary societies, women's level of education is increasing. Hence, their profiles are becoming relevant for professional positions within government and private sectors. Consequently, their entry into the labor force impacts directly on family structures and reconfigures social grids.<sup>172</sup> Women have to redefine their place in social institutions and develop new identities. Simultaneously, as women's socio-economic statuses gradually elevate, different forms of relations with their male counterparts emerge. Thus, women are perceived as a "politically salient group".<sup>173</sup> Through employment, they develop social interaction with other women, share ideas and concepts, collect and organize resources and contribute to socio-political reforms.

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<sup>168</sup> Niels Spiering, Jeroen Smits & Mieke Verloo, 2009, "On the Compatibility of Islam and Gender Equality: Effects of Modernization, State Islamisation and Democracy in Women's Labor Market Participation in 45 Muslim Countries", *Social Indicators Research*, vol. 90: 517.

<sup>169</sup> Note 157, Sandra Fredman, 31.

<sup>170</sup> *Ibid*, 29.

<sup>171</sup> Note 139, 28.

<sup>172</sup> Note 85, Feryal M. Cherif, 1147-1148.

<sup>173</sup> *Idem*.

In conclusion, one can understand how prominent the role of education appears to be in order to open the way to a better understanding of the possibilities available to women who want to work. The ability to seek one's right and understanding one's capabilities needs to be pruned and encouraged through an increased level of awareness and consciousness. By leaving the privacy of their homes, women enter the world of schools, work experiences and political powers, therefore exposing themselves to other influences, ideas and inspirations.

## 5.2. Balancing work and family life

In a study entitled “The Right to Choose or Choosing What’s Right?”, Turbine & Riach research the various factors impacting on women’s choice to work in Russia.<sup>174</sup> They affirm that women often understand the choice to balance paid and unpaid labor as a choice of ‘being unequal’.<sup>175</sup> In fact, by choosing to remain at home rather than proceeding to a paid job, they are choosing willingly to remain unequal. Despite this acceptance, women seem to consider that even when they ‘choose to be unequal’, they are economically challenged or deprived of their necessities. This presents a paradox for contemporary societies where women who have the freewill to have and take care of their families are disadvantaged at the employment level.<sup>176</sup> Turbine & Riach therefore highlight the fact that the boundaries between work rights and choices are often blurred. Indeed, navigating the right to work and the choice to work or not appears to be an illusionary task for many women worldwide.<sup>177</sup> In Muslim countries, this presents an even more difficult challenge because Muslim women are required to obtain their husband’s permission to be able to leave the house. Often, under the patriarchal influence, many husbands might feel that a working wife would tend to neglect her duties as a wife and as a mother. For some strict conservatives, such a situation would lead to the disastrous downfall of society itself. In accordance with their traditional line of thought, a woman’s essential and unique role lies within her responsibility as a mother and a wife to maintain the family unit.

## 5.3. Right to work in Islam

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<sup>174</sup>Note 145, Vikki Turbine & Kathleen Riach, 181.

<sup>175</sup> Idem.

<sup>176</sup> Idem.

<sup>177</sup> Idem.

Contrary to popular belief, the *Qur'ān* does not prohibit a woman's choice to work.<sup>178</sup> There are no verses forbidding women to participate in public and political life. In fact, despite the many rights denied to women before the advent of Islam, they were historically active in commerce and trade.<sup>179</sup> One of the most important female figures in Islam, Khadija, was a businesswoman. As Prophet Muhammad's wife, she played a pivotal role in his living conditions and was even, at one point, her husband's employer. Indeed, Khadija was highly autonomous and independent. Yusuf Sidani argues that her living style and behavior reflected prevalent practices in pre-Islamic societies.<sup>180</sup> Interestingly, Siddiqi points out that during early ages, women would engage in professional activity when it was needed.<sup>181</sup> For example, if women's services were required in educational or medical institutions, their social participation and activity were promptly encouraged. These perspectives offer an interesting precedent for contemporary women's emancipation.

Hence, under Islamic law, women have the right to vote, hold public office and contribute to socio-economic and political affairs.<sup>182</sup> Undeniably, there is increasing literature and research to counter popular discourses that Islam does not recognize a woman's right to work. Sidani, for example, states that there are a growing number of Muslim scholars and Arab feminists who promote the view that women's work is not anti-Islamic.<sup>183</sup> Nonetheless, Sidani suggests that these advancements are neither conclusive nor have much impact. The different forms of activism and feminist discourses initiated in the 1900s have contributed to the increasing participation of women within the work arena but remain insufficient.<sup>184</sup>

The lack of equality between men and women cannot be solely attributed to the role of traditional Islamic discourse. There are additional factors hindering female participation in the work arena. For instance, prevailing cultural norms issued from tribal heritage and legacy are far from being based on religion and similarly oppress

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<sup>178</sup> Note 12, Ronak Husni & Daniel L. Newman, 39.

<sup>179</sup> Note 5, Yusuf Sidani, 499.

<sup>180</sup> *Idem*.

<sup>181</sup> Note 14, Muhammad Iqbal Siddiqi, 49.

<sup>182</sup> Note 15, Shaheen Sardar Ali, 126.

<sup>183</sup> Note 5, Yusuf Sidani, 509.

<sup>184</sup> *Ibid*, 508.

women by prohibiting their involvement in the socio-economic development of communities. Thus, as pointed out by Sidani, there is often a tendency to confuse religious views that is, the ‘ulama’s’ strict understanding with long-standing traditions and customs.<sup>185</sup>

Since in most cases, legal or customary provisions become irrelevant, as they do not reflect the realities of women’s lives, the right to work can be negotiated in the marriage contract.

#### **5.4. Right to work and gender equality**

The right to work has different consequences for the living conditions of Muslim women. On the one hand, it provides them with an exit from the private sphere to the public sphere. By doing so, women are able to attain economic independence and active autonomy. On the other hand, the right to work can be interpreted as being entirely based on a ‘male model of work’.<sup>186</sup> This male model is grounded in the definition and assumption of ‘work’ as a paid activity outside of the home. Fredman asserts that there is one fundamental way to enable women to truly exercise their right to paid work outside the home: the structure of paid work has to be transformed.<sup>187</sup> In other words, males and females must both participate in unpaid tasks and chores within the home and in the role of parenting. By instilling collective efforts in the private sphere, equality can be achieved. The ongoing and shared responsibility of both men and women for unpaid work will thus not reduce their ability to find adequate paid work.

The relationship between unpaid and paid work is also recognized in the African Protocol on the Rights of Women (‘African Protocol’).<sup>188</sup> The latter requires States Parties to acknowledge and take measures to ensure that both parents have equal responsibility for the caring and upbringing of the children. The African Protocol further stresses the need for recognizing the economic value of unpaid work within

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<sup>185</sup> Ibid, 504.

<sup>186</sup> Note 139, 30.

<sup>187</sup> Idem.

<sup>188</sup> Ibid, 32.

the private sphere.<sup>189</sup> Women's right to work, thus, cannot be dissociated from gender equality. Rather, it is imperative to highlight that the relationship between equality and rights is crucial to understanding socio-cultural dynamics that impact on the employment of women.

The relationship between equality and socio-economic rights is equally well represented in the Committee on Economic, Social and Cultural Rights (ICESCR) General Comment on Non-discrimination:

Discrimination undermines the fulfillment of economic, social and cultural rights for a significant proportion of the world's population. Economic growth has not, in itself, led to sustainable development and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.<sup>190</sup>

Such an observation illustrates the link between a patriarchal reading of the maintenance verse and the implementation of the right to work.

Discrimination between the genders impacts on the overall situation of society and its global advancement in terms of social and economical progress depends on a change of perspective on the role of women as active and valued workers.

### **5.5. Effective implementation of the right to work**

With regard to the conflict between secular and religious laws on a woman's right to work, it seems possible to resolve the situation through two ways namely, the Islamic discourse and the use of the language of rights. This section elaborates on both methods by providing concrete examples in the global context.

The situation in Pakistan illustrates how Islamic teachings can help empower women economically. Despite being a predominantly Muslim state, economic rights are increasingly implemented through the efforts of women themselves. A freelance

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<sup>189</sup> Note 76, The African Protocol.

<sup>190</sup> CESCR General Comment 20 on Non-discrimination in Economic, social and cultural rights (article 2, paragraph 2), E/C.12/GC/20 (2009) paragraph 1.

journalist, Ehsan Mahsood, interviewed several working Pakistani women who explained the different ways of avoiding existing barriers by using the teachings of Islam.<sup>191</sup> For example, a chemist explained how she included a clause in her marriage contract that would prevent any interference from her husband and his family with her career. As explained in the previous chapter dedicated to marriage in Islam, the contractual nature of a Muslim marriage allows for such negotiation between spouses and clauses to be inserted into the marriage contract.

Interestingly enough, Mahsood also reports that women from lower income populations feel less pressure to enter a marriage but are rather encouraged to study and work to be able to support the rest of the family. Ousseina D. Alidou notes a similar tendency in Nigeria when it comes to the tradition of seclusion (*kuble*). She explains how any form of *kuble* cannot exist in the lives of poor people from either urban or rural areas. Alidou states that this is due to ‘the severity of the material conditions of families at this lower end of the social hierarchy’. Such a situation therefore requires ‘the active engagement of all, men, children, women and elderly in seeking a livelihood’. Alidou’s work illustrates how the urgency and necessity of satisfying one’s basic needs remains ‘unencumbered by the cultural limitations of the laws of seclusion, be they religious or secular’.<sup>192</sup>

The second most effective method to implement the right to work is through the use of the language of rights. Also known as the rights discourse, the language of rights provides a strategic resource for conceding the meaning of work and family life.<sup>193</sup> Education and labor force participation are key concepts within the rights discourse. Both actively contribute to increase women’s employment by providing platforms for fostering new identities.<sup>194</sup> The emergence of these identities is directly linked to the improvement in women’s socio-economic status and positively impact on the way they are perceived within the society. Moreover, women’s active involvement in the awareness and use of their rights enable them to better influence state affairs and the

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<sup>191</sup> Masood Ehsan, 2005, “Women at work”, *Nature* [0028-0836], vol.433 (7025): 452-453.

<sup>192</sup> Ousseina D. Alidou, “Rethinking Marginality and Agency in Postcolonial Niger” in Badran Margot (ed.), 2011, *Gender and Islam in Africa: Rights, Sexuality and Law*, Stanford University Press: Chicago, 44.

<sup>193</sup> Note 145, Vikki Turbine & Kathleen Riach, 183.

<sup>194</sup> Note 85, Feryal M. Cherif, 1150.

economy.<sup>195</sup> In regards to the research question, one can wonder how to implement the right to work for Muslim women who are restricted by patriarchal readings of the verse 4:34. As the Pakistani experience demonstrates, women do not have to reject Islam in order to fulfill their desire to work and have a career. Furthermore, the survey illustrates how irrelevant the verse may become in the context of a weak and unstable financial situation, leaving women in such a context no choice but to work and help their family to survive.

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<sup>195</sup> Idem.

## **6. METHODOLOGY**

### **6.1. The importance of a qualitative study**

The intention of this research is to provide as complete a panorama of views around verse 4:34 of the *Qur'ān*. Hence, the cohort was non-randomly selected in order to assemble women of different statuses and backgrounds. The professions, trades and conditions of work of the women vary greatly. Some work out of freewill and have independent careers such as medicine or law while others work out of necessity in order to gain financial stability. Some of the interviewees are young Muslim women of marriageable age while others are older. They also emanate from different political and cultural backgrounds.

### **6.2. Research methods**

#### **6.2.1. Selecting the cohort**

Nine Muslim women from within the Cape Muslim community were approached as this specific geographic and cultural group provides a useful framework for the purposes of this dissertation. The interviewing process of the participants took place during January 2013 and was pre-approved by the Research Ethics Committee of the Faculty of Law at the University of Cape Town.

Participants were chosen according to three defined age groups: 18-30, 31-45 and 46-60. Three participants each were also selected according to the following three categories:

1. Women who choose to work
2. Women who work by necessity
3. Women who choose not to work

The six working Muslim women in categories (1) and (2) above were selected from different sectors including a bank, commercial center, non-governmental organization, private enterprise and a university. It is also deemed valuable to present

the insights of participants who choose to work in contrast to the opinions of participants who choose not to work as it provides an enlightening juxtaposition of the different interpretations of verse 4:34 relative to spousal maintenance. The research equally took into consideration the category of women who needed to work out of necessity because it proved to be a good basis to illustrate the necessity of interpreting and contextualizing the maintenance verse in contemporary social and economic contexts.

The participants were provided with information sheets (see Annexure appended to this dissertation) and were asked to indicate if they fitted into one of the three categories mentioned above. After having explained the purpose of the interview, the participants were presented with open-ended questions so as to extract the maximum of their personal views. The idea was to create a dialogue with the participants therefore the interviews were conducted on a one-on-one basis. Due to the impossibility of physically meeting with two of the participants, their interviews were conducted through emails and social network systems.

To respect the anonymity and confidentiality of the participants, they are described as follows and are referred to in the same way throughout the dissertation:

CATEGORIES	1: Work by Choice	2: Work out of necessity	3: Not working by choice
A: 18-30 Years	<b>A1</b> Gym Assistant	<b>A2</b> Bank Consultant	<b>A3</b> Beautician
B: 31-45 Years	<b>B1</b> Legal officer	<b>B2</b> Sales Assistant	<b>B3</b> IT consultant
C: 46-60 Years	<b>C1</b> Senior Pharmacist	<b>C2</b> Head Seamstress	<b>C3</b> Medical Assistant

### 6.2.2. Use of a questionnaire

The empirical research is based upon a questionnaire containing 15 questions that are articulated along the following three axes: a woman's relationship with her spouse ; with God ; and with society.<sup>196</sup> The choice of utilising a questionnaire was to avoid digression on issues of domestic violence, for which verse 4:34 is equally substantially influential.<sup>197</sup>

In the first set of questions, the participants were asked to describe what they perceived to be the perfect marital relationship, the duties of spouses and their own personal experiences as Muslim wives. The intention was to determine how influential the religious teachings are on their individual perceptions of marriage and spousal roles and to what extent religious teachings shape their daily behaviors toward their husbands and children. The second set of questions pertain to the participants' understanding of God's will with regard to gender equality in marriage. Verse 4:34 was presented to the participants for their personal analysis and interpretation to enable an understanding of how Muslim women relate to the gender inequality issues perceived within the *Qur'ānic* verse. Finally, a third set of questions were posed with the objective of probing the participants' views on the importance of the right to work for a woman in contemporary South African society. Questions on the necessary balance between the presence of women in the public and private spheres were included and the participants had the opportunity to express their own preferences.

The overall results enabled an analysis of the discrepancy between the reality of working Muslim women and the relevance of the *Qur'ān* in their daily lives.

### 6.3. Limitations of the study

Due to the scope of the dissertation, it focuses only on spousal maintenance for Muslim wives during marriage. Although current debates center on the role and duty of men towards their ex-wives during the *iddah* period (waiting period commencing

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<sup>196</sup> View Annexe.

<sup>197</sup> Note chapter 3&4.

dissolution of the marriage) and the post-*iddah* period, the dissertation does not deal with the *iddah* and post-*iddah* periods. The input of male voices on the subject has also been excluded although it would be interesting to contrast their views to those of women on the issue of verse 4 :34. Further research is therefore encouraged outside the scope of this dissertation to ascertain the views of men on the question of verse 4 :34 and their maintenance obligations during *iddah* and beyond *iddah* as well as to extend the research into other geographical and population groups.

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## 7. ANALYSIS OF EMPIRICAL STUDY

Following the explanation offered in the previous chapters of the different components of the research theme, the dissertation now focuses on the analysis of the empirical research conducted in the area of Cape Town. The nine female participants<sup>198</sup> were questioned on the following three themes: their relationship with their family; their relationship with God; and their relationship with society. Their responses to these three themes and the questions posed within those themes (see annexure attached) are discussed in the sections below.

### 7.1. Women and family

The five questions posed in this theme aim to understand the participants' view of their role as a wife and mother. They were asked to define the characteristics of a perfect wife and husband and to list the different essential elements that would lead to a harmonious family life and enhance relationships amongst its members. They were also asked to indicate where they learnt how to become a good wife and mother per Islamic teachings.

As indicated previously, Prophet Muhammad described marriage as an essential part of a devout Muslim's life.<sup>199</sup> His teachings explain that God created mates for all men and women so that they may dwell in tranquility. Moreover, he described the spousal relationship as one where God has placed love and mercy between the hearts of each partner.<sup>200</sup> Therefore, it cannot be denied that Islam advocates a relationship of reciprocity, love, mercy, kindness and understanding in order to achieve a harmonious and durable marriage. To achieve such a goal is part of one's spiritual journey towards God.

In accordance with the above approach to marriage, all nine participants described the ideal marital relationship as one based on mutual feelings of love, communication and understanding. In addition, trust, honesty, loyalty, commitment, respect and humility were also listed as important components of marriage. Participant A1 was the only

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<sup>198</sup> See page 10 for list of participants.

<sup>199</sup> Note 90.

<sup>200</sup> Verse 30:21 of the Qur'an.

one to add fun as a pre-requisite to a good marital relationship. She describes in her own words that ‘if we cannot laugh together, then we are not going to last long’. Participants A2 and A3 mention the importance of spending time together and doing activities as a couple to strengthen the relationship and improve communication. Interestingly, only participants from age group A (18-30) explicitly express the need to spend time together as a couple, either through activities or sharing jokes. The older age groups were more comfortable with keeping to the traditional definitions as per described in the *Qur’ān*, that is *communication and understanding between the couple*. In addition, elements necessary for a harmonious family life include the necessity to practice religion as a family. Five participants cited the following motto, ‘A family that prays together, stays together’, which reflects the essential role of religion in family life. Therefore, the overall perception of all nine participants for a perfect marital relationship and harmonious family corresponds to the *Qur’ānic* vision described by Prophet Muhammad.

With regard to the description of a perfect wife, there was consensus amongst all nine participants in their responses. Although participant C2 bluntly states ‘that there is no such thing as a perfect wife’, the answers of all participants were similar, proving that there is a common perception amongst them of what is required of a woman in her family. Firstly, all nine participants indicate that it is essential for a wife to be a good mother. To do so, they have to be available at home, take care of the children, feed them and be in charge of the household chores and care. In addition, they have to educate their children on religious matters and have enough time to be emotionally present. Participant C1 states ‘as a mother, you have to be there for your kids and love them, hold them in your arms and listen to them’. Participants B1, B2, A3 and C3 mention that a wife and mother should be able to ‘display affection’ towards her children.

Secondly, a perfect wife should be equally available to her husband. This availability comes in different forms. For participants C2 and C3, it is crucial to be able to ‘listen to your husband on finances and family matters’ whereas participants A1, A2 and B2 mention being pretty and affectionate as important elements. Participant C1 is the only one to mention acceptance as a defining characteristic of a perfect wife. She elaborates by saying that accepting her husband as he is does not mean subordination

or submission, but rather proves a wife's capacity to love and be patient with her husband.

The consensus of opinions continues when participants described their understanding of a husband's duties and role within the family. All nine participants note that he has the primary duty to provide for the family's material needs. Participants A1, A2, A3, B1 and B2 use the term 'sole provider' whereas participant B3 uses 'breadwinner'. Participants C1, C2 and C3 explain that a husband's duty is to satisfy all the financial needs of the family. Furthermore, all nine participants describe the husband as being a 'leader', 'role model' or 'head of the household'. Participants A1 and B2 notes 'that as a husband, he commands respect and is the one everyone in the family looks up to'. Participants C1 and C2 mention the husband as being the role model for the children, especially in religious matters. The content of the duty of maintenance was the same for all participants and is defined as being the payment of rent, food, transportation, electricity, clothes, accessories and health-related expenses such as medicine and health insurance.

All nine answers reflect a vision of the husband as powerful, respectful and capable. His role as a provider, head of the household and leader of the family is clearly stated in their responses. On the contrary, despite the fact that six out of the nine participants are employed in different jobs, none of them mentioned the role of the wife as a financial provider. Furthermore, none of the participants indicate that a wife and a mother could be an example for her children and that she is, jointly with her husband, head of the household too. All nine participants expressed a vision of themselves that correspond with the traditional perception of women being subordinated to their husband's authority and therefore subscribe to the classic separation of gender roles. As mentioned previously, a patriarchal interpretation of verse 4:34 has led to the common perception that due to the physical differences between the genders, men and women hold a specific role within the marital relationship. This perception is reinforced through the empirical research undertaken in this study and demonstrates that women tend to reproduce the same stereotypes even though they may be living under very different social circumstances.

The above observation is linked to the fact that all nine participants learnt about their roles as wives and mothers at ‘madrassa schools’<sup>201</sup> during childhood and through the teachings of their parents, especially their mothers. None of the participants mentioned undertaking any personal enterprise to research and obtain more knowledge through reading, questioning *imams*<sup>202</sup> or attending courses. Notably, all nine participants obtained at the very least a matric (grade 12) pass at high school. It is therefore not a question of intellectual ability that presents an obstacle to the further acquisition of knowledge but perhaps a limited exposition to the different sources and availability of information. The empirical research suggests that the generic information propagated from generation to generation and by Islamic authorities promotes an understanding of marital relations that encompass hierarchical power dynamics. In the hope to curb the reproduction of stereotypes in the long term, young girls attending Islamic schools must be presented with fresh perspectives on the role of a wife and mother within the family.

The general observation with regard to the perception of the nine participants as wives and mothers can thus be summarized as being heavily tainted by traditional influences and conservative interpretations of verse 4:34. Although they conform to such stereotypes, none of the participants expressed any feelings of unease or rejection of their situation.

## 7.2. Women and religion

In this section of the questionnaire, participants were asked about their relationship with God. In relation to gender equality, they were asked whether they believe that God created men and women as equals and if they had any knowledge of the theory of natural differences as described in the previous chapters. Subsequent questions aimed at understanding their perception of verse 4:34 and its implications on the role

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<sup>201</sup> Historically, Madrassa was an educational institution specifically created to teach Islamic law according to one or more Sunni rites. Nowadays, the term has lost its original technical meaning and simply means ‘school’.

Gary Leiser, 1986, “Notes on the Madrasa in medieval Islamic society”, *The Muslim World*, Vol. 76(1): 16.

<sup>202</sup> An imam is the spiritual leader of the Muslim community and is used several times in the Quran to designate the Prophet and his successors.

Britannica Dictionary online, Accessed at <http://global.britannica.com/EBchecked/topic/283354/imam> on the 30 March 2013.

of the husband as ‘provider’ and ‘maintainer’. Finally, they were asked to describe the extent of inclusion of religious authorities in their lives and to share their opinion about whether or not Islam could be considered a religion that is respectful of women and their rights.

At the beginning of each interview, the participant had to qualify her level of religiosity on an approximate scale of one to five. The scale moves gradually from level one, representing someone who has no religious feelings or behavior to level five, representing someone who has a strong religious fervor and has accomplished all five pillars of Islam.<sup>203</sup> It was an interesting exercise for each participant to self-reflect on her own sense of religiosity and all participants took between two and five minutes to choose their position along the scale. The majority of the participants (six out of nine) judged themselves at level four, indicating a strong feeling of religious fervor. As participant B2 explains, the only reason that she cannot choose level five is due to the fact that she still has to accomplish the fifth pillar of Islam, that is, performing the holy pilgrimage to Mecca. Both participants C1 and C2 judge themselves to be at level five as they have already undertaken the pilgrimage to Mecca. The youngest of all the participants was the only one to qualify her level of religiosity as a level three. She felt that she was still struggling with her faith and although she considered herself to be a ‘good Muslim’, she ‘didn’t agree with everything’. The results explained above reinforce the general observation that many Muslim women remain deeply religious despite cases of injustice or discrimination perpetuated against them in the name of Islam. Their religious identity as Muslims is undeniably part of their wellbeing and central to their identity in both the public and private spheres.

The issue of gender equality amongst the participants seems to mirror the ongoing debate at the international level amongst scholars and experts. Indeed, the results collected reflect the myriad of opinions that were offered earlier in the dissertation. On the one hand, participants C1 and C2 negate the statement that God created men and women as equals. For participant C1, ‘husbands are superior in some situations, like in the household’ whereas for participant C2, it is clear that ‘women cannot be

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<sup>203</sup> See note 108.

bosses'. On the other hand, participants B1, B2, A3 and C3 all firmly believe that God created men and women as equals. Participant B1 explains that 'it is men's way of using religion to oppress women that has made people think that we are not equal to men'. Participant B2 expresses the importance of the *Qur'ān* as wanting 'equality for all Muslims' regardless of gender. Between these two opposing views, participants A2 and B3 choose a more mitigated position by saying yes but 'up to an extent' and 'in their own way'. In other words, God created men and women as equals but as participant A2 explains, 'men and women are still different from each other and do not have the same strength and weakness'. The remaining participant A1 articulates an ambiguous answer by saying firstly, that she does not think men and women are equal in Islam because there are 'very few rights for wives'. However, secondly, she does not think 'Allah did that like that' and she hopes he did not. Again, her confusing response may reflect her approach of researching and trying to understand more about her faith. In summary, the empirical research illustrates that there is no clear-cut consensus amongst the nine participants about their understanding of Islam's message on gender equality. The youngest participants hold an ambiguous position in contrast to the older generation who seem to maintain a firmer opinion. It is equally interesting to note the following paradox: the same two participants that qualified their level of religious fervor at five also agree that God made men superior to women.

The theory of natural differences was also presented to the participants. As explained earlier in the dissertation, certain scholars base their argument in favor of unequal treatment between the genders on their physical and biological differences.

Consequently, men being physically stronger are attributed the chores of working outside the home, protecting and providing for women. The latter, being biologically able to give birth are expected to fulfill their role as mothers and child care-takers in the privacy of their homes. None of the participants had heard of the 'theory of natural differences' but once the concept was explained to them, they were quick to acknowledge their understanding and content of it. Participant A2, in line with her opinion that 'men and women are equal in their own way', states:

‘It’s true because physically we are different and we are not as strong as men. But emotionally we are stronger, so maybe God did that to compensate each other’s weaknesses so we could live together. If we were equal in all we would not need to be with a man or a woman.’

Participant A1 accepts the physical differences between men and women but in her view, such difference should not constitute criteria for bad treatment and discrimination. Indeed, she believes that ‘women have more strength inside and men more strength outside but both are strong.’ Participant C2 thinks that the theory is true and ‘normal’. When probed about the significance of ‘normal’, she explains that a simple observation of men and women can prove that they are created differently and so, they have different roles to play. However, she denies the supposition that women should suffer from discrimination and oppression based on their physical and biological abilities. Indeed, although all nine participants agree with the theory of natural differences, none of them were inclined to use it as an argument to justify women being treated unfairly. Such an observation illustrates the pervasive effects of traditional and conservative thoughts within the general conscience of society. It is still present and deeply rooted in the practices but seems to have lost its justification over time. As the survey illustrates, no participants argued on the basis of the theological reasoning but seemed to rely on and perpetuate mechanically the traditional practices. Unfortunately, none of the participants took the extra step of rejecting or actively questioning the theory.

The maintenance verse (4:34) provoked a more proactive response from the participants. All nine participants were aware of the verse and the terms ‘provider’ and ‘maintainer’. The participants understood the terms ‘provider’ and ‘maintainer’ as ‘being the one to take care of our financial needs’, ‘taking care of the rent, food, transport, electricity’ and ‘making sure we have all that we need’. The content of the duty of maintenance described by the participants was thus in accordance with the theoretical input from scholars and experts. It was essentially centered around the satisfaction of material and basic needs of the wife such as rent, food, clothes, transportation, electricity and the more specific needs for the children, such as school fees and school activities. The participants were presented with two distinct translations of the verse, a popular version commonly referred to and a version

retranslated by a feminist Islamic scholar, Laleh Bakhtiar.<sup>204</sup> None of the participants were familiar with the gender-neutral translation offered by the feminist scholar.

Although all nine participants explicitly agreed with the content of verse 4:34, six proceeded to add some reservations. Participants A2, B2, C2 and C3 questioned the impact of the verse in today's society in light of economic constraints and difficulties. As participant B explains, 'in modern times, things can be different because sometimes the husband is unable to provide'. Participant A2 notes that 'sometimes the wife might need more for herself and for the family and it's hard for the husband to provide for all of it'. For participant C3, nowadays in the best interest of the children, 'the wife might need to help her husband provide'. Due to present circumstances, they therefore all concluded that the content of the verse might be too restrictive or 'rigid'. As participant A2 explains, 'in the end, it is about the expectations of the wife and discussion with the husband of what the family wants'. Participant C3 also believes that a good way of resolving the tension is through discussion and agreement with the husband. For participant B2, 'husband and wife should be able to discuss and come to an agreement on what to do in such a situation'.

Each participant was also asked whether or not they think that the husband's duty of maintenance is a basis for his authority in the household. Participant B2 explains that it does not affect his authority as long as they have 'a previous arrangement and if the husbands agrees to "pay back" the wife when he has money.' Participant C2 thinks that 'marriage is about love first, then money', so she does not think that a woman should not enter a marriage if the husband happens to be unable to provide and maintain her. Such observations show that participants are unable to accept the verse in its traditional understanding because it no longer reflects their daily realities. They do not necessarily expect their husband to be the 'sole provider' of the house because they realise that the present situation makes it practically impossible. Therefore, they seem to hold on to the symbolic authority of the husband although he does not fulfill concretely his duty. The fact that they are unaware of other possible translations of verse 4:34 also forces them to rely on their primary understanding of marriage as a relationship based on communication and understanding, without rejecting the verse

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<sup>204</sup> See Annexure.

in its totality. In a paradox manner, they maintain an image of their husband as the provider and maintainer despite the fact that such an image no longer fits with their reality. This echoes Fatima Mernissi's analysis of the gap between reality and the representation of reality. In her book *Beyond the Veil* she notes:

‘The ideas that we entertain about ourselves as individuals or as members of a national community are not to be confused with our pragmatic behaviors. The latter expresses us as reflecting entities. We all know how wide is the discrepancy between what we do and what we say to others (or worse to ourselves) that we are doing.’<sup>205</sup>

Amongst the three participants who comply with the traditional understanding of the verse, two voluntarily chose to stay at home and take care of the children (A3, B3). The third participant (A1) who is also the youngest participant feels that verse 4:34 constitutes one of the rare rights accorded to wives by Islam. When questioned further on the causal link between the right to maintenance and the duty to obey her husband, she appeared to be unaware of such a link. She viewed the husband's obligation to maintain as a unilateral duty and as such a privilege right for the wife.

When asked whether or not they would seek religious intervention in the case of marital disputes, the majority of the participants indicated that they would seek an *Imam's* guidance and counsel but only as a last resort. As participant B2 explains, ‘if you cannot sort it out first with your husband’ only then can one go to the *Imam* for advice. The necessity to resolve the conflict first between the couple before involving religious guidance may demonstrate that the principles of understanding and communication remain the main pillars of marriage for these participants. For participants A2, B2 and C3, the *Imams* are ‘generally helpful’ and can assist in finding the most peaceful solution for the parties. This might indicate that religious authorities still have significance in the lives of some Muslim women. In contrast, two participants each from categories A and C would not seek an *Imam's* counsel in case of marital disputes. For the two older participants, C1 and C2, a couple's problems are a private issue and should be resolved within ‘the walls of our home’. For the two younger participants, A1 and A3, it had not been an option that they had previously

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<sup>205</sup> Fatima Mernissi, 1987, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society*, Indiana University Press: USA, 10.

considered. When asked if they would do so in the future, A3 acknowledged that she might but only as a last resort.

The last question in the theme 'Women and Religion' aims to obtain an understanding of Muslim women's views regarding the patriarchal nature and influences of Islam and its effect on the overall wellbeing of Muslim women. All nine participants expressed surprise when presented with the proposition that Islam is criticized by forces within and outside the Islamic world as unfair and harmful for the emancipation of women. Although some participants like A1, C1 and B2 seemed to be familiar with issues of gender inequality and patriarchal influences, it remained a shock for all the participants, resulting in many defensive responses. Participant A2 feels 'they should go hear more before judging' whereas participant A1 feels 'disappointed because it shows how lack of education can be harmful'. She further suggests that 'ignorance can cause a lot of damage.' Participant B3 expresses her confusion and wonders 'how can someone justify saying such a thing' especially 'when we as Muslims have many great Muslim women who have paved the way for us as females to become good mothers and wives.' For C3, believing that Islam is not a religion for women cannot be true 'because the woman has the same rights as the man' and the only premises upon which a distinction can be made is on the deeds of one another. Similarly, participant B2 believes that Islam is not bad for women and concludes that 'Islam is not just a religion, it is a way of life'.

The above responses reflect a very protective attitude on the part of the participants toward Islam. This observation underscores a general tendency that has emerged throughout the research of passive acceptance of Islam, especially in its patriarchal form. There was no inquiry by the participants about the reasons that may have led to a critical vision of Islam. Furthermore, the responses illustrate that the participants consider their religious identity as an essential part of their personal grounding and personality. Indeed, they all perceived the general criticism of Islam as a personal attack against them.

### **7.3. Women and society**

The questions in this theme, which are dealt with in the paragraphs below aim to understand the participants' view of their role outside the private sphere of their home. They were questioned about the importance of a right to work for a woman and the impact it can have on their religious and familial duties. They were also prompted to provide their general vision of South Africa, specifically in relation to the exercise of their religious views and practice.

The first question interrogates the participants' views about the importance of the right to work for a woman. The majority of participants answered affirmatively as indicated by the table below:

Yes: 7	A1, A2, B1, B2, B3, C1, C2,
No: 2	A3, C3

Participants A1, A2, B1, B2 and B3 believe that women should have the right to work because it helps them to gain independence and it helps build their confidence in themselves. Participant A1 explains that 'women have goals and dreams too, they also want to succeed'. Participants C1 and C2 agree that women should benefit from the right to work because in today's reality, both spouses should bring an income into the home to improve the lives of the children. Participant C2 explains that 'if a woman does not help her husband to get money, the whole family will suffer' and so 'if the husband is a good husband he will allow his wife to work and the family will be better'. In fact, participant C1 adds that even if the husband alone can provide for the family's needs, his wife should still be able to work and keep 'her money for herself' to increase her own personal wealth. Participant B2 agrees that working enables more stability in a woman's environment.

However, the remaining two participants from the category of women who choose not to work think that 'caring for the family is most important' and that 'money is secondary'. Participant A3 thinks that a woman's work in her house is more important because 'anyone can replace' her at her job whereas 'no one can be a mother' to her children. She further points out that leaving her home to spend time outside puts herself at risk and may affect her children'. Participant C3 admits that 'when the

children no longer needs her', then she might resume work. But for the time being, her job is to take care of them and be there for them.

None of the participants used Islam to justify their choice to work or not. Their reasons for choosing to work or not are not based on religious reasons. Rather, they relate to their personal well-being and/or the well being of their family. The participants accepted that the husband has a right to decide whether they should work or not but none of them based their decisions on their husband's will.

The second question relates to the balance that women have to maintain between their family and their employment. All nine participants agreed that it is possible for a Muslim wife to be both a perfect mother and wife while having a job. However, for some of them, external conditions must be met to make the balance more achievable. For example, participant B2 explains that 'a Muslim woman can do both especially if she works with a Muslim boss because she can wear her scarf and have time out for prayers, so it is easier, there is more comfort and flexibility'. For participants A1 and C2, it can be possible as long as the husband is understanding and 'cooperates more in the house'. Participant A2 advises that although she has a job, she still has to make sure that her family is not affected and that she is 'available for her husband'. Her duties towards her family include timeous preparation of meals, helping the children with their homework, spending time with them and not being 'too tired to spend time with her husband'. Her situation reflects the general situation faced by thousands of working mothers worldwide. As explained in chapter six, women are accountable to two jobs: one within their families and one with their employers. This represents the classic obstacle that prevents women from achieving and fulfilling their right to work on the same level as men. As long as legal structures and social behaviors are not altered to offer more flexibility to women, they will constantly be trapped in this duality.

The next question is linked to the transmission of culture and religious patterns of behavior from one generation to the next. Based on the previous observations, one can presuppose a link between the teachings of the parents, especially mothers and the present behaviors of the participants. The question then was what type of information would be transmitted to the next generation of women. All nine participants

mentioned the importance of teaching the basics of Islam to their daughters. For example, daughters must not ‘forget their daily prayers’, must be careful about the dress code, ‘follow the religion and protect her chastity’ and ‘learn what the *Qur’ān* says’. Participant C3 explains that in a Muslim home, ‘you raise your daughter for another family’ so it is primordial to teach her the values of the *Qur’ān* such as respect, honesty, understanding and communication. In doing so, she will not run the risk of being rejected by her new family. Such an observation reflects the transmission of a patriarchal view of marriage and status of a bride in her husband’s family. Other participants have gone beyond the religious sphere and advocate for the inclusion of secular knowledge as well. For example, participant A1 explains that her daughter ‘must be open minded and accept all religions’ whereas participant A2 wants her daughter to ‘have a solid education on both, the secular and religious level’.

The last question of the section aims to explore the participants’ feelings about being Muslim citizens in South Africa. In such a multicultural context, one wonders how Muslim women express their religious beliefs in a way that correlates with the practical realities of modern society.

For six of the participants, South Africa offers a safe place to exercise their right to freedom of religion. Participant A1 describes South Africa as being ‘more liberal than other countries for Muslims’ because of the presence of a mix of different cultures and religions. Such a context requires understanding and tolerance from all citizens so that each community can express itself in peace and respect for the others.

Participants B3 and C2 agree that in South Africa, they can ‘express their faith without being judged’. However, participant B1 is aware of the fact that although freedom of religion is a positive consideration, the fact that they are not officially governed by *Qur’ānic* laws creates more temptations for Muslim citizens. She cites the example of the dress code within Islamic rules and explains that it is more difficult to convince her daughter to abide by such a code when she is confronted daily with different ways of dressing. If they were living in a Muslim society, it would have been easier for her and her daughter to respect her perceived rules of Islam. Participant C1 too suggests that it would be easier to respect her obligations as a Muslim woman if she had a Muslim boss. In that case, she would have been able to accomplish her daily prayers and wear her headscarf to work.

Participant A2 is the only participant to have responded negatively. In her opinion, South Africa is not 'Muslim-friendly' because there are no praying facilities at work and it is 'difficult to fit in' if you follow the strict Muslim dress code. For participants A3, B3 and C3, these kinds of conditions contributed to their choice to stop working.

The study therefore demonstrates that religious and cultural influences have impacted on the social inclusion of all nine participants. Furthermore, the study has shown no great variations between the different age groups in terms of actions and lines of thoughts. All nine participants adhere, on slightly different levels, to the concept of their husband being the 'maintainer' and 'protector' of the family, despite agreeing to the fact that in the present context, he is not able or expected to shoulder the financial responsibility solely on his own. All nine participants have equally demonstrated a passive acceptance of the common understanding of verse 4:34 and adopt attitudes than can be described as conservative and traditional rather than emancipated and innovative. Even the fact of working is still done within the boundaries of a patriarchal reading of the verse. Religion is essential and the core of the family and individual behaviors of the spouses, leading to the conclusive fact that if change were to occur, it would have to go through the channel of religion and its authorities.

## 8. CONCLUSION

In conclusion, one can reiterate the initial research question on the way Muslim working women reconcile their faith with their right to work. As exposed earlier, the right to work is an essential tool for women to gain financial independence and stability. Linked to this particular right, women are encouraged to expose themselves to other responsibilities and experiences beyond the private sphere of their family and home. In contrast to a patriarchal reading of the verse 4:34, women are considered to be productive and capable members of the community. Their voices and actions are considered valuable for the progress of society and several international reports have underlined the importance of including female participation at all levels of organisation of society. Furthermore, international and national legal standards advocate for the gender equality and non-discrimination in both public and private spheres. Islamic scholars have provided different versions of verse 4:34 that contrast greatly with the common patriarchal readings available to the lay community and that are more in tune with the international secular framework. As previously explained, these gender friendly translations do not necessarily reject Islam as the basis of thoughts but rather use the techniques proposed by history throughout the evolution of Islamic law since the time of Revelation. They are therefore considered to be legitimate and illustrate how verse 4:34 can be interpreted and applied in a more empowering manner for women of Muslim faith.

However, the dissertation demonstrates a duality in the understanding of verse 4:34 by the participants of the survey. On one hand, they accept and apply the verse in its patriarchal meaning, accepting their role of wife and mother as per the traditional designation. On the other hand, they are equally aware of the incongruence of their understanding of the verse with their daily life. They therefore do not strictly apply the verse to its full extent. As illustrated by the results of the survey, they accept their husband to be the head of the household but do not necessarily expect him to be the sole provider by agreeing to work in order to help the family's financial stability. They agree that their husband represents the authority of the household and commands respect but advocate for mutual understanding and communication. Contrary to the patriarchal reading of the verse, the spousal relationship they aim for

is not a vertical and one-way relationship but rather a more horizontal and reciprocal one based on communication and respect.

The dissertation therefore answers to the initial research question by showing that Muslim women of Cape Town experience some difficulty in reconciling their faith to modernity. Participants acknowledge the discrepancy between the verse 4:34 as it is commonly understood and reality but do not attempt to yet challenge or disregard it as inapplicable or irrelevant. Because of their strong sense of religiosity, they tend to believe and maintain a blind faith in Islam, disregarding the important fact that different interpretations of the *Qur'ān* exist. Therefore, the survey suggest that the participants familiarise themselves with other versions and scholarly teachings of Islam. Indeed, the present economical, social and cultural in the context of South Africa allow Muslim women the freedom and space to interrogate and challenge the patriarchal readings of verse 4:34 in a more active and progressive manner.

To conclude, one can question the impact of religion when it does not reflect the daily reality of its believers. Islam had a tremendous impact on the Arab society when it was first revealed because it addressed the inequalities and difficulties of the people and proposed concrete and applicable solutions. Women and men alike found the answers to their prayers and placed their faith in Islam because they experienced change for the better. Nowadays, the nature of their difficulties has changed and therefore, the nature of the solutions proposed to them must also evolve accordingly. The *Qur'ān* and its verses are essential tools to bring about change and have the power to bring positive amendments to the life of Muslim believers. Unfortunately, without an active and constant exchange, it may remain forever frozen in time.

## BIBLIOGRAPHY

### 1. Articles, book chapters and books:

Abdal-Haqq, Irshad, "Islamic Law: An overview of its origin and elements" in Hisham M. Ramadan, (ed.), 2006, *Understanding Islamic Law: From Classical to Contemporary*, AltaMira Press: United Kingdom, 1-18.

Al Hadi, Semira, "Women and Islam" in Heinrich Boll Foundation, 2008, *Reflections: Documentation of the Forum on Gender*, Heinrich Boll Foundation, number 16: 78-86.

Ali Abdullah, Yusuf, 2000, *The Holy Qur'ān*, Wordsworth Editions Ltd.: Hertfordshire.

Ali, Shaheen Sardar, 1998, "Women's Human Rights in Islam: Towards a Theoretical Framework", *Year Book of Islamic & Middle Eastern Law*, vol.4: 117-152.

Ali, Shaheen Sardar, 2006, *Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A comparative analysis of application of CEDAW in Bangladesh, India and Pakistan*, UNIFEM: South Asia Regional Office. Accessed at <http://www.unwomensouthasia.org/assets/complete-study.pdf> on the 30 March 2013.

Ali Engineer, Asghar, 2005, *The Qur'an, Women and Modern Society*, New Dawn Press Group: United Kingdom.

Alidou, Ousseina D., "Rethinking Marginality and Agency in Postcolonial Niger" in Badran Margot (ed.), 2011, *Gender and Islam in Africa: Rights, Sexuality and Law*, Stanford University Press: Chicago, 40-60.

Amien, Waheeda, 2010, "A South African Case Study For The Recognition And Regulation Of Muslim Family Law In A Minority Muslim Secular Context", *International Journal of Law, Policy and the Family*, vol.24 (3): 361-396.

An-Na'im, Abdullahi A., 2002, *Islamic Family Law in a Changing World: A Global Resource Book*, Zed Books: New York.

Anwar, Zainah (ed.), 2009, *Wanted: Equality and Justice in the Muslim Family*, Sisters in Islam: Selangor.

Badran, Margot, 2006, *Islamic Feminism Revisited*. Available at <http://scholar.google.com/scholar?hl=fr&q=margot+badran+definition+of+islamic+feminism&btnG=&lr> accessed on 19.02.13, 13:33.

Badran, Margot (ed.), 2011, *Gender and Islam in Africa: Rights, Sexuality and Law*, Stanford University Press: Chicago.

Bakhtiar, Laleh, 2011, "The Sublime Quran: The misinterpretation of Chapter 4 Verse 34", *European Journal of Women's Studies*, vol.18: 431-439.

Barlas, Asma, *The Qur'an, Sexual Equality, and Feminism*, University Of Toronto, 12 January 2004.

Available at [http://www.asmabarlas.com/TALKS/20040112\\_UToronto.pdf](http://www.asmabarlas.com/TALKS/20040112_UToronto.pdf), accessed on 16.02.13, 13:15.

Bond, Johanna, 2005, *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press: Durham.

Boonstra, Heather, 2001, "Islam, Women and Family Planning: A Primer", *The Guttmacher Report on Public Policy*, Vol.4 (6): 4-7.

Available at <http://www.guttmacher.org/pubs/tgr/04/6/gr040604.html>, accessed on the 06.02.13, 16:54.

Cliteur, Paul, 2011, "Female Critics of Islamism: Liberal or Secular Islam?", *Feminist Theology*, vol. 19(2): 154-167.

Cooper, Carole, 2009, "Women and the Right to Work", *South African Journal of Human Rights*, vol. 25: 574-605.

Dunn, Shannon and B. Kellison, Rosemary, 2010, "At the Intersection of Scripture and Law: Qur'ān 4:34 and Violence against women", *Journal of Feminist Studies in Religion*, vol. 26(2): 11-36.

Facchini, Francois, 2010, "Religion, law and development: Islam and Christianity: Why is it in Occident and not in the Orient that man invented the institutions of freedom?", *European Journal of Law and Economics*, vol. 29: 103-129.

Feryal, M. Cherif, 2010, Culture, Rights, and Norms: Women's rights Reform in Muslim Countries, *The Journal of Politics*, vol. 72(4): 1144-1160.

"Fighting free; Turkish women and Islam", *The Economist*, 6 November 2004: 52(US).

Available at <http://ic.galegroup.com.ezproxy.uct.ac.za> , accessed on the 03.01.13, 10:13.

Fredman, Sandra, "Engendering Social and Economic Rights" in Goldblatt Beth & Mclean Kirsty (eds.), 2011, *Women's Social and Economic Rights: Developments in South Africa*, Juta & Co.: Cape Town, 4-33.

Goldblatt, Beth & Mclean, Kirsty (eds.), 2011, *Women's Social and Economic Rights: Developments in South Africa*, Juta & Co.: Cape Town.

Hijab, Nadia, 1988, *Womanpower: The Arab debate on women at work*, Cambridge University Press: Cambridge.

Husni, Ronak & Newman, Daniel L., 2010, *Muslim Women in Law and Society*, Routledge: New York.

Iqbal, Siddiqi Muhammad, 1984, *The Family Laws of Islam*, Kazi Publications: Chicago.

Kaymakcan, Recep, "Religious Education Culture in Modern Turkey" in *International Handbooks of Religion and Education*, Vol.1, 462.

Kesgin, Salih, 2011, "A critical analysis of the Schacht's argument and contemporary debates on legal reasoning throughout the history of Islamic Jurisprudence", *The Journal of International Social Research*, Vol. 4(19): 157-166.

Kirmanj, Sherko, 2008, "Islam, Politics and Government", *Totalitarian Movements and Political Religions*, Vol. 9 (1): 43-59.

Leiser, Gary, 1986, "Notes on the Madrasa in medieval Islamic society", *The Muslim World*, Vol. 76(1): 16.

Lockwood, Bert B., 2006, *Women's Rights: A Human Rights Quarterly Reader*, John Hopkins University Press: Baltimore.

Lodrup, Peter & Modvar, Eva (eds.), 2004, *Family Life and Human Rights*, Gyldendal: Oslo.

Masood, Ehsan, 2005, "Women at work", *Nature* [0028-0836], vol.433 (7025): 452-453.

Mernissi, Fatima, 1987, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society*, Indiana University Press: Indiana.

Mir-Hosseini, Ziba, "Towards Gender Equality: Muslim Family Laws and the Sharī'a" in Zainah Anwar (ed.), 2009, *Wanted: Equality and Justice in the Muslim Family*, Musawah/Sisters in Islam: Indonesia, 23-64.

Morsink, Johannes 1999, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, University of Pennsylvania Press: Philadelphia.

Mubarak, Hadia, 2004, *Breaking the Interpretive Monopoly: A Re-examination of Verse 4:34*, Koninklijke Brill NV: Leiden.

Regional Bureau for Arab States, *The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World*, United Nations Publications: New York.

Available at <http://www.arab-hdr.org/publications/other/ahdr/ahdr2005e.pdf>, accessed on the 11.02.13, 14:54.

Regional Bureau for Arab States, *The Arab Human Development Report 2009: Challenges to Human security in Arab Countries*, United Nations Publications: New York.

Available at <http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf> accessed on the 11.02.13, 15:00.

Rhouni, Raja, "Deconstructing Islamic Feminism: a look at Fatima Mernissi" in Badran Margot (ed.), 2011, *Gender and Islam in Africa: Rights, Sexuality and Law*, Stanford University Press: Chicago, 69-88.

Ross, Micheal L., 2008, "Oil, Islam and Women", *American Political Science Review*, vol. 102 (1): 107-123.

Shabbir, Khan Mohammad, 2001, *Status of women in Islam*, APH Publishing Corporation: New Delhi.

Shaikh, Sa'diyya, "Embodied Tafsir: South african Muslim women confront Gender Violence in Marriage" in Badran Margot (ed.), 2011, *Gender and Islam in Africa: Rights, Sexuality and Law*, Stanford University Press: Chicago, 89-115.

Sidani, Yusuf, (2005), "Women, work, and Islam in Arab societies", *Women In Management Review*, Vol. 20(7): 498 – 512.

Spierings, Niels; Smits, Jeroen & Verloo, Mieke, 2009, "On the Compatibility of Islam and Gender Equality: Effects of Modernization, State Islamisation and

Democracy in Women's Labor Market Participation in 45 Muslim Countries", *Social Indicators Research*, vol. 90: 503-522.

Tanzeem, Fatima, 2007, *Marriage Contract in Islam*, Deep & Deep Publications PVT.LTD: New Delhi.

Turbine, Vikki & Riach, Kathleen, 2012, "The Right to Choose or Choosing What's Right? Women's Conceptualizations of Work and Life Choices in Contemporary Russia", *Gender, Work and Organization*, vol. 19 (2): 166-187.

Voorhoeve, Maiike (ed.), 2012, *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, I.B Tauris & Co.: New York.

Wadud, Amina, 2004, "Qur'ān, Gender and Interpretive possibilities", *Hawwa*, vol. 2(3): 316-336.

Wadud, Amina, 1996, "Towards a Qur'ānic hermeneutics of social justice: race, class and gender", *Journal of Law and Religion*, vol. 12: 37-50.

Women Living Under Muslim Laws International Solidarity Network, 2003, *Knowing Our Rights: Women, Family, Laws And Customs In The Muslim World*, Creative Design: London.

Yahia al-Hibri, Azizah, 2001, "Muslim Women's Rights in the Global Village: Challenges and Opportunities", *Journal of law and Religion*, Vol.15 (1/2): 37-66.

## **2. International and Regional Documents:**

The African Charter on Human and People's Rights, OAU Doc. CAB/LEG/67/3, adopted June 27, 1981, entered into force October 21, 1986.

Available at [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf) , accessed on the 14.02.13, 12:00.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), United Nations document.

Available at [www2.ohchr.org/english/law/cedaw.html](http://www2.ohchr.org/english/law/cedaw.html), accessed on the 24.09.12, 10:23.

The International Covenant on Civil and Political Rights (ICCPR), United Nations Document, General Assembly Resolution 2200A (XXI), adopted December 16, 1966, entered in force March 23, 1976.

Available at <http://www2.ohchr.org/english/law/ccpr.htm>, accessed on 14.02.13, 12:08.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, OAU Doc. CAB/LEG/66.6, adopted September 13, 2000, entered in force November 25, 2005.

Available at <http://www1.umn.edu/humanrts/africa/protocol-women2003.html>, accessed on 30.03.13, 13:35.

The Universal Islamic Declaration of Human Rights, September 19, 1981, Paris.

Available at <http://www.alhewar.com/ISLAMDECL.html>, accessed on 14.02.13, 12:30.

**ANNEXURE:****QUESTIONNAIRE**

Age: _	Work: _
Religiosity:	(-) 1 2 3 4 5(+) (did all five pillars) (normal)

**I. Women in Marriage**

- i. How would you describe a perfect relationship between spouses?
- ii. What are the main ingredients for a harmonious family life?
- iii. Could you list a series of essential characteristics to be a perfect wife?
- iv. What are your husband's role and duties in the family?
- v. Who taught you how to become a good Muslim wife?

**II. Women in Religion**

- i. Do you think Allah created men and women as equals?
- ii. Have you ever heard of the theory of natural differences?
- iii. What do you think of the verse 4:34 and the terms "maintainer and provider"?
- iv. When you have issues as a couple, do you seek religious guidance? If yes, where?
- v. How do you feel when people say that Islam is not a religion for women?

**III. Women in Society**

- i. How can you explain the importance of the right to work for a woman?
- ii. Do you think a woman can be a good Muslim wife and work at the same time?
- iii. If you were to choose between a family and a career, what would it be?
- iv. If you had a daughter, what would you teach her as essential cores?
- v. Do you think South Africa is a good country for Muslim women?

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Qur'ānic verse 4:34

“Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance).”

“Men are the supporters of wives because God has given some of them an advantage over others and because they spent of their wealth. So the ones in accord with morality are the ones who are morally obligated and the ones who guard the unseen of what God has kept safe. And those whose resistance you fear then admonish them and abandon them in their sleeping places and go away from them. Then if they obey you, then look not for any way against them.”

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Thank You

University of Cape Town