

## CASE IN POINT SOUTH AFRICA: A BRIEF OVERVIEW OF WHETHER ISLAM IS DEEMED LESS TOLERANT OF WOMEN'S RIGHTS THAN OTHER FAITHS AND CULTURES?

Mohammad Hoosain Sungay, Ashraf Booley\*

University of the Western Cape, South Africa

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**Abstract.** The Constitution of the Republic of South Africa, 1996, guarantees freedom of religion for all. The Muslim population constituting roughly 3% of the total population of 60 million people in South Africa fall within these protections. There is a common misconception globally that women's rights and Islamic *Sharee'ah* law are intrinsically at odds with each other. This paper's aim is to debunk and elucidate these myths by demonstrating that, in contrast to common perception, *Sharee'ah* law endows Muslim women additional rights in all spheres of life, far beyond "modern civilisation". A comparative study of *Sharee'ah* law legislation with other global civilizations and religions is conducted in proving this paper's goal. This paper uses a variety of primary and secondary sources that discuss secular, religious, and customary law to support the statement of the paper. The findings of this paper indicate that rather than the lack of protections mandated by religion being the root of Muslim women's problems, it is the lack of enforcement of these protections.

**Keywords:** South Africa, Sharee'ah Law, Woman's rights, Lack of protection, Muslim Women, and Faiths.

\***Corresponding Author:** Mohammad Hoosain Sungay, Private Law Department, University of the Western Cape, South Africa, e-mail: [abooley@uwc.ac.za](mailto:abooley@uwc.ac.za)

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### 1. Introduction

On the 28<sup>th</sup> of June 2022, Acting Justice Tlalelti handed down a ground-breaking unanimous judgement in the Constitutional Court of South Africa. This judgement declared certain sections of the Marriage Act 25 of 1961 (hereafter the Marriage Act) and Divorce Act 70 of 1979 (hereafter the Divorce Act) unconstitutional on the basis that they failed to recognise marriages solemnised in accordance with *Sharee'ah* law Principles. The Muslim community in South Africa at first perceived this as a complete victory given the years of adjudication that had preceded it. Although this judgment may appear to be a step in the right direction, it has certain repercussions that may be deemed to be inconsistent with what is required by Islamic law. Inferences may be drawn that the judgement reinforces widespread stereotypes about the Muslim community, particularly the idea that Islam denies rights to Muslim women. This paper will briefly investigate whether there is a need for legislative reform in the South African context to convey more rights to Muslim women. In doing this, the paper briefly unpacks the remarks made in the *Women's Legal Centre Trust v President of the Republic of South Africa and Others* (referred to as the *Women's Legal Centre Trust case*)<sup>1</sup> judgement. In addition, to primary

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<sup>1</sup> *Women's Legal Centre Trust v President of the Republic of South Africa and Others* (CCT 24/21) [2022] ZACC 23 (28 June 2022) (*Women's Legal Centre Trust case*).

and secondary Islamic sources of law in displaying that the problem does not lie with the regulation itself, rather the lack of mechanisms affording the enforcement thereof.

## 2. Muslim population of South Africa & *Sharee'ah* law application to lives of Muslims the incumbency of its application

South Africa is a country of many cultures and many religions – indeed, a country of pluralities (Coertzen, 2014). It is stated that the Muslim population in South Africa constitutes 3% of the total population of 60 million people, thus representing just short of two million citizens (Isilow, 2021). On this basis, the applicability Islamic Law simply cannot be neglected within our country's legal system. To effect Muslims rights, the Constitution of the Republic of South Africa, 1996 (hereafter the Constitution) guarantees freedom of religion for all religious persons and religions in the country.<sup>2</sup> Within the Islamic framework, the *Holy Quran*, Prophetic teachings (*hadith*) of Prophet Muhammad (peace and blessings be upon him (PBUH))<sup>3</sup>, both of which lay the basis for *Sharee'ah* law constitutes the divine law that every Muslim, male and female, is required to follow in order to gain the happiness of their creator and the ultimate success of the afterlife.<sup>4</sup> In totality, *Sharee'ah* law has four primary sources, considered as the dominant sources (the *Holy Qur'an*, the Prophetic teachings (the *Sunnah*), the consensus of juristic opinions (*Ijma*) and reasoning by analogy (*Qiyas*). These are the four primary sources upon which all the legal rules of Islamic laws are based (in certain instances other sources may also be considered) (Mzee, 2016). In order to determine what rights *Sharee'ah* law bestows upon Muslim women, this paper will examine each of these sources in connection to the subject in addressing the central query of the paper.

## 3. A historical and cultural overview of women as some of society's most vulnerable and marginalized individuals

History demonstrates that out of all deprived groups in the world, women and children have suffered the most (Mandal, 2013). Woman throughout history and to date in civil society are prone to experiencing intimidation, harassment (Peace & Egharevba, 2018) and had been accorded a secondary role in the workplace and family model.<sup>5</sup> The general family structure was and is still very patriarchal in nature thereby affording extraordinary power in the hands of men to their detriment.<sup>6</sup> This section will navigate a footpath throughout time illustrating how woman's rights have been hindered since the beginning of history navigating from Roman Civilization to Biblical times to current day civilization.<sup>7</sup>

<sup>2</sup> Section 15 (1) of the Constitution of the Republic of South Africa (hereafter the Constitution) where it states: "Everyone has the right to freedom of conscience, religion, thought, belief and opinion".

<sup>3</sup> An abbreviation used by Muslims after mentioning the name of the Prophet Mohammad as a sign of respect. This respect is afforded to all previous Prophets as well.

<sup>4</sup> Al-Qur'an chapter 4 verse 59 wherein it states: "O believers! Obey Allah (God Almighty) and obey the Messenger and those in authority among you".

<sup>5</sup> Relief Web 'Hazards hurt most in societies that think being female is the real disaster' available at <https://reliefweb.int/report/world/hazards-hurt-most-societies-think-being-female-real-disaster> (accessed 23 August 2022).

<sup>6</sup> Relief Web 'Hazards hurt most in societies that think being female is the real disaster' available at <https://reliefweb.int/report/world/hazards-hurt-most-societies-think-being-female-real-disaster> (accessed 23 August 2022).

<sup>7</sup> No disrespect to any religion or culture was intended by the author in the writing of this section.

### ***Roman civilization***

Civilization in the so called great Roman Empire<sup>8</sup> identified woman as beings completely dependent on a male figure (Wieand, 1917). When a woman was married, her husband became the legal owner of both her and her possessions. In addition, the wife was her husband's purchased property, acquired like a slave solely for his benefit.<sup>9</sup> A woman was not permitted to hold any civil or public office, function as a witness, surety, tutor, or curator, adopt or be adopted, make a will, or enter into a contract. Finally under the Scandinavian races, women were under perpetual tutelage, whether married or unmarried. They were not allowed to participate in public decision making procedures (Chatelard & Stevens, 2016) and were also excluded from the general rights awarded to citizens such as the right to voting, owning property, and to appeal judicial decisions in a court of law (Chatelard & Stevens, 2016).

### ***Biblical era***

As we investigate the Biblical periods, the status of women did not change much. Many would contend that the position of women further declined throughout this time. According to the Old Testament of the Bible, a woman was compelled to wed her rapist and was unable to divorce him as long as he lived.<sup>10</sup> In addition, a man's daughter may be sold into servitude and never be able to reclaim their freedom as males could.<sup>11</sup> The adoption of the Newer Testaments did not considerably improve the status of women. Women still do not have the right to teach or rule over men in any capacity.<sup>12</sup> They were told to cover their heads or else risk being forced to shave them if they disobeyed the order.<sup>13</sup> Similar to the Roman Empire, the common view of women was that they were made exclusively for the satisfaction of men.<sup>14</sup>

### ***Period before the advent of Islam***

Laws in the Arabian Peninsula prior to Islam was based on an extremely tribalistic system in which only males were entitled to inheritance to the exclusion of woman and children (Mzee, 2016). This period is generally regarded as ignorance (*Jahiliya* in Arabic terms) or better put, the dark ages (Nadwi, 1996). This period existed until the adoption of Islam 1443 years ago. She and her property became vested in the husband under the same marital regulations that were in effect during the reign of the Roman Empire (Jansen, 2007). The practice of polygamy was unregulated in that a husband could have married as many women as he wanted to (Jansen, 2007). Furthermore, the action divorce did not entail any maintenance obligations, thus rendering woman even more vulnerable after divorce (Jansen, 2007).

<sup>8</sup> History.com 'Ancient Rome' available at <https://www.history.com/topics/ancient-rome/ancient-rome> (accessed 24 August 2022).

<sup>9</sup> Wondrium Daily 'The Role of Women in Ancient Rome—Piecing Together a Historical Picture' available at <https://www.wondriumdaily.com/role-of-women-in-ancient-rome/> (accessed 17 September 2022).

<sup>10</sup> Deuteronomy 22:28-29.

<sup>11</sup> Exodus 21:7.

<sup>12</sup> Timothy 2:11-14: "A woman should learn in quietness and full submission. I do not permit a woman to teach or to have authority over a man; she must be quiet. For Adam was formed first, then Eve. And Adam was not the one deceived; it was the woman who was deceived and became a sinner".

<sup>13</sup> Corinthians 11:2-10: "For if a woman does not cover her head, she might as well have her hair cut off; but if it is a disgrace for a woman to have her hair cut off or her head shaved, then she should cover her head. A man ought not to cover his head, since he is the image and glory of God; but woman is the glory of man. For man did not come from woman, but woman from man; <sup>9</sup> neither was man created for woman, but woman for man".

<sup>14</sup> Corinthians 11:2-10.

### ***The Hindu religion***

According to Hindu holy scriptures and practices, subjection of the female folk to male patriarchy was and is still a fundamental principle. These beliefs include rigid gender norms, where women play a passive role and the husband a dominant, active one (Sharma *et al.*, 2013). The law of ancient Hindu civilization was expressed in the Sanskrit proverb "*Na stri swatantramarhati-Swatrantam Na Kachit Striyah*," which meant that women were unfit for any kind of autonomous existence (Halder & Jaishankar, 2008). A woman was ultimately considered less than fully human, an object to be preserved by her male guardians (Halder & Jaishankar, 2008). Women in this light are perceived as being completely reliant on men for support with motherhood and marriage are the two main status duties for women (Sharma *et al.*, 2013). The ancient scriptures never mention any property for an unmarried woman. Women's property rights to inherited or marital landed property were denied, and their control over the succession of landed family property was constrained (Halder & Jaishankar, 2008, p.664). It is even stated in certain Hindu scriptures that the example of a good wife is one who's mind, speech and body are kept in subjection, acquires high renown in this world, and, in the next, the same abode with her husband.

### ***African customary law***

In the multicultural society of South Africa, various legal systems may find application (Rautenbach & Bekker, 2014). Of these legal systems, African customary law stands tall to the extent that protection is provided for its practices, values and application within the Constitution itself.<sup>15</sup> Examples of customary law traditional customs that severely repressed women's rights include *Ukuthwala*, betrothal gifts/*lobolo*, *Ukungena*, male primogeniture, succession to traditional position or office being limited to male folk, among many others. *Ukutkwala* referred to the practice wherein a father stubbornly refused to allow his daughter to marry another, the unmarried woman would be abducted (with or without her consent) (Nhlapo *et al.*, 2014). *Lobolo* or *bogadi*, roughly translated to bride price, refers to a negotiated amount agreed upon between the groom and the wife's family for the purchase of the woman in a marital agreement (Ngema, 2013). Contrary to what will be shown further on in this paper, this bride price severely differs from the Islamic equivalent of dower. This bride price is normally chosen by a family representative (Makama, 2020) and is paid to the wife's father to her exclusion (Ngema, 2013). Moreover, the paid *lobolo* had to be returned in the event of a divorce. If there was an inability to repay the paid *lobolo* to the husband following the dissolution of their marriage, many families were forced to resort to leaving their daughters in their marital homes against their will, even if they were victims to domestic violence (Ngema, 2013). Traditionally, the first payment was made before the wedding and the rest was paid after a woman had proved her "womanhood" by having children (Makama, 2020). The groom had the prerogative to demand *lobolo* returned or accept his wife's younger sister as his second wife if the new bride was unable to bear offspring (Makama, 2020). An infamous customary law practice that caught the eye of our Constitutional Court was the matter of *Bhe and Others v Khayelitsha Magistrate and Others* (hereafter *Bhe* case)<sup>16</sup> is the application of the rule of male primogeniture. This rule in customary law holds succession by males only) (Nhlapo *et al.*, 2014, p.276). In application thereof, the eldest surviving male relative of the deceased succeeds the entire estate and status of the deceased

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<sup>15</sup> Sections, 39(2) & S211(3) of the Constitution.

<sup>16</sup> (CCT 49/03) [2004] ZACC 17; 2005.

individual to the absence of a female (Nhlapo *et al.*, 2014, p.274). This rule was subsequently declared unconstitutional on several grounds in the *Bhe* case.

*Ukungena* is a custom practised by both Nguni-speaking and Sesotho-speaking groups according to which a widow is forced to enter into a union with a brother or half-brother of the deceased in order to raise seed for the deceased (Nhlapo *et al.*, 2014, p.235). Customary marriages, like the many marriages depicted above demonstrated scenarios wherein the wife was subject to the marital power of the husband and was regarded as a perpetual minor (Rautenbach & Bekker, 2014, p.106).

### ***English common law***

Only in the late nineteenth century, during the dominance of English Common Law, did the situation improve somewhat in that woman's rights were being realised. The amendment of the Married Woman's Property Act of 1870 finally allowed woman to own property thus changing the default position of ownership passing onto their husbands (Kha, 2018, p.37). This amendment furthermore allowed woman to enter contracts unilaterally without a male representative (Kha, 2018, p.39). According to the doctrine of coverture, a woman's body is literally her husband's property. He has custody of her and can use a writ of *habeas corpus* to enforce this (Kha, 2018, p.51). The University of London's senate was the first secular institution in the "modern world" to let women to enrol in university only in 1868 (Carter, 2018). After the Representation of the People Act was passed, women over 30 were granted the right to vote, making this another historical first.<sup>17</sup>

As this section demonstrated, religious and secular regulations greatly hampered women in many facets of life. Some of these restrictions, which were uniformly implemented, are regrettably still in force today. The next question is then, given the religious and secular legislations, what does Islam say about women's rights?

## **4. Islamic tradition and the *Sharee'ah's* prohibition of laws against women and feminists**

There is a common misconception that women's rights and Islamic *Sharee'ah* law are intrinsically at odds with one another (Uddin, 2017, p.27). This assumption is held by almost everyone, including seasoned anti-Muslim activists (Al-Manteeqi, 2016). These groups have a number of common ideas, such as the notions that women inherit less than men, that the dower symbolizes the purchase of a woman in marriage, that no financial protections are offered for women, and that polygyny is an unregulated practice among many others. These myths will be clarified and dispelled in this paper's forthcoming sections. Additionally, this paper will show how *Sharee'ah* legislation gives Muslim women more rights in all facets of life. It will also illustrate historical changes in the Muslim world, demonstrating how Islam has advanced far beyond "modern civilization" in its fight for women's rights when compared to the historical and cultural groupings.

### ***Quranic injunctions***

Contrary to popular assumption, Islam has advanced women's status and granted them revolutionary rights over 1400 years ago.<sup>18</sup> These rights were codified in the

<sup>17</sup> The Guardian 'Women's suffrage - February 1918, first women gain right to vote in parliamentary elections' (2018) available at <https://www.theguardian.com/gnmeducationcentre/2018/feb/05/womens-suffrage-february-1918-first-women-gain-right-to-vote-in-parliamentary-elections> (accessed 20 September 2022).

<sup>18</sup> Khan S 'The Verse of Abuse Or the Abused Verse' available at

revelation of the *Holy Qur'an*<sup>19</sup>. This section will briefly explain various passages in this holy book that deal with women's rights in proving this claim.

The fourth chapter of the *Holy Qur'an's* 114 chapters is titled "women". Logically as one would assume, this chapter deals predominantly with women's rights in all fields of life. In the opening segments of this chapter, it is made clear that men have the full financial responsibility to take care of woman.<sup>20</sup> It is further contended that Islamic law is unanimous in the principle that a husband has no authority over the property and assets of his wife, while she has rights over his.<sup>21</sup> Only in 1922, did the Law of Property Act allow only then for both male and female to inherit property. The *Holy Quran* states in chapter 4 verse 7:

*“Just as there is a share for men in what their parents and kinsfolk leave behind, so there is a share for women in what their parents and kinsfolk leave behind – be it little or much – a share ordained /obligatory (by Allah)”* (Ali, 1946).

This verse embodies various legal injunctions. The most important one is that both men and women can inherit. Although it is true that as a general rule, the female is to inherit half the share of her male counterpart,<sup>22</sup> the missing half share from the females inheritance is provided for by the aforementioned financial responsibility laying on the male figure responsible for her and the family (Ali, 1946). Prior to her marriage, her father or brother fills this role of the *wali*.<sup>23</sup> After her marriage, her husband takes this role of guardianship over to care for her maintenance (*nafaqa*).<sup>24</sup> Food, shelter, and clothing for the wife and kids during the marriage are all included in this upkeep. These maintenance responsibilities are further extended to the waiting period (*iddat*)<sup>25</sup> following the termination of the marriage, normally three menstrual cycles must pass (Booley, 2014). This obligation continues even after death, as a woman's funeral costs are to be covered by her *wali*, whereas the reverse is not true (Abduroaf, 2018).

Dower (*mahr*) and bridal price are different concepts (Booley, 2014, p.44). In Islam, every woman maintains the right to ask to her desires for a dower upon the conclusion of a valid Islamic marriage (Bani & Pate, 2015, p.104). This dower is chosen by the woman and belongs to her solely. The purpose of the dower is firstly given as a sign of respect to the wife (Ferdousi, 2019, p.553). Additionally, the dower serves as a security to shield a wife from unfavourable circumstances i.e., the death of her husband, divorce or desertion by the husband (Ferdousi, 2019, p.547). Because of this, the wife's financial situation

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<https://yawnet.org/sites/default/files/materials/files/2016-09/VerseofAbuseorAbusedVerse.pdf> (accessed 11 September 2022).

<sup>19</sup> The Holy text of the religion of Islam – Considered the word of God revealed to Prophet Muhamad PBUH (referred to as the Al-Qur'an).

<sup>20</sup> See Al-Qur'an 4:34 wherein it states: “Men shall take full care of women with the bounties Allah has bestowed on them, and what they may spend out of their possession as Allah has eschewed each with certain qualities in relation to the other”.

<sup>21</sup> See Al-Qur'an 4:34.

<sup>22</sup> Al-Qur'an chapter 4 verse 11 wherein it states: God (thus) directs you as regards to your children's (inheritance): to the male, a portion equal to that of two females.

<sup>23</sup> An individual who has been entrusted with the obligation God has levied on him to see to the needs of and represent another. This individual is regarded as her physical and financial protector from birth to and including death.

<sup>24</sup> Al-Qur'an chapter 2 verse 233 wherein it states: “... And upon the father is their (i.e., the mothers') provision and their clothing according to what is acceptable. No person is charged with more than his capacity”.

<sup>25</sup> The term “waiting period” or “*iddat*” refers to the period of waiting for the woman before remarrying after her divorce or death of her husband. However, the waiting period or *iddat* differs from case to case. In the case of a divorced woman who menstruates, the waiting period is three menstrual cycles. The waiting period for a woman who has passed the age of menstruation is three lunar months, and in the case of a woman whose husband is deceased the period is four months and ten days respectively. See Mohammad I J & Lehmann C ‘Women 's Rights in Islam Regarding Marriage and Divorce’ (2011) 4 *Journal of Law and Practice* for further reading on this aspect.

after marriage is quite favourable to her (Jansen, 2017, p.185). The husband has no right over the dower given, nor can he reclaim it under any circumstance.<sup>26</sup> She is not required to share this dower and is free to do what she wishes with the gift (Mohammad & Lehmann, 2011, p.5). This represents one of the main differences between the dower and the customary practice of bridal price.

In an Islamic household, the husband has several functions or obligations that must be fulfilled in accordance with *Sharee'ah* law. The term "*qawwamun*," which literally translates to "the protectors and the maintainers of women," is given in the *Holy Qur'an* in recognition of the maintenance obligation Allah Almighty has placed on males.<sup>27</sup> On this basis, men have a greater and more difficult responsibility in supporting their families (Bani & Pate, 2015, p.104). Although the majority of women do carry out these works of a housewife on their own, these are not mandatory. Men should be grateful to their wives for their work in the house. Therefore, no man has the right to question or punish his wife when faced with her refusal to carry out the house-keeping chores (Bani & Pate, 2015, p.108).

Divorce has existed in some form or another since the dawn of time. In many legal and theological systems before Islam, the laws governing divorce and the division of property were incredibly sexist and harmful to women. The Matrimonial Causes Act of 1923 established the first legal grounds for divorce, giving both men and women the ability to do so.<sup>28</sup> Islam brought about a significant increase in the status of women undergoing divorce. The *Holy Quran* specifies three different ways in which women are permitted to leave their marriages and devotes an entire chapter to the right course of action for the individuals who have been wronged during this process.<sup>29</sup> The fundamental tenet of this chapter is that the woman should be given the highest care in addition to the right to just maintenance that she and any children born to the marriage are entitled to. Chapter 231 verse 2 of the Holy Qur'an states: "And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. And whoever does that has certainly wronged himself. And do not take the verses of Allah in jest."<sup>30</sup> The chapter on women has a further revelation pertaining to the subject of divorce, which reads as follows: "O you who have believed, it is not lawful for you to inherit women by compulsion..." (Ali, 1946, p.184). The most basic rule of ownership during marriage remains even after divorce in that women property is not divided during a divorce.<sup>31</sup> Whatever a woman earns or is given before

<sup>26</sup> *Al-Qur'an* chapter 2 verse 229 wherein it states: "And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep (within) the limits of Allah."

<sup>27</sup> *Al-Qur'an* chapter 4 verse 34 wherein it states: Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially.

<sup>28</sup> University of Kent 'Matrimonial Causes Act 1923' available at <https://womenslegallandmarks.com/2017/08/08/matrimonial-causes-act-1923/> (accessed 20 September 2022).

<sup>29</sup> For further reading on this, see *Al-Qur'an* chapter 65.

<sup>30</sup> *Al-Qur'an* chapter 2 verse 231 wherein it states: "And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. And whoever does that have certainly wronged himself. And do not take the verses of Allah in jest".

<sup>31</sup> *Al-Qur'an* chapter 2 verse 229 wherein it states: "And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah – it is those who are the wrongdoers". Also see *Al-Qur'an* chapter 4 verse 20 wherein it states: "But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?"

and during the course of the marriage remains her property if the marriage ends (Mohammad & Lehmann, 2011, p.8). This practice goes against the aforementioned legal and theological systems norms that were in practice. The Church, according to Catholics, opposes the idea of divorce and instead advises the couple to go through a "less public type of separation" (McCarron, 1975, p.113). Additionally, the partners to this marriage are not allowed re-marry until their first spouse passes away (McCarron, 1975, p.113). In Judaism, only the male figure has the right to divorce to the exclusion of the woman (Harris, 2015). Although the husband is the natural divorce candidate in Islam, a woman nonetheless has the legal right to obtain a judicial divorce (*faskh*) without the husband's permission, after consulting with a religious authority/s (*imam*) (Booley, 2014, p.49). This naturally occurring male right to divorce can also be transferred to the wife in a marriage by a marital contract. This topic will be covered in more detail in the paper's concluding suggestions section.

The issue of polygyny is not unique to Islam and is often a misunderstood practice. Most cultures and religions have historically been polygynous. The Holy Bible mentions that Solomon had 700 wives.<sup>32</sup> Islam limited the number of wives to four and established clear rules and regulations for the practice to ensure fair treatment of each (Mohammad & Lehmann, 2011, p.6). The *Holy Quran* states in chapter 4 verse 3 that a man is allowed to marry up to 4 women on the absolute condition that he acts justly with them all.<sup>33</sup> It is prohibited to enter into a polygamous marriage if this condition is not met, and it can also serve as a legal basis for divorce. This equality is expected regarding finances, emotions, and even sexual relationships (Mohammad & Lehmann, 2011, p.7).

The *Holy Qur'an* also grants women general rights including equal wages and the ability to vote among many others. The universal right of adult suffrage was only founded in the late 1900's.<sup>34</sup> The Holy Qur'an granted the right of woman to earn over 1400 years ago.<sup>35</sup> In 1984, the Equal Pay (Amendment) Act allowed for woman to be paid the same as men for work of equal value.<sup>36</sup> Chapter 65 verse 6 of the Holy Quran contains a verse that expressly states that "If they suck to the children for you, give them their due payment" (Ali, 1946, p.1565).

### ***Injunctions laid by the holy prophet (PBUH)***

The teachings of the Holy Prophet Muhammad (PBUH) represent one of the four dominant primary sources of *Sharee'ah* law (Mzee, 2016, p.56). When looking at his blessed life, there are ample examples provided in which he displays through his character and words, how a woman should be placed on a pedestal and their accompanying rights over men folk. This section will outline certain guidelines for teaching women that the Prophet (PBUH) taught.

<sup>32</sup> First Kings 11:3.

<sup>33</sup> *Al-Qur'an* chapter 4 verse 3 wherein it states: "And if you fear that you shall not be able to deal justly with the orphan girls then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (slaves) that your right hands possess. That is nearer to prevent you from doing injustice".

<sup>34</sup> National Archives 'Woman Suffrage and the 19th Amendment' available at <https://www.archives.gov/education/lessons/woman-suffrage> (accessed 22 September 2022).

<sup>35</sup> *Al-Qur'an* chapter 60 verse 12 wherein it states: "O Prophet! When the believing women come to you, pledging to you that they will neither associate anything with Allah 'in worship', nor steal, nor fornicate, nor kill their children, nor falsely attribute 'illegitimate' children to their husbands, nor disobey you in what is right, then accept their pledge, and ask Allah to forgive them".

<sup>36</sup> Section 2 of the Equal Pay (Amendment) Regulations 1983 No. 1794.



The first of many teaching that is to be highlighted in this section in the display of status of a woman is the teaching of the Prophet (PBUH) wherein a companion asked to go to war. He replied very simply by asking whether the companion has a mother to which the answer was in the affirmative. The reply thereafter was "Then stay with her, for Paradise is beneath her feet."<sup>37</sup> This from the outset illustrates the status of a woman in Islam. The example of a real man, contrary to the masculine belief, is not one who acts superior in the household in which respect is demanded. Rather, the contrary to this belief exists wherein the Holy Prophet (pbuh) is quoted to have said:

*"An honourable man treats women with honor and respect, and only a despicable person treats women poorly"* (Khan *et al.*, 2018, p.10).

In addition, it was also stated that:

*"The believers who show the most perfect Faith are those who have the best behaviour, and the best of you are those who are the best to their wives"*.<sup>38</sup>

This facet of spirituality did not distinguish people based on their gender. The Prophet (PBUH) is stated to have said:

*"The most complete of the Believers in their Eemaan are those who have the best manners, and the best of you are those who are best to their women"*.<sup>39</sup>

The above stated is just a brief illustration of what the Prophet (PBUH) taught the believing men regarding their woman folk – particularly the rules regarding their treatment and link to spirituality.

Marriage in Islam is viewed as an important and sacred union between a man and woman that fulfils half of one's religious obligations.<sup>40</sup> Men are also specifically commanded to treat their wives with kindness and respect. The Prophet Muhammad is reported to have said: "The most perfect in faith amongst believers is he who is best in manners and kindest to his wife".<sup>41</sup>

### ***Islamic history***

As was said in the sections above, humanity experienced an extremely dark phase known as the *Jahiliyyah* period before the advent of Islam. Reiterating, women's rights were not only not being upheld, but they were also sometimes treated worse than slaves. Females were denied the freedom to make their own decisions, to own their own property, the practice polygyny was an unchecked global practice, (Rodgers-Miller, 2005, p.561) and they buried their daughters alive as babies as a result of the shame brought to the family by a female being born as opposed to a male child (Hanapi, 2013, p.216). As already demonstrated, many of these customs were abolished with the advent of Islam by stringent laws that gave women the same, and occasionally even greater, rights than men.

In the purportedly "modern world," Women's colleges were founded in the 1800s in response to a need for advanced education for women who were not allowed into most higher education institutions (Parker, 2015, p.6). Furthermore, women were only given the ability to pursue jobs in law and accounting when the Sex Discrimination Removal Act of 1920 was passed.<sup>42</sup> Only after the advent of democracy in South Africa in 1996

<sup>37</sup> Sunnah.com Majah I 'Sunan an-Nasa'i 3104' available at <https://sunnah.com/nasai:3104> (accessed 15 September 2022).

<sup>38</sup> Sunnah.com 'Riyad as-Salihin 627' available at <https://sunnah.com/riyadussalihin:627> (accessed 15 September 2022).

<sup>39</sup> Sunnah.com 'Jami' at-Tirmidhi 1162' available at <https://sunnah.com/tirmidhi:1162> (accessed 16 September 2022).

<sup>40</sup> Sunnah.com 'Mishkat al-Masabih 3096' available at <https://sunnah.com/mishkat:3096> (accessed 25 September 2022).

<sup>41</sup> Sunnah.com 'The Chapters on Marriage' available at <https://sunnah.com/ibnmajah:1977> (accessed 25 September 2022).

<sup>42</sup> The Inner Temple 'The Significance of the Sex Disqualification (Removal) Act 1919' available at

were there acts promulgated to prohibit discrimination against woman in work, education and training.<sup>43</sup> Before these laws were implemented, the aforementioned advances were made in the Muslim world. It is impossible to remain immune to the power and vision of Fatima Al-Fihri, a Muslim woman who succeeded in founding the first world's university in the 9th century (Fejzic-Cengic, 2020, p.18). Hafsa (RA)<sup>44</sup> was the rightful custodian of the original prototype copy of the *Holy Quran*.<sup>45</sup>

Islamic *Sharee'ah* law and history dictate various regulations and practices that show how women are obviously given preference over men in all aspects, as demonstrated in the preceding three subsections. These woman empowering laws are as plainly stated as they have been for generations. So where are Muslim women going wrong if Islam recognizes all the above-mentioned rights for women? Why do they still find themselves in a "vulnerable position"?

***Despite all the provisions of Sharee'ah legislation that support women's rights, why are Muslim women in South Africa in such a perilous position?***

One of the primary factors contributing to the sad situation of Muslim women is the non-recognition of Muslim marriages. In the *Women's Legal Centre Trust* case, a matter was brought forward on behalf of 2 parties, both of which were aggrieved females to Muslim marriages dissolved. With the non-recognition being afforded, it was noted in the judgement that parties to Muslim marriages are left with little to no recourse in comparison to civil marriages.<sup>46</sup> To make matters worse, despite being a citizen of South Africa, Muslim women may lack legitimate access to our courts as a result of this non-recognition.<sup>47</sup> It was further asserted that this non-recognition amounted to nothing less than compromising a citizen's right to dignity and equality, among other constitutional rights.<sup>48</sup> Therefore due to the lack of enforcement mechanisms to enforce their religiously granted rights, Muslim women experience extreme economic and social problems when going through divorce.

There are many real-world instances that may be utilized to demonstrate this conclusion. The situation where women are given sole financial and domestic obligations is one example of this that can be alluded to. Women have an unfortunate continued inability to control their own fertility. This moreover than not results in childbirth which then limits their ability to engage in productive activities. Women's responsibility for unpaid domestic work makes them time poor as well as more economically dependent on men (Peace & Egharevba, 2018). Islamic law as explained provides further remedies for this as well in the form of maintenance payments. However, the sad reality is once again, this is yet another unenforceable right as Muslim woman can't raise their religious right to maintenance in a court of law.

The question therefore becomes, which is at fault—our South African legal system or the *Sharee'ah* law system? The obvious answer to this taking the above mentioned into

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<https://www.innertemple.org.uk/women-in-law/the-significance-of-the-sex-disqualification-removal-act-1919/> (accessed 30 September 2022).

<sup>43</sup>Commission for Gender Equality Act 39 of 1996 & the Promotion of Equality and Prevention of Unfair Discrimination Act 4 Of 2000. See the Women Empowerment and Gender Equality Bill of 2013.

<sup>44</sup> Radiyallahu Anhu (RA) is an Arabic term translating to 'may the peace and blessings of God Almighty be upon them'. This term is used by Muslim community as a sign of respect for the important figure spoken of.

<sup>45</sup> Quraan Search Online 'Brief Biography of IVth-Ummul-Mumineen Sayeda Hafsa (RA) Bint Umer Farooq (RA)' available at <http://www.quransearchonline.com/HTML/Biography/ilyref/hafsaraz.html> (accessed 28 September 2022).

<sup>46</sup> *Women's Legal Centre* case 38.

<sup>47</sup> *Women's Legal Centre* case 62.

<sup>48</sup> *Women's Legal Centre* case 17.

account is of course the former system of law. In a post-apartheid South Africa there are still no legislative provisions recognising Muslim personal law – even though the Constitution makes provision for such legislation to be enacted.<sup>49</sup> Consequently, Muslims have been practicing their Islamic family laws of marriage, divorce, and inheritance within the private sphere, facilitated, and regulated by community-based Muslim judicial bodies, and their affiliated clergy (*Sheikhs* and *Imams*). These clergies have limited to no enforcement mechanisms in comparison to our judicial system (Essop, 2022). As an illustration, if a court makes a maintenance order against an ex-husband from a marriage, he will be aware that if he does not comply with the order, he will be arrested and further prosecuted in court. Consequently, Muslim Judicial bodies and their affiliated clergies can merely recommend that certain rectification measures should be followed. If they do not comply with the advice/orders given, there remains no enforcement mechanism that is available to enforce that woman attain their Islamic rights. This phenomenon is sadly the reality in our current day South Africa. One wouldn't think twice about abandoning their wife without providing for her Islamically required right to upkeep because there would be no accountability on them. Simultaneously, that same individual would be scared to drive faster than the posted speed limit out of concern that they would get fined. There is evidence showing that women in Muslim marriages are often unable to persuade their partners to conclude civil marriages to allow them this recourse in a court of law.<sup>50</sup>

It is crucial to remember that there are numerous examples of women in civil marriages who, despite having these enforcement measures, also find themselves in incredibly challenging circumstances. This issue is beyond the scope of this paper and was just mentioned for the sake of completeness. We are now in a position where the Muslim community in South Africa is forced to deal with this awful situation. How can the state correct the issue is the next logical question at this point. Will simple recognition be enough or will a special piece of legislation need to be drafted for Muslim Woman's rights to be fully realised. Above and beyond this, is it even possible to draft a piece of legislation that is fully *Sharee'ah* and Constitutionally complaint? (Domingo, 2011).

#### ***Recommendations available to alleviate this predicament***

A solution is still required even after outlining the problems faced by Muslim women and identifying their true causes. To ensure that these problems are remedied, there are numerous answers, but everyone must contribute in their own unique way. Recognition of Muslim marriages would be the first point of call. This remedy is required to ensure Muslim women to exercise their constitutionally guaranteed right to access courts, as was discussed in this paper.<sup>51</sup> The consequences of this recognition should not only be restricted to accessing courts. Rather it should be extended to allow Muslim woman to lay claims related to maintenance, custody and access, proprietary consequences of marriage and divorce, unfair treatment as lawful grounds in polygamous marriages and the law governing the must be dealt with under the religious system of Islam.

This solution, to be fully realised and effective, needs to be followed by the creation of a special judicial court that is only responsible for handling Islamic religious disputes

<sup>49</sup> Sections 7(2) of the Constitution wherein it states: "The state must respect, protect, promote and fulfil the rights in the Bill of Rights".

<sup>50</sup> *Women's Legal Centre case 47*.

<sup>51</sup> Section 34 of the Constitution wherein it states: "Everyone has a right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or where appropriate another independent and impartial tribunal or forum".

(also referred to as *Sharee'ah* courts). In foreign legal systems, such as those in Libya and Nigeria, this adoption has been successfully implemented. The result of the adoption of these separate court structures ultimately would result in the true progression and realisation of religious rights and limit religious entanglement. This is done through qualified Islamic scholars/judges adjudicating over matters of their expertise and rulings that are in conformity with the religion of Islam and its constituent principles. Through this adoption, our legal system will be able to avoid the rulings that prove to be contrary to Islamic principles because of secular presiding officers dealing with religious matters. This problem has already happened countless times. The cases of *Hassam v Jacobs and Others*<sup>52</sup>, the *Faro v Bingam NO and Others*<sup>53</sup> and *Daniels v Campbell and Others*<sup>54</sup> cases are but a few cases wherein this problem of religious entanglement was noted. The late Chief Justice Ismail Mahomed of the Constitutional Court held a firm position that judges outside the Islamic faith should not interfere or dabble in Muslim matters.<sup>55</sup> It is a known fact that the principle of Islamic law is not at all compatible with the South African law and Constitution (Sungay, 2022). It's not compatible with our secular law nor with the westernised ideas with what legislation should be. The two will never fully meet.<sup>56</sup> This remedy of the adoption of *Sharee'ah* courts has been argued for since the dawn of democracy by Al Jama-ah's Member of Parliament and leader, the Honourable Mr Ganief Hendricks.

The third and final solution that this paper would recommend alleviating these predicaments goes down to the very basic of things: Education – more specifically the educating of woman to enter martial contracts. This marital contract can secure the wife by incorporating safeguards to her benefit and does not need to be coupled with any supplementary solution i.e. recognition of Muslim marriages, in order for its results to be realized (Jansen, 2017, p.186). These safeguards could incorporate stipulations including but not limited to the prevention of a second wife being taken, obligations for maintenance in the case of a divorce and even personal requests relating to her lifestyle – most of which are Islamically legislated rights given to Muslim women (Jansen, 2017, p.187). If at any time after the conclusion of the marriage, either of the parties are not living up to their agreed performances in terms of the contract, it can constitute grounds for penalties or divorce if necessary. The intriguing aspect of this suggestion is that, if certain requirements are followed, contracts are upholdable in any court of law (Hutchison et al., 2017, p.4). The woman to the marriage would thus have the right of redress in a court of law, as opposed to the lack of remedy she currently has, if a husband breaks any agreed-upon term in this contract.

## 5. Conclusion

The information provided in this paper briefly demonstrates that Islamic law is not the problematic area causing Muslim woman's rights to be withheld. The reality, as shown is that it is not the religion granting too little rights to women, rather that it's the limit on the application of these religious laws in a South African context. A historical

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<sup>52</sup> (CCT83/08) [2009].

<sup>53</sup> (4466/2013) [2013].

<sup>54</sup> (CCT 40/ 03) [2004].

<sup>55</sup> Al Jama'ah 'The Interim Registration of Muslim Marriages Bill: To be Recognized or Not to Be Recognized?' available at <https://www.aljama.co.za/marriage-bill-3/the-marriage-bill-updates> (accessed 30 September 2022).

<sup>56</sup> Al Jama'ah 'The Marriage Bill Explained' available at <https://www.aljama.co.za/marriage-bill-3/the-marriage-bill-explained/> (accessed 30 September 2022).

overview was shown to demonstrate how societies throughout time discriminated and limited women's rights until modern day secular laws. The paper further demonstrated how Islamic law and its constituent history granted Muslim women more rights than any other systems known. This observation drew to the realisation that it's not the religion that hinders Muslim women's rights but rather the application of the religious laws in our South African context. The paper concluded by placing certain recommendations including the recognition of Muslim marriages, establishing of *Sharee'ah* courts, and educating of women to enter marital contracts to ensure that they have recourses available to them should their God given rights not be given to them. The information provided in this paper should be used as a tool to educate legal practitioners about Islamic practices and the public (not restricted to women) the knowledge of what their rights and corresponding responsibilities are. And verily, God knows what we know not.

### References

- Abduroaf, K. (2018). *Deceased Estates: Islamic Law Mode of Distribution*. 2 ed. Highlands Waqaf Trust Publishers Cape Town.
- Ali, A. Y. (1946). The Holy Quran–Text, Translation and Commentary by Abdullah Yusuf Ali.
- Bani, L. M., & Pate, H. A. (2015). The Role of Spouses under Islamic Family Law. *International Affairs and Global Strategy*, 37(2015), 104-111.
- Badawi, J. A. (1980). Status of woman in Islam. *Islamland*.
- Booley, A. (2014). Divorce and the law of Khul: A type of no fault divorce found within an Islamic legal framework. *Law, Democracy & Development*, 18, 37-57.
- Chatelard, A., & Stevens, A. (2016). Women as legal minors and their citizenship in Republican Rome. *Clio. Women, Gender, History*, (43), 24-47.
- Coertzen, P. (2014). Constitution, charter and religions in South Africa. *African Human Rights Law Journal*, 14(1), 126-141.
- Domingo, W. (2011). Muslim personal law in South Africa: "until two legal systems do us part or meet?". *Obiter*, 32(2), 377-392.
- Essop, F. (2022). The intersection between the Islamic law of inheritance and the South African law of succession, Unpublished LLD Thesis, UCT.
- Fejzic-Cengic, F. (2020). Fatima Al-Fihri Founder of the First World University. *Studies in Media and Communication*, 8(2), 14-20.
- Ferdousi, N. (2019). the Practice of Dower and Dowry in Muslim Marriage in Bangladesh: a Legal Analysis. *Jurnal Syariah*, 27(3), 547-564.
- Halder, D., Jaishankar, K. (2008). Property rights of Hindu women: A feminist review of succession laws of ancient, medieval, and modern India. *Journal of law and religion*, 24(2), 663-687.
- Hanapi, M.S. (2013). From Jahiliyyah to Islamic worldview: In a search of an Islamic educational philosophy. *International Journal of Humanities and Social Science*, 3(2), 213-221.
- Hutchison, D., Pretorius, C., & Naude, T. (2017). *The Law of Contract in South Africa*. 3ed. Oxford University Press South Africa.
- Jaafar-Mohammad, I., & Lehmann, C. (2011). Women's rights in Islam regarding marriage and divorce. *Journal of Law and Practice*, 4(1), 3.
- Jansen, Y. O. (2006). Muslim Brides and the Ghost of the Shari'a: Have The Recent Law Reforms in Egypt, Tunisia and Morocco Improved Women's Position in Marriage and Divorce, and Can Religious Moderates Bring Reform and Make It Stick?. *North-western Journal of International Human Rights*, 5, 181.
- Kha, H. (2018). John Stuart Mill on matrimonial property and divorce law reform. *Fundamina*, 24(2), 35-57.

- Khan, N., Alkiek, T. & Chowdhury, S. (2018). *Women in Islamic Law: Five Prevalent Myths*. Yaqeen Institute for Islamic Research.
- Makama, R.E. (2020). *Constructions, negotiations and performances of gender and power in Lobolo: An African-Centred feminist perspective*. DPhil Thesis, UNISA.
- Mandal, K. C. (2013, May). *Concept and Types of Women Empowerment*. In *International Forum of Teaching & Studies* (Vol. 9, No. 2).
- McCarron, G. J. (1975). *Divorce and the catholic church*. *Journal of religion and health*, 113-119.
- Mzee, M. M. (2016). *Islamic Law of Inheritance: The Case of Illegitimate Child and Possibility of Having an Assets of Deceased Father: A Tanzanian Case Study*. *JL Pol'y & Globalization*, 45-55.
- Nadwi, A.A. (1996). *Learning Islam Book 5*. Safar Publications, United Kingdom.
- Ngema, N. M. (2013). *The enforcement of the payment of lobolo and its impact on children's rights in South Africa*. *Potchefstroom Electronic Law Journal*, 16(1), 404-425.
- Nhlapo, T., Himonga, C., Maithufi, I.P. (2014). *African Customary Law in South Africa Post-Apartheid and Living Law Perspectives*. Oxford University Press, South Africa.
- Parker, P. (2015). *The historical role of women in higher education*. *Administrative Issues Journal*, 5(1), 3.
- Rautenbach, C., Bekker, J.C. (2014). *Introduction to Legal Pluralism in South Africa*. Lexis Nexis, South Africa.
- Rodgers-Miller, B. D. (2004). *Out of Jahiliyya: Historic and Modern Incarnations of Polygamy in the Islamic World*. *Wm. & Mary J. Women & L.*, 11, 541.
- Sharma, I., Pandit, B., Pathak, A., & Sharma, R. (2013). *Hinduism, marriage and mental illness*. *Indian journal of psychiatry*, 55(Suppl 2), S243.
- Sungay, M.H. (2022). *Constitutional Legitimacy of Islamic Law of Wills in South Africa*. *Manchester Journal of Transnational Islamic Law & Practice*, 18(1).
- Uddin, A.T. *Women's Rights in Islamic Law*. *Atlantic Council Report*, 1-45.
- Wieand, H.E. (1917). *The Position of Woman in The Late Roman Republic*. Part 1. *The Classical Association of the Middle West and South, Inc.* 378-392.

### Case Law

- Daniels v Campbell and Others* (CCT 40/03) [2004]
- Hassam v Jacobs and Others* (CCT83/08) [2009]
- Bhe and Others v Khayelitsha Magistrate and Others* (CCT 49/03) [2004]
- Faro v Bingham NO and Others* (4466/2013) [2013]
- Women's Legal Centre Trust v President of the Republic of South Africa and Others* (CCT 24/21) [2022] ZACC 23 (28 June 2022)

### Constitution

The Constitution of the Republic of South Africa, 1996.

### Internet Sources

- Al Jama'ah 'The Interim Registration of Muslim Marriages Bill: To be Recognized or Not to Be Recognized?' available at <https://www.aljama.co.za/marriage-bill-3/the-marriage-bill-updates> (accessed 30 September 2022).
- Badawi JA 'The Status of Woman in Islam' available at <https://www.iium.edu.my/deed/articles/statusofwomen.html> (accessed 15 September 2022).
- Carter P 'The first women at university: remembering 'the London Nine' available at <https://www.timeshighereducation.com/blog/first-women-university-remembering-london-nine> (accessed 08 September 2022).

- H Isilow, 'Islam Has Rich, Proud History in South Africa: President' Anadolu Agency (07 May 2021) <https://www.aa.com.tr/en/africa/islam-has-rich-proud-history-in-south-africa-president/2232044> (accessed 17 August 2022).
- Harris E 'In Israel, Jewish Divorce Is Granted Only By Husband's Permission' available at <https://www.npr.org/sections/parallels/2015/03/01/389873594/in-israel-jewish-divorce-is-only-granted-by-husbands-permission> (accessed 24 September 2022).
- History.com 'Ancient Rome' available at <https://www.history.com/topics/ancient-rome/ancient-rome> (accessed 24 August 2022).
- Immanuel A M 'A Woman Under Sharia: 8 Reasons Why Islamic Law Endangers Women' available at <https://counterjihad.com/women/> (accessed 10 September 2022).
- Khan S 'The Verse of Abuse Or the Abused Verse' available at <https://vawnet.org/sites/default/files/materials/files/2016-09/VerseofAbuseorAbusedVerse.pdf> (accessed 11 September 2022).
- National Archives 'Woman Suffrage and the 19th Amendment' available at <https://www.archives.gov/education/lessons/woman-suffrage> (accessed 22 September 2022).
- Peace O & Egharevba M 'Why Are Women the Most Vulnerable In The Society In The Society In Times of Social Conflict' available at [https://www.researchgate.net/publication/324013577\\_WHY\\_ARE\\_WOMEN\\_THE\\_MOST\\_VULNERABLE\\_IN\\_THE\\_SOCIETY\\_IN\\_THE\\_SOCIETY\\_IN\\_TIMES\\_OF\\_SOCIAL\\_CONFLICT](https://www.researchgate.net/publication/324013577_WHY_ARE_WOMEN_THE_MOST_VULNERABLE_IN_THE_SOCIETY_IN_THE_SOCIETY_IN_TIMES_OF_SOCIAL_CONFLICT) (accessed 22 August 2022).
- Quraan Search Online 'Brief Biography of IVth-Ummul-Mumineen Sayeda Hafsa (RA) Bint Umer Farooq (RA)' available at <http://www.quransearchonline.com/HTML/Biography/ilyref/hafsaraz.html> (accessed 28 September 2022).
- Relief Web 'Hazards hurt most in societies that think being female is the real disaster' available at <https://reliefweb.int/report/world/hazards-hurt-most-societies-think-being-female-real-disaster> (accessed 23 August 2022).
- Sunnah.com Majah I 'Sunan an-Nasa'i 3104' available at <https://sunnah.com/nasai:3104> (accessed 15 September 2022).
- Sunnah.com 'Riyad as-Salihin 627' available at <https://sunnah.com/riyadussalihin:627> (accessed 15 September 2022).
- Sunnah.com 'Jami' at-Tirmidhi 1162' available at <https://sunnah.com/tirmidhi:1162> (accessed 16 September 2022).
- Sunnah.com 'Mishkat al-Masabih 3096' available at <https://sunnah.com/mishkat:3096> (accessed 25 September 2022).
- Sunnah.com 'The Chapters on Marriage' available at <https://sunnah.com/ibnmajah:1977> (accessed 25 September 2022).
- The Guardian 'Women's suffrage - February 1918, first women gain right to vote in parliamentary elections' (2018) available at <https://www.theguardian.com/gnmeducationcentre/2018/feb/05/womens-suffrage-february-1918-first-women-gain-right-to-vote-in-parliamentary-elections> (accessed 20 September 2022).
- The Inner Temple 'The Significance of the Sex Disqualification (Removal) Act 1919' available at <https://www.innertemple.org.uk/women-in-law/the-significance-of-the-sex-disqualification-removal-act-1919/> (accessed 30 September 2022).
- University of Kent 'Matrimonial Causes Act 1923' available at <https://womenslegallandmarks.com/2017/08/08/matrimonial-causes-act-1923/> (accessed 20 September 2022).
- Wondrium Daily 'The Role of Women in Ancient Rome—Piecing Together a Historical Picture' available at <https://www.wondriumdaily.com/role-of-women-in-ancient-rome/> (accessed 17 September 2022).

**Legislation**

Commission for Gender Equality Act 39 of 1996

Women Empowerment and Gender Equality Bill of 2013

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

**Treaties and Conventions**

Convention on the Elimination of All Forms of Discrimination against Women, GA Re 34/180,  
UN GOAR, 34<sup>th</sup> Session Supp No 46, UN Doc A/34/36 (1980), adopted 18 December 1979.