

# Islamic "purse strings": the key to the amelioration of women's legal rights in the Middle East

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Now there was a time when they used to say That behind every--"great man." There had to be a--"great woman." But in these times of change you know That it's no longer true. So we're comin' out of the kitchen 'Cause there's somethin' we forgot to say to you (we say) Sisters are doin' it for themselves. Standin' on their own two feet. And ringin' on their own bells. Sisters are doin' it for themselves. (1)

#### I. INTRODUCTION

"Women in Gulf Arab states hold billions of dollars in assets, and banks are only beginning to capitalize on this rich market niche." (2) In early 2006, after a recitation from the Holy Quran, women from all around the Arab world opened the inaugural "Women's Expo" heralding in a new voice of economic empowerment in the Middle East. (3) Even more recently, in addition to loans for women, the First Gulf Bank in Abu Dhabi (one of the UAE's leading financial institutions) created a "ladies only" Visa credit card. (4)

This trend towards a greater financial power for women in the Middle East is nothing new. It does however signal a change in a more important area: women's basic human rights. As women gain a greater stronghold economically in the Arab world, so too will they gain fundamental human rights.

Certainly the world is aware of the discrimination and de facto gender apartheid of countries such as Saudi Arabia. (5) But, when Islam was first founded, it was readily apparent that the Prophet Mohammad strived to give women greater rights. (6) In fact, advances made with regard to women of the time were considered very progressive. (7)

Today, based on the progress women have made in their own right, certain fundamental

human rights are beginning to be recognized. Whether the 2005 Kuwaiti recognition of a woman's right to vote (8) is based on this economic progress or on some other international pressure is hard to say, but arguably the trend towards increased women's rights tracks the growth of Arab women's spending power. This article will attempt to prove just that.

Irrespective of just how repressive the world may claim Islamic law to be, it does grant women significant legal economic rights. Harnessing these rights has led to significant advances for women, and an increased understanding of them could prove to advance these human rights even further.

## II. THE EVOLUTION OF ISLAMIC LAW PROPERTY RIGHTS OF WOMEN

From the very beginning of Islam, women were afforded significant rights. In fact, "[t]he emancipation of women was a project dear to the Prophet's heart. The Quran gave women rights of inheritance and divorce centuries before Western women were accorded such status." (9) Women also held leadership positions within the ummah (collective group or nation), and even fought alongside men in battle. (10) As Ms. Armstrong explained, "[Early Muslim women] did not seem to have experienced Islam as an oppressive religion, though later, as happened in Christianity, men would hijack the faith and bring it into line with the prevailing patriarchy." (11)

There is strong proof within the teachings of the Prophet that women were to be given a high status among nascent Islamic society. One expert considers the following hadith (occurrence or saying of the prophet) to be proof that women were given the highest place of honor:

Mu'aviyah ibn Jahimah reported, Jahiman came to the Prophet, peace and blessings of Allah be on him, and said, O Messenger of Allah! I intended that I should enlist in the fighting force and I have come to consult thee. He said: 'Hast thou a mother?' He said, Yes. He said: 'Then stick to her, for paradise is beneath her two feet.'

(12)

Considering that paradise is the ultimate goal, and that no matter what one does in life, there is no greater obtainment, it is obvious that women were to be considered in only the highest regard. Another hadith confirms this:

Abu Hurairah reported that a man asked the Messenger of Allah (peace and blessings of Allah be upon him) as to who amongst his near ones has the greatest right over him. He (the Holy Prophet) replied: 'Your mother.' He asked, 'Then who is (next)?' He (the Holy Prophet) replied: 'Your mother.' He again asked, 'Then who (is next)?' He (the Holy Prophet) replied: 'Your mother.' He asked: 'Then who is (next)?' He (the Holy Prophet) replied: 'Your father.' (Agreed upon) (13)

Ironically, during a time when men were proclaiming absolute patriarchal order, the Prophet indicated that a woman, in this case a mother, was to be held above all. The father was to follow in degrees of glory only after the mother. This notion was radical in early Islam. Women were at times treated as chattel. For a man of God to come along and to proclaim the honor and dignity of women to such a degree that they were above men, was a truly novel concept.

To go along with this concept, Islam introduced (or emboldened) several new rights that women had previously not enjoyed in the early common era. Two of the most significant of these were dowry and inheritance.

#### A. Dowry

"Wed them with the leave of their owners, and give them their dowers, according to what is reasonable ..." (14) This Quranic verse can be seen as both a positive and negative with regard to women's rights. Certainly observing the fact that a woman has "an owner," indicates some form of subservient status. However, the power of the second portion of that sentence cannot be underestimated. As one learned author explains, "[t]hrough the dower, women gain access to property, yet at the same time it is part of a legal system which defines women as protected dependents." (15)

The Dower or mahr, is a right given to all women in marriage. Under Islamic law, marriage is governed by contract law principles. Therefore, like commercial contracts, there are reciprocal rights and obligations arising from a binding offer and acceptance. (16) Dower is an important part of this contract. In exchange for the women entering into a lawful relationship with her husband, and thereby offering him obedience, a wife is entitled to receive from her

husband some form of dower. This can take the form of money or goods (which usually means jewelry). (17) This money is for the woman to keep. It is not intended for the use by her husband or family. In addition, a dower is owed whether or not the marriage contract specifies it. If the contract is silent, the husband still owes a reasonable or "proper dower."

(18)

According to both Sunnis and Shias alike, an agreed upon dower may consist of anything that can be valued monetarily, is useful, and ritually clean. Further, both classical jurists and modern law makers agree that there is no ceiling for the dower. (19) As explained by Professor Azizah al-Hibri:

This fact is illustrated by an early event in Islamic history.

During the khilafah [caliphate] of 'Umar, young men complained about the large amounts of mahr women were demanding. Mahr is an obligatory marital gift, sometimes monetary, that a Muslim man must give his prospective wife. The amount or type of mahr is usually determined by mutual agreement. Afraid that such a trend may discourage men from getting married, Khalifah 'Umar announced in the mosque that he was going to place an upper limit on the amount of mahr. An unknown old woman rose from the back of the mosque and said to 'Umar: "You will not take away from us what God has given us." 'Umar asked her to explain her statement. Citing a clear Qur'anic verse, the woman established that the amount of mahr can be quite high. 'Umar immediately responded: "A woman is right and a man is wrong." He then abandoned his proposal. (20)

Unfortunately, while there is agreement regarding no cap to dower, there is no such agreement with regard to its minimum. Several of the classic schools of Islamic thought (Shafi, Hanbali, and Shia) believe that there is no minimum to dower. Following the logic contained in the Quran, "... so that you seek them with your property in honest wedlock, not debauching," these schools argue that anything of value is acceptable as dower. (21) This view is shared in Syria, Morocco, and Kuwait. It is also expressly detailed in laws of Jordan which states that the wife should be entitled to dower specified in the contract, "however

small or large." (22) Some countries such as Egypt set a minimum of 10 dirhams, while others like Tunisia simply state that "the dower shall not be insignificant (tafiḥ)." (23)

Irrespective of the amount of dower, the fact that a woman has a right to receive it as a part of the marriage contract ensures Muslim women of significant bargaining power both before and during marriage. Conversely, in other cultures, women are not afforded this right. Take as examples the Sikh and Hindu cultures; there it is the woman's family who give the dower to the man and/or his family. Abdul Varachhia, an expert in the area, explains, "[t]he rationale behind the giving of the dowry by the woman's parents is that the woman is given everything she needs when she enters the marriage and her parents feel they have completed their responsibilities to their daughter who, on marriage, takes a journey from her family to become a member of her husband's family." (24) Whereas in Muslim society, a woman's right to dower is so strong that if an agreed upon amount is not paid, the woman can demand a divorce. (25) Or if she decides to remain married, she can refuse to engage in sexual relations until the dower is paid. (26)

Additionally, short of a woman agreeing to discharge a portion (or all) of her dower, it is very difficult to lower the amount of dower without going to court. There are, however, simple provisions for her dower to increase. The Quran states, "[s]eeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, ye agree mutually (to vary it), there is no blame on you ..." (27) This authority to add to the dower will be considered lawful if it meets three conditions: (1) It is determinate; (2) It occurs during marriage (not during a separation or revocable divorce); and (3) It is accepted by the wife (or her guardian if she lacks legal capacity to accept). (28)

Many opponents of Islam look at fundamentalist groups like the Taliban and point out how unfair marriage for a woman can be. The notion of an arranged marriage, they argue, is abhorrent. (29) Not surprisingly, that notion is also abhorrent in the Islamic faith. A young Muslim woman cannot marry without her father or grandfather's permission. But that does not mean she can be forced to marry. Abul A'la Maududi elaborates:

Islam does not give the father or the grandfather a final say in the marriage of a woman. The final say belongs to woman herself. She cannot be married to anyone without her free consent. It is

really surprising that a minor girl should be deprived of this precious right. A woman has been given the right to assert her discretion because marriage is a matter intimately related to her life-long happiness. Looked at from this point of view, a minor girl stands as much in need of this right as a grown up woman. If maturity of judgement (sic) and great affection can entitle the father or grandfather to overrule the discretion of a minor girl, the discretion of a grown up daughter can also be overruled on the same ground. (30)

To assert that Islam is in favor of arranged marriages is similar to asserting that Christianity is in favor of arranged marriages based on the radical Mormon clan in Southern Utah who arranged for very young women to marry into a polygamist sect. (31) Indeed traditional Islam favors protecting women to the extent that men will not take advantage of them. Thus, dower serves as a financial tool to keep men in check. If you value marriage, you must show it by putting your money up front.

Dower protects women in many ways. First of all, it discourages divorce. The majority of Sunnis agree that dower is due and payable to a woman on the occurrence of either of two events: "1) the actual consummation of marriage; and 2) the death of either spouse before consummation." (32) Thus, if a man has already consummated a marriage and then decides to divorce, he faces a large financial penalty for his actions. Second, it discourages polygamy. (33) Multiple wives cost men multiple dowers, (34) which can obviously add up appreciably. Finally, it also discourages domestic violence. "If a wife is seeking a judicial dissolution of the marriage on the ground of harm (darar), she does not need to return the mahr to her husband. This position is accepted by the majority of Islamic scholars." (35)

Furthermore, dower is taken very seriously prior to marriage. (36) A proud father will not let his daughters marry short of a dower fit for their status in life. For example, in Jordan, if no dower is specified, the law looks to the wife's family and then her peers in the town. (37) Aspects taken into consideration to equalize a dower are: beauty, youth, social status, virginity, wealth, intelligence, piety, manners, and having no children. (38) Unfortunately, in some fundamentalist societies men consider dower as simply a mechanism to purchase a

woman of choice. Following some sort of flawed ijihad (the process of making a legal decision by independently interpreting the original sources), some fundamentalists may see dower as explained here:

Shaykh Khalil, the most prominent Maliki jurist sees the relationship of the mahr to marriage as a transaction: 'In the market one buys merchandise, in marriage the husband buys the genital arvuum mulierus. As in any other bargain and sale, only useful and ritually clean objects may be given in dower.' Also, the most prominent Shi'ite jurist, Muhaqqiq al-Hilli, defines marriage as 'a contract whose object is that of dominion over the vagina, without the right of possession,' and fundamentalists themselves allow men to dispatch their nonvirgin wives, without their mahr, as damaged goods. (39)

Even assuming arguendo that the fundamentalists are correct in that the dower represents the price of dominion, there is still a strong argument that dower protects women. Some feminists believe that dower should be abandoned to counter this fundamentalist notion. However, as Ms. Jacobson accurately points out, the feminist movement (especially in the West Bank) started as a desire to educate women about the need to have "modern" marriages. (40) Nevertheless, "[t]he realities of life in the West Bank and Gaza Strip are such that the dower is the only independent source of wealth to which most Palestinian women have access." (41) Furthermore, dower remains:

one of the fundamental bargaining tools in a traditional marriage negotiation--a groom's family might offer more dower in exchange for the bride agreeing to accompany her husband abroad when he works, or the bride's family might agree to accept less dower in exchange for a promise regarding the type of house that will be provided. (42)

Until there is a better alternative, depriving a Muslim woman of her dower could have terrible consequences. The most powerful tool that dower gives a women is economic leverage. She sets the amount, and no one can take it away from her. As such, "[s]he may decide to use it



after marriage in starting her own business, or invest it for a later time when she may need it. It is the woman's safety net, given to her by a freely consenting prospective husband as a gift [nihlah]." (43) While it is true that sometimes women are left financially defenseless by thieving fathers or overbearing husbands who get their wives to waive their entitled rights, (44) overall it is still a very powerful form of protection and remains "a potentially critical element in the balance of rights and duties between the spouse." (45)

## B. Inheritance

While dower is a powerful form of economic advancement for women, there is still another tool that helps women to become more economically viable. This tool is inheritance. Prior to the introduction of Islam into Arabia, women were sadly without any hope. Zainab Chaudhry best describes this time period:

The social and political structure at that time was defined by tribal membership, and dominated by men. Women played little part in the religious or political affairs of the tribe, and the 'men's rights over their women were as their rights over any other property.' In marriage, a woman's consent was not needed, and she was often purchased by the man from her father or guardian as an object of sale. Men also enjoyed the right to divorce women at will without having to provide any maintenance to them. A man 'had the right to unlimited polygamy,' and often upon his death, his wives would be considered part of the estate to be passed on to his heirs. Female infanticide was a common practice. Women had no hope of inheritance, and 'were not allowed the holding, or in any case the uncontrolled disposal, of their possessions.' (46)

With the advent of Islam however, things changed dramatically. Women's rights blossomed. The change affected all the previous negativity. And such abhorrent practices mentioned above ceased (or were significantly limited). (47) With the new changes in inheritance and other rights, women (now legal entities) could:

own and manage her own property, and [were] granted status as an inheritor in a scheme of fixed shares. With education incumbent on

all Muslims, women became leaders in many fields, including the intellectual pursuit of religious scholarship. It is interesting to note that at the time Islam was guaranteeing all of these rights for women, 'the West was mired in that unenlightened period now known as the Dark Ages.' (48)

Demystifying Islamic inheritance can be difficult. However, in reality it comes down to a basic structure. "The Islamic Law of Inheritance is also known as the 'science of the shares,' or the *ilm al-fara'id*." (49) The Quran specifies three classes of heirs: (1) the "sharers"; (2) agnatic heirs referred to as "residuaries"; and (3) uterine heirs, or "distant kindred." (50) Only if there are no sharers, or agnates, does the estate go to the "distant kindred." (51)

Notwithstanding the fact that when this system was first developed it gave much greater rights to women than any other system in the world, in today's society it is not without its faults. The Quran establishes that in many cases the share of a male is equivalent to that of two females. (52) There are exceptions and manners in which a female can inherit more, but overall the system is designed to give inheritance greater significance to a man. Fortunately, Islamic law does set out a process to equalize this. First of all, in no way are females disinherited (no matter how distant). This is a great distinguishing factor from pre-Islamic Arabia. (53) Second, all distributions have to be equitable. According to the Quran this equitable distribution must take into account the actual *nafa* (benefit) the overall distribution would provide to the bereft. (54) So even if a situation may look to give more to a son (for example), there is a mechanism in place for a daughter to inherit more under the proper conditions. Such a condition might exist if she had several children and he was an infant himself. Finally, a testator can bequeath up to one-third of his or her wealth without decreasing the division of the remaining estate. (55) Thus proper estate planning can ensure more income to the women in the family, if necessary.

Since females are not disinherited and the estate must be divided properly by taking all factors into consideration, a fair and equitable distribution remains possible. Given the additional potential for specific bequests, inheritance under Islamic law is not universally unfair to women by a factor of two to one.

Another important consideration is the fact that amongst this tangled structure, there are

other Islamic legal mechanisms that protect women's inheritance rights. The Quran is very specific that no bequests to heirs go before debts are paid. (56) This rule is carried strongly into all facets of Islamic law. In a hadith narrated by the Caliph Ali, the Prophet explicitly ruled that all debt be satisfied prior to any legacy being considered. (57) Today, this rule is considered *ijma*, or consensus, because most of the Islamic world accepts it. Thus, when it comes to a woman's right to inherit, if there is still dower outstanding from a husband to wife, it must be paid off first. This is in addition to any share she would receive as a part of his estate. Some couples use dower as a specific way of augmenting the share of a surviving wife by agreeing upon a suitable amount for the deferred portion of the *mahr* at the time of marriage. (58) In this manner a woman is given very high inheritance rights. It is another way in which dower is a powerful instrument within the hands of a marrying woman.

Islamic inheritance law is certainly not simple. As one Muslim saying goes, "knowledge of the laws of inheritance and its various shares constitutes one-half of all knowledge." (59) So it comes at no surprise that there are many exceptions within this realm. For example, many Islamic nations make it so a non-Muslim cannot inherit from a Muslim and vice versa. (60) Differences in domicile can also impact whether or not one will inherit. (61) Thus depending on the status and location of a wife's spouse or family, inheritance could potentially be affected. No surprisingly, murder, like in most civil codes, prohibits any type of inheritance as well. (62)

Overall, inheritance has many complicated rules that are well defined within the Quran. Unfortunately in the past fourteen centuries of Islamic thought, most of the passages have been interpreted through various *qiyas* (the process of analogical reasoning) and *ijtihad* done only by men. Further, many prominent Muslim women have agreed to these interpretations. For example, Islamist Nagwa Kamal Farid, (who was Sudan's first woman Islamic legal judge) believed that "inequities in inheritance are not detrimental to women since women never have to support themselves, this being the burden of men, and, therefore, it is right that men receive a larger share of inheritance." (63)

Today, however, women do provide more familial support. Thus, the basic inheritance framework needs some adjustment. Fortunately, the principles espoused by the Prophet regarding equitable treatment of women and his advancement of women's issues has survived throughout the years and (as will be shown) will continue to advance.

Further, irrespective of its tilt in favor of men, inheritance does afford women great financial benefit. Taken together with dower, even the most poverty stricken rural daughter, sister, wife, or mother can accumulate a small amount of wealth. How she uses this wealth to advance herself is entirely upon her. How this wealth can advance the cause of oppressed women is what this article aims to prove.

The next three sections of this article will explore further wealth accumulation by women in the Middle East. First, maintenance will be briefly discussed, followed by an overview of the expansion of economic opportunity which has led to great wealth accumulation amongst Muslim women. Finally, this section will conclude with a discussion of a powerful tool that offers economic power even to the poor--microfinancing.

### C. Maintenance

Maintenance is the lawful right of the wife under a valid marriage contract on certain conditions. It is the right of the wife to be provided at the husband's expense, and at a scale suitable to his means, with food, clothing, housing, toilet necessities, medicine, doctors' and surgeons' fees, baths, and also the necessary servants where the wife is of a social position which does not permit her to dispense with such services, or when she is sick. (64)

Many, if not all, of the justifications used to retain a lower standard of inheritance from a social-economic rationale are based upon the logic that a man must provide for his women (wife, daughters, etc.). Thus, this principle has a positive effect in that men must provide for their spouses, but it has a negative Western connotation in that it seems to encourage the role of a woman in a secondary status--that of a homemaker.

Maintenance comes from the Quran, "... But [the father] shall bear the cost of [the mother and her child's] food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child... if ye decide on a foster-mother for your offspring there is no blame on you, provided ye pay (the mother) what ye offered on equitable terms." (65) From this verse, Islam holds tight to the idea of taking care of both current and potential mothers. Divorced women are also included with a Quranic form of protection, "Let the women live (in 'iddah) [pending divorce] in the

same style as ye live according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden ..." (66) Taken together, it is very clear that the Quran lays out the requirement to provide maintenance for women. The common thread behind this seems to be pregnancy and childbirth. Nonetheless, this is an area that has been expanded to encompass nearly all women; and if the Quran is not completely clear, there is additional support for maintenance in other areas of Islamic law.

Take for example a sunna or tradition of the Prophet that gives direct credence to the concept of maintenance. In his last sermon, Muhammad preached to all hearers: "Show piety to women, you have taken them in the trust of God and have had them made lawful for you to enjoy by the word of God, and it is your duty to provide for them and clothe them according to decent custom." (67)

From this tradition it is hard to argue any variance from the requirement to provide maintenance for a woman. But what are the requirements to receive it? According to Dr. Nasir, there are three: (1) the wife is under a valid marriage contract; (2) if the wife "places" herself under her husband's power, and gives him access to her at all "lawful" times (call Tamkeen); and (3) if she obeys all his lawful commands for the duration of the marriage. (68)

From these requirements, it is evident that a Muslim wife is supposed to be under the dominion of the husband. But remember, this really is not that different from what is called for in the Jewish (69) or Christian tradition. (70) One big difference however, is how clearly Islamic law indicates that a man must provide a financial form of maintenance to his bride. This form of maintenance is not taken from her dower--it is in addition to it. In many countries it is considered a debt on the husband and only payment or discharge will settle it. (71)

A woman can lose a right to this maintenance by, for example, going to jail, or by being abducted. (72) There are some who disagree with this, however, because at least in the case of abduction, it was not caused by the woman's choice. (73) More commonly, a woman can lose her maintenance if she pursues employment without her husband's permission. (74) If she has his permission to work, however, then in most cases he would still be required to pay her his regular maintenance. Additionally, most of the income a woman earns on her

own is usually considered her own. Because of this choice (to work or not work), some Islamic scholars consider that Islam grants women "economic independence and equal rights of employment, while the West frees them from the home only to enslave them in the marketplace." (75)

Other things can lead a woman to lose her maintenance. Among this list are types of "disobedience," such as leaving the matrimonial home, or even denying the husband conjugal rights. (76) There are, however, exceptions that would allow a wife to be "disobedient." Among these exceptions are: (1) a husband beating his wife; (2) a husband allowing a co-wife to live in their house without the first wife's consent; (3) a husband's kin living with the wife without her consent; (4) a command of a husband that violates Islamic law; (5) a wife not receiving prompt dower; and (6) a wife going to visit her sick father--even if he is not Muslim, and even if her husband denies her permission. (77)

The amount due for maintenance is established in much the same manner as dower. One looks to custom, family, market, other kin, and any other logical equalizing factors. (78) Also similar to dower, the amount of maintenance can be raised or lowered depending on a change in marital circumstances. There are even provisions for women to accumulate unpaid maintenance and have it granted legal status pending resolution of a divorce. (79)

The Quran makes clear that "[h]usbands) are the protectors and maintainers of their (wives) because Allah 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 Allah would have them guard." (80) But Islam, unlike Jewish and Christian faiths (for the most part), specifically requires financial maintenance. When this maintenance is taken together with a woman's right to dower, and her albeit limited right to inheritance, a woman can begin to collect a small nest egg to do with as she pleases. All circumstances and situations are different, but notwithstanding the allegation of outright misogyny in Islam, there is clear proof that at least financially, women are supposed to have significant fiscal rights.

The next question naturally posed, then, is what can a woman do with her nest egg? How can she make it work for her?

D. Women in the Middle East and Their Investments

The evolution of women and finance in the Middle East has been one of constant growth. Today, "[b]ecause of the basis of inheritance in shari'ah (Islamic law), [women] own considerable fortunes in their own right and indeed a good part of the wealth of the country. "(81) In countries like Saudi Arabia, there are still many restrictions keeping women away from true equality. But each day women further open the door toward economic parity and more opportunities.

Some of the economic steps that have helped advance women were taken inadvertently by men. As early as the 1980s, Saudi banks introduced branches that were tailored exclusively for women. (82) Because of the quasi-gender apartheid of women in Saudi Arabia, this was seen as a necessary step to keep women separate from men. At the same time, it recognized that women also have financial assets and business needs.

Today, women's banks have become powerful, and other Islamic countries continue to capitalize on their appeal. On August 15, 2006, Islamic Financial Services (IFS) opened a branch in Dubai to exclusively serve women. (83) From this branch, women can invest in many services, including remote trading. (84) The branch provides women yet another outlet to invest their growing capital.

While not all women keep their money exclusively in women's banks, the amount of money controlled by women is astronomical. In addition to money women already have invested in the global economy, it was estimated as of November 2002 that Saudi women had bank deposits worth more than \$26.6 billion that were not yet invested. (85) This is money just waiting to find further financial growth. Various obstacles stood in the way that precluded women from investing this huge nest egg, such as the various Islamic laws previously discussed in this article. Other roadblocks have been even more discriminatory. In spite of the obstacles, women have been pushing down these roadblocks. According to the BBC, Saudi businesswomen have at times simply ignored the business "curbs" placed in front of them, and have openly defied these obstacles in the name of commerce. (86)

Other women are simply taking their money elsewhere. According to one report, rigid Islamic financial rules regarding women have accounted for the recent flight of over \$5 billion from Saudi bank accounts into capital investments in foreign countries. (87) At the same time, Kuwaiti women are learning to invest in their own country. In 2005, the Wall Street Journal

reported that: "Across the Middle East, stock markets are on a tear, fueled by soaring oil prices, a wave of privatization and new willingness to invest locally. But in a twist for the region's conservative, male-dominated societies, women are starting to play a big role in the bull run."

Dressed in black robes, women are calling out stock prices and quickly learning the tools of the trade. From 2003 to 2005, the number of women registered to trade stocks tripled to about 30,000. (88) Clearly, the vice chair of a Qatari investment firm, Hanadi Nasser Bin Khalid Al-Thani was correct when he said, "women are playing an increasing role in the financial arena. They're reshaping the regional financial landscape." (89) During the first three months of 2005, women executed some 9000 trades worth about 100 million Kuwaiti dinars, or about \$340 million. (90)

As a vestige to the current gender segregation, a great deal of this trading takes place on Kuwait's women-only floor. But this floor, which was once cramped and windowless, has now grown to three times its original size and occupies a vast balcony over the main exchange floor. (91) Modern technology allows women to broker orders on the spot from outside investors, or women can sit and drink tea (like their male counterparts) while watching the action. (92)

As of 2005, Saudi women owned approximately 20,000 firms. (93) These range from ordinary retail businesses to various types of industry. While these numbers only account for roughly five percent of all registered Saudi businesses, (94) the number of women registered in local chambers of commerce is on the rise dramatically. In Jeddah there are about 2000 women members out of the total membership of 50,000. (95) And in Riyadh, women number 2400 out of a total 35,000 members. (96)

With increased business membership, women have also begun to break down other gender barriers. In February 2006, six Saudi women in Damman ran for seats in the local chamber of commerce. (97) As reported by the Associated Press, "the election is a marker of change in Saudi Arabia, where progress toward a more open political system, including greater rights for women, is measured in inches, not miles." (98) Women are still banned from running or voting in municipal government elections, but women now serve in the Chamber of Commerce building, which was once entirely off limits to women. (99)



Women candidates for these new opportunities credit King Abdullah for this change. When the king took office after his half brother Fahd died, he intervened personally, which ultimately gave women the right to run. (100) As will become clear throughout this article, Islamic law is not the obstacle for women in the Middle East. Instead, old patriarchal structures block effective change. The fact that the Saudi monarchy is beginning to transform is a sign that forecasts great change in the future. The more women push for equal rights in this oppressive environment, the more likely the regime will shift.

Family-owned and operated businesses are also experiencing gender change. Fathers are also learning to accept women in the workplace:

Due to the overwhelming number of family owned businesses, estimated to be around the 90% mark by Saudi-based consultants NextMove, the reins of many Saudi organizations are being passed not only from father to son, but also from father to daughter. Some women, armed with confidence from their success in the corporate world, have also led the way for greater female participation in the workforce. (101)

This surge of women in the workplace is not without its drawbacks. Because of the rigid rules regarding women and their place in society, one large problem can preclude a woman from excelling in Saudi Arabia: a restrictive marriage. According to Saudi Arabia's leading female technology expert, Alia Banaja:

Women are straightforward, and their work is excellent; we've grown rapidly mainly because of the effort women put into the job. But I have found some difficulties when dealing with women. Why? Marriage. One of my employees cancelled a meeting because her fiancée refused to let her go, and threatened to divorce her. (102)

Notwithstanding the obstacles, women are continuing to grow and progress in the Middle

Eastern business world. One leading indicator is the Jeddah Economic Forum. In 1999, women were not allowed to speak at the forum. (103) By 2000, 50 women sat to watch the proceedings. (104) In 2001, more than 100 women join the men, and this time they were allowed to "write-in" questions, (105) As many as 200 women attended the 2002 forum, and in 2003 the women had their own forum. (106) It continues to grow to this day. In 2004, the forum produced a bold statement from a Saudi businesswoman by the name of Lubna Sulaiman Al-Olayan, wherein she declared that her vision for Saudi Arabia was one in which, "any Saudi citizen, irrespective of gender" could do any job. (107) Considering the background of female oppression, these words were strong indicators of change to come.

Nevertheless, if the regime does not shift or if change occurs too slowly, women will likely leave. According to one female clothing importer, the kingdom's future depends on women joining public life. (108) Samai Al-Edrisi feels, however, that if change does not occur fast enough, she will take her two college-educated daughters and leave for a freer environment. (109)

Undoubtedly, many changes in the role of women in Middle Eastern economics are slow in the making. While women have access into the business world, the type of work they are allowed to do is often limited. Most women-owned businesses deal with apparel, cosmetics, furniture and home decor, foodstuffs, health and fitness products, educational materials for children, and other such products. (110) Other economic sectors are hard for women in Saudi Arabia to enter. In fact, Saudi law oftentimes directly prohibits women from seeking certain types of employment. For example, a collegiate Saudi woman is not allowed to major in engineering, economics, or law. (111) But women are seeking to change these barriers. And while Saudi social policies may try to funnel women into a certain direction, more and more women are pushing the education envelope to ensure greater access for all women in all areas. As the Middle East struggles to progress, many believe the key to its future is in women's hands. (112) Thus, more and more people are beginning to see the relevance of an important proverb, namely: "When you educate a man, you educate a man. When you educate a woman, you educate two generations." (113) Until Saudi Arabia sees the value and truth of this, progression will be stifled.

In the meantime, women are moving forward and change is becoming more widespread. For many years, progress was apparent only among Saudi elite. Women who lived on the

outskirts of society seemed to have little hope for progress, because they lacked the means to get in the door of global prosperity. But now, the times are changing even for the underprivileged mother living in the countryside of the Middle East. A new concept introduced in just the last few years is helping to bring all women to the forefront, empowering even poor women to travel the road to economic success. The concept is microfinancing, and its inventor was just recently awarded the Nobel Peace Prize. (114)

#### E. A Note on Microfinancing

Developed by Professor Muhammad Yunus, (115) microfinancing involves very small loans called microcredits, which are typically made for less than \$100. (116) Professor Yunus founded the Grameen bank in 1976 during a particularly difficult famine in Bangladesh. The bank's goal was to help people start businesses and thereby lift themselves out of poverty. (117) Today the bank has over 6.6 million borrowers, and an amazing 97 percent of its clients are women. (118) Since 1976, the idea has spread to over 40 countries and has flourished by giving women an opportunity to bring about their own development. (119)

Professor Yunus understood that giving women more control over resources was more profitable to a community because women tend to invest more in their families than do men. (120) Studies in various countries such as Bangladesh, Brazil, Canada, Ethiopia, and the United Kingdom, found that women devote more income to education, health, and nutrition and less to alcohol and cigarettes. (121) Also noteworthy, according to Isobel Coleman in *Foreign Affairs*, is that:

[I]ncreases in female income improve child survival rates 20 times more than increases in male income, and children's weight-height measures improve about 8 times more. Likewise female borrowing has a greater positive impact on school enrollment, child nutrition, and demand for health care than male borrowing. (122)

It should come as no surprise then that countries that have closed the gender gap have made greater strides in education and have achieved the most economically and socially. (123) On the other hand, countries that do not promote economic growth in women lag far behind. (124) This is part of the reason why Professor Yunus focused microfinancing on women. He recognized that women are generally poor, more credit-constrained than men,

and have less access to the work force. (125) He also knew that women are more likely to pay back the loans than men and that "millions of small people with their millions of small pursuits [could] add up to create the biggest development wonder." (126)

Because of the interdictions regarding riba (usury or excessive interest), there were critics who worried microfinancing would run contrary to Islamic law. Understanding this, Professor Yunus made sure he was properly advised on all Islamic concepts that could conflict with his financing mechanism. In his own words:

Many Islamic scholars have also told us that the Shariah ban on the charging of interest cannot apply to Grameen, since the Grameen borrower is also an owner of the bank. The purpose of the religious injunction against interest is to protect the poor from usury, but where the poor own their own bank, the interest is in effect paid to the company they own, and therefore to themselves. (127)

More specifically, one of his advisors was very encouraged by the whole program and offered her support:

There is nothing in Shariah law or the Quran against what you are doing. Why should women be hungry and poor? On the contrary, what you are doing is terrific. You are helping to educate a whole generation of children. And thanks to Grameen loans, women can work at home, instead of sitting around. (128)

The success of microfinancing is astonishing. Grameen bank has survived accusations that it lacked adequate funds, and it now has attracted more and more world advocates, including Bill Clinton and his foundation. (129)

Truly, microfinancing is a powerful new tool in the quest to improve women's rights around the world. As women gain more power financially, they gain power to change the world around them. But how can economic advancement lead to a change in the fundamental rights of women? The next section of this article will discuss, with particularity, how the purse strings of the world can help lift women out of the trough of discrimination and lead them to a new light.

### III. HOW ECONOMIC ADVANCEMENT CAN CONTRIBUTE TO THE FIVE RIGHTS NECESSARY TO ACHIEVE GENDER EQUALITY

In a recent article in the *Texas Journal of Women and the Law*, Edieth Wu identified what she called "global burqas," or disguised forms of discrimination. (130) She listed five fundamental rights where women around the world are not finding equality: (1) the right to life; (2) the right to equality; (3) the right to equal protection under the law; (4) the right to be free from all forms of discrimination; and (5) the right to be free from torture or other cruel, inhuman, or degrading treatment or punishment. (131) These areas serve as a good baseline. For without these rights, women will never truly be equal. It is therefore essential that, at a minimum, these rights be conferred and defended. The following section of this article will discuss these five rights and show how each can be obtained via the financial power of women in the Middle East.

#### A. Right to Life

A few years ago, Amina Lawal of Nigeria was sentenced to death for adultery. More specifically, she had a baby out of wedlock. (132) Fortunately, international pressure saved her life, (133) but each year many women are put to death for similar accusations. Unlike Amina Lawal, they are not given a trial, they do not have international pressure to protect them, and sometimes even their own parents support their murder. In Jordan, where approximately 25 women each year fall victim to honor killings, (134) women are often murdered because they have allegedly tarnished their family's honor. One scholar traces the roots of honor killings to a crude Arabic expression, "a man's honor lies between the legs of a woman." (135) Thus, if a woman is accused of inappropriately engaging in any unlawful sexual activity, she destroys both the honor of herself and her family. Azza Basarudin provided a disturbing anecdote of one such murder based on a shaky accusation:

On May 31, 1994, Kifaya Husayn, a 16-year-old Jordanian girl, was lashed to a chair by her 32-year-old brother. He gave her a drink of water and told her to recite an Islamic prayer. Then he slashed her throat. Immediately afterward, he ran out into the street, waving the bloody knife and crying, 'I have killed my sister to cleanse my honor.' Kifaya's crime? She was raped by another

brother, a 21-year-old man. Her judge and jury? Her own uncles, who convinced her eldest brother that Kifaya was too much of a disgrace to the family's honor to be allowed to live. The murderer was sentenced to fifteen years, but the sentence was subsequently reduced to seven and a half years, an extremely severe penalty by Jordanian standard. (136)

Kifaya is not alone. In 2003, two sisters were hacked to death by axes. One sister, who was twenty-seven, was murdered for leaving her home to marry a man without her family's consent. (137) Her 20-year-old sister was murdered for trying to leave home to join her older sister. According to one official, the scene was brutal, and one victim's head was nearly completely severed. (138) In another honor killing, a father killed a woman, stabbing her twelve times, and then waited until she was dead to call an ambulance. (139) The young woman's crime was simply falling in love with a Roman Catholic. (140)

Motivated by her death, the young woman's best friend wrote a book about honor killings and how the law in Jordan should be changed to support victims of this crime. (141) According to the author, 90 percent of honor killings involve virgins--young girls, like her friend, who never violated anyone's honor, but were "rumored" to have done something wrong. (142)

Jordan is not the only country plagued with this crime. But it does have a common denominator. "Experts say the phenomenon is widespread among poorer, less educated, tribal societies with a tradition of self-administered justice, like Jordan's, and in underdeveloped countries in the Middle East, North Africa, Central Asia and South America." (143) As women free themselves economically, I contend that this type of crime will be reduced. Nevertheless, before conducting the economic analysis, one must first consider how honor killings are viewed under Islamic law and international legal standards.

#### 1. Islamic Law and Honor Killings

According to the Quran, if either a man or woman commits adultery, they should be flogged with a hundred lashes. (144) Nowhere does the Quran justify killing the adulterer. To prove this, Maulana Ali, a Quranic expert, notes that the Quran doles out a different punishment for slave-girls. If they commit adultery, they are to only receive punishment which is "half that for free women" (145) If an adulterer was supposed to be stoned to death, this verse would be

impossible. One cannot stone someone "half to death." (146)

This punishment is also confirmed via hadith. According to Bukhari, (147) "Zaid bin Khalid reported that he heard the Messenger of Allah (pbuh) making pronouncement about him who had committed adultery and had not been married that he should be given one hundred lashes and sent to exile for one year." (148) It is possible to find, however, other hadiths that support killing someone for adultery. In a lesser-accepted hadith, Tirmizi reports:

Abu Umamah bin Sahl reported that 'Uthman bin Affan look towards the people from above his house on the day of blockade and said: I adjure you by God, Aren't you aware of the fact that the Messenger of Allah (pbuh) said: That the shedding of blood of a Muslim was unlawful except when he committed any crime out of these three crimes: Adultery after marriage, renouncing Islam after embracing it, killing anybody without right, or being killed (in this attempt). (149)

There is also a hadith that relates to stoning a Jewish adulterer. In this hadith, the Prophet ordered the Jewish citizen's death. (150) Maulana Ali explains, however that the reason for this order was because stoning was prescribed under Jewish law. (151) The Prophet was simply applying Jewish law to Jewish offenders. Nowhere was stoning to death supposed to have been applied to Muslims for the crime of adultery. (152) Further, according to Maulana Ali, any reference to stoning outside of this reference to Jewish law, was given by the Prophet prior to the revelation of the Quran 24:2, wherein the punishment was set at one hundred lashes--nothing more. (153)

Irrespective of whether an adulterer should receive lashes, or assuming arguendo that an adulterer should be stoned to death, there is still another problem that must be overcome prior to the imposition of such a punishment. According to the Quran, in order to convict someone of adultery, there must be four witnesses. (154) This alone should prove a great obstacle to ever convicting someone of adultery. Additionally, if someone makes an accusation of adultery, but this accusation is false, the Quran specifies that this false accuser should be given eighty lashes. (155) A prominent hadith also confirms this:

Hilal bin Umaiya accused his wife before the Prophet of committing

illegal sexual intercourse with Sharik bin Shama. The Prophet said, 'Produce a proof, or else you would get the legal punishment (by being lashed) on your back.' Hillal said, 'O Allah's Apostle! If anyone of us saw another man over his wife, would he go to search for a proof.' The Prophet went on saying, 'Produce a proof or else you would get the legal punishment (by being lashed) on your back.' The Prophet then mentioned the narration of Lian (as in the Holy Book). (156)

Given that the sin of adultery is hard to prove and given that there is absolutely no strong evidence, Quranic or otherwise, that Islamic law permits stoning an adulterer to death as punishment, it is particularly surprising that anyone would try to justify honor killings. As stated previously, these killings often occur over mere speculation or rumor of promiscuity, not even full-fledged adultery. Adultery would intuitively be considered worse under Islamic law, yet some women are never given the benefit of the doubt. According to Professor Azizah Y. al-Hibri, domestic violence has no place within the context of the Islamic perspective. (157)

Professor al-Hibri recognizes, however, that some radical Islamists believe that hitting a woman (usually a spouse) is justified under the Quran. These radicals support their belief using a verse regarding chastisement. (158) The verse states that, "as to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) spank them (lightly) but if they return to obedience seek not against them." (159) Professor al-Hibri finds no justification for a beating in this verse. (160) She points out that the chastisement punishment is "both conditional and structurally complex, leaving room for erroneous, culturally skewed, or subjective interpretations." (161)

Based on the history of the Chastisement verse, it becomes evident that any type of chastisement is to be done in a very restrictive manner. According to Maulana Ali, this punishment should occur only in the most extreme circumstances. (162) So rare in fact is this punishment that it is practically impossible to ever justify it. Furthermore, the Prophet made it clear that even if justified, a man should refrain from doing so, and in so refraining, his reward would be that much higher. (163)



So then, if the mere hitting of a woman is so difficult to justify, how can the justification of murder ever be in accordance with Islamic law? The answer is that it cannot. In her narrative description of the history behind the Chastisement verse, Professor al-Hibri mentioned that during the period of Jahiliyyah, men were very cruel to their wives. Jahiliyyah is the period of ignorance preceding the coming of Islam. As stated previously, Islam changed many things for the better. Most significantly it ended many forms of violence and discrimination against women.

Some claim that the first roots of honor killings date to either the Code of Hammurabi in 1752 B.C. or as far back as the Assyrian legal code of 3000 B.C., wherein men who committed rape were punished by having their wives raped by other men. (164) Yet neither of these sources gives rise to any justification under Islamic law. Indeed, honor killings were and are forbidden under Islamic law, and should never be practiced under any circumstances. The difficulty, however, is in convincing the communities where an honor killing occurs that it is not justified and that the only honor they are achieving is an honorific place in hell. As more become aware of this crisis, however, hopefully the practice will soon end.

## 2. International Law's Response to Honor Killings

Just as Islamic law does not support honor killings, international law also condemns it. Jordan is a party to a number of human rights treaties that either directly or indirectly condemn honor killings. (165) Nevertheless, Jordan provides that Islam is the state religion. (166) While this does not counter the fact that Jordan is a party to these treaties, it can modify the extent to which Jordan feels obligated to follow a particular treaty.

Many Islamic countries attach reservations to human rights treaties that indicate that they are not bound to a particular portion of the treaty inasmuch as "it conflicts with the provisions of the Islamic Shariah." (167) In one example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Jordan does not explicitly list this type of reservation, but Jordan does indicate that they are not bound to many portions of the treaty without giving a specific reason. (168)

The fact that many international human rights treaties contain reservations by Islamic states begs the question about the impact of international treaties on an Islamic state. At first glance, some might argue that Islamic states give little credence to international treaties. (169)

This, however, is wrong. Simply stated, Islamic law gives strong support for an Islamic country to follow an international treaty. Furthermore, one could argue that an international treaty signed by many Islamic countries is an indication of ijma and therefore consensus in terms of Islamic law.

Indeed, Muhammad looked upon treaties in a very favorable way. From Islamic history, it is clear that Islam adopted the principle of *pacta sunt servanda*. (170) Dr. Khadduri explains, "once the treaty is concluded Muslim authorities are strict in regard to the necessity of living up to its terms. The Qur'an urges the Muslims not to break oaths after making them ... [thus] *pacta sunt servanda* is inherent in the conception of *aqd* [treaty] and is recognized by all Muslim jurist-theologians." (171) Such was the case with regard to the Treaty of Hudaibiya, which was signed between the Prophet and the Quraish in 628 C.E. The formal negotiating history and the strict observance by Muslims were strong indications of the Prophet's belief in adherence to treaties. (172)

Further evidence of Islamic adherence to *pacta sunt servanda* is found in the Quran: "O you who believe, fulfill (all) obligations." (173) Dr. M. Ali explained that the translation of this verse and the Arabic word, *aqd*, includes, "[r]espect for all covenants, contracts, agreements, leagues, treaties, and engagements." (174) The Quran further exhorts believers to "[f]ulfill the Covenant of Allah when ye have entered into it, and break not your oaths after ye have confirmed them: Indeed ye have made Allah your surety; for Allah knoweth all that ye do." (175) Nor should covenants be broken because one community feels stronger than another. (176) In fact, breaking treaties puts the violator into a state lower than animals. (177)

Understanding that Islamic law supports the enforcement of treaty provisions, it is important to consider treaty provisions applicable to the cessation of honor killings. To begin, Article 5 (a) of the CEDAW specifies that:

States Parties shall take all appropriate measures ... [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. (178)

Jordan has not given any reservation, understanding, or other declaration regarding this article, so they are bound by international legal obligation to take all appropriate measures to modify the culturally deplorable practice of honor killing. Additionally, as shown, there is no Islamic legal justification for the practice, so Jordan is also bound by moral grounds to stop it.

The International Covenant on Civil and Political Rights (ICCPR) further supports this obligation by declaring that, "every human being has the inherent right to life ..." and "[n]o one shall be arbitrarily deprived of his life." (179) According to Article 4, even in times of emergency, there shall be no derogation from this principle. (180) Additionally, ICCPR requires governments to ensure one's right to life and security, without any distinction of any kind--including gender. (181) Clearly, an arbitrary decision of an irate family member killing a young woman over a mere rumor of sexual impropriety violates this convention. Therefore, the state, in this case Jordan, must do what it can to stop the practice, even in the most remote corners of the country.

CEDAW further guarantees a woman's right to be defended from honor killings, which are committed (for the most part) by private

actors. In 1992, the CEDAW committee adopted General Recommendation 19, which states emphatically that, "states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence." (182) In addition to this responsibility, the committee explained that traditional ideologies which "regard women as 'subordinate to men' and seek to 'justify gender-based violence as a form of protection or control' deprive women of mental and bodily integrity." (183)

Other sources of international law indicate that the end of violence against women is reaching customary international legal status. The United Nations General Assembly has indicated strongly that:

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating

violence against women and to this end, should ...  
[e]xercise due diligence to prevent, investigate and, in  
accordance with national legislation, punish acts of  
violence against women, whether those acts are  
perpetrated by the State or by private persons. (184)

While this declaration is not binding international law, it shows that the world recognizes the importance of state responsibility regarding the end of violence against women. Many declarations and other international instruments reinforce the importance of an individual's right to life. (185) Importantly, so does the Islamic Declaration of Human Rights (IDHR). It, however, takes life a step further by proclaiming the need to protect a body even after death:

Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law ... Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity. (186)

From this declaration, it is again easy to find that Islamic law values the right to life. The IDHR even goes so far as to proclaim how valuable one's body is after death. Therefore, within the context of honor killings, it is clear that not only should a woman be protected in life, but even if a victim is subject to an honor killing, her body should also be treated respectfully, not beheaded or mutilated.

From the above, it is evident that both Islamic law and international law forbid the concept of honor killings. So then, how can economic advancement help?

### 3. Economic Advancement and the End of Honor Killings

"Most often, the [honor] killings occur among the poorer and less educated, particularly in Arab tribal societies like Jordan's and the Palestinians.... The killings are rare among the educated and urbane." (187) While it may be impossible to bring an entire country to a new socio-economic level overnight, steps in this direction will ultimately help end honor killings.

One of the most positive steps in this area is the recognition that this problem exists in the first place. A search of print or electronic media from approximately fifteen or twenty years ago yields virtually no results regarding "honor" or "honor killings." (188) It is only recently, from 1995 forward, that this issue has been given due attention. (189) Unfortunately, most of the attention has been from the journalistic approach of identifying the issue; little if any attention has been given on how to solve the problem via economic or other material methods. Dr. Tahira Khan, a professor at Pakistan's Agha Khan University, however, has done in-depth research in the area. (190) In his view, financial interests often create an "honor killing industry." (191)

According to Dr. Khan, too much emphasis has been placed on understanding honor killings from a socio-cultural standpoint. This in turn, Dr. Khan explains, undermines the material/economic dimensions. Indeed, "[f]inancial and property considerations, more than simply an obsession with female chastity, fuel male control over female sexuality." (192) In truth, stopping honor killings requires a focus on not only on the cultural norms but also on the material/economic dimensions that lead to acceptance of the crime.

According to the research conducted by Dr. Khan, honor killings do not only involve adultery or sexual impropriety; they also occur where the sexuality of the woman was not even involved. Instead, the underlying issue in some cases was property and economic gains. (193) It is therefore possible that gains from inheritance or dower produced wealth, causing women to be targeted. Another potential explanation would be that the male did not want to have to pay the amount he still owed his bride based on her dower contract--or where death of his bride may allow the husband to receive his wife's dower and then permit him to marry another woman of his choice. (194) A high percentage of honor killings are committed due to property (195) While Dr. Khan's research focuses on Pakistan, many similar findings could undoubtedly be discovered in any less-developed country that still uses honor as a justification for murder.

Like Jordan, honor killings in Pakistan occur primarily in rural areas. Here, the marriage of a daughter is a "well-calculated affair." (196) To keep property together, marriages are often arranged within the family on an exchange basis. (197) Property considerations also support the determination that inheritance leads to many honor killings. As discussed previously in the section on inheritance, most lines of succession run through the father's side of

genealogy. Therefore, any allegations regarding a woman's sexual impropriety might be considered more serious because of the potential complications involved with children born from another man. This is perhaps one reason why men in these "patrilineal, patrilocal" societies receive more leeway if allegations of their sexual misconduct arise. (198) For in these cases, honor killings rarely involve a man as the victim.

Dr. Khan offer no direct economic solution to the problem of honor killings, but he accurately identifies the economic driving force behind it. As one attorney explained, "[h]onour is only a pretext [sic] to murder women for property and in many cases, for getting lighter punishment for heinous crimes." (199) With money as one identified source, what is the solution to these honor killings?

One of the first issues to address would be to empower women so they are considered more than just property themselves. Dr. Kahn explains that in these poor rural communities, "[w]omen are considered the property of the males in their family irrespective of their class, ethnic, or religious group. The owner of the property has the right to decide its fate. The concept of ownership has turned women into a commodity which can be exchanged, bought and sold." (200)

To change this perspective, groups like Human Rights Watch and Amnesty International are working to bring awareness to the problem. As recently as December 2002 their efforts helped encourage the United Nations to pass a resolution condemning honor killings. (201) Unfortunately twenty nations did not sign the resolution, including Russia, China, and Pakistan. (202) To change this, global economic pressure, including pressure from the United States, may be needed. (203)

To Jordan's credit, some of the country's leaders have begun to take notice and to push for change. King Abdullah II opposes honor killings and has backed the proposed legislation that would make penalties for the practice more severe. (204) However, as noted previously, Jordan also has other groups fighting to resist this legislation. With the king's support, however, a beneficial side effect has occurred--more groups are openly speaking out against the practice, which in turn may help to end it. (205)

Jordan is also beginning to reap the rewards of a financially driven female working force. Understanding the importance of education, Jordan has made remarkable improvement over

the last couple of years. The literacy rate for women is now 83.9 percent, and 67 percent of women have some secondary education. (206) Education of young and old women is an important step toward improving the economic standing of an entire country. As Isobel Coleman points out, "Educating women, especially young girls, yields higher returns than educating men." (207) Coleman elaborates regarding some of the results:

Girls' education also lowers birthrates, which, by extension, helps developing countries improve per capita income. Better-educated women bear fewer children than lesser-educated women because they marry later and have fewer years of childbearing. They also are better able to make informed, confident decisions about reproduction. In fact, increasing the average education level of women by three years can lower their individual birthrate by one child ... (208)

All of these benefits are helpful, but perhaps the greatest result of empowering women economically is the possibility of ending domestic violence. Coleman explains that microfinancing has had a number of positive impacts around the world--including the improvement of the social status of women. (209) She also explains that, "women with microfinancing get more involved in family decisionmaking, are more mobile and more politically and legally aware, and participate more in public affairs than other women." (210) More germane to the topic of honor killings, Coleman points out that, "[f]emale borrowers also suffer less domestic violence--a consequence, perhaps, of their perceived value to the family increasing once they start to generate income of their own." (211)

## B. Right to Equality

Continuing to explore the positive changes that can occur with empowering women economically, this article will now look at a woman's right to equality. In 1987, a Palestinian film emerged from Israel showing both the struggle of Palestinians living under Israeli occupation as well as a beautiful portrait of a traditional Arab wedding. (212) The film, *Urs al-jalil*, was about an elderly man who made a bargain with the local Israeli military. In order to be permitted to have a wedding for his son, the military was allowed to attend. As the

wedding unfolded, the film portrayed a traditional Arab celebration.

This remarkable film showed the preparation in putting on a wedding while at the same time demonstrating the clear separation lines between men and women. Upon close examination, it also demonstrated the differences between Western and Islamic notions of marriage. In the film, there were no wedding vows exchanged, and no "you may now kiss the bride." Instead the movie showed the wedding feast, the community involvement, and the importance of tradition. Little significance was given to any formalization of the wedding. (213) This is because, in Islamic law, marriages are primarily an arrangement finalized by a contract. Thus, the significance of exchanging vows is of little import to a traditional Islamic marriage.

When addressing the concept of women's equality, marriage is a great starting point. Cultural and traditional customs may place a Middle Eastern woman in the untenable position of an "arranged marriage," but Islamic law does not support it. (214) Thus, at least at the inception of marriage, a woman and a man are on equal footing. However, two issues arguably place women in a lesser position when it comes to marriage. The first is polygamy. Clearly if a man is permitted to marry more than one woman, it is impossible to argue that any of his wives are on equal grounds as their husband. The other inequality is divorce. As will be discussed, the difficulty women face in obtaining a divorce, which contrasts the ease with which men may obtain them, may lead a woman to stay in an otherwise abusive marriage. Therefore, divorce is an example of how Muslim women are put at a disadvantage.

To address the right to equality, these two areas of marriage will be reviewed along with Islamic legal principles and international law. Finally, using economics as a tool for change, this section will conclude with ways in which money can be a factor in diminishing both inequalities on the individual and national levels.

#### 1. Islamic Law and Polygamy

[P]olygamy is not a mere Islamic phenomenon. It was recognized by pre-Islamic people for many centuries. For instance, it was exercised by Babylonians, Greeks, Persians, and Arabs. Indeed, many pre-Islamic religions such as Judaism acknowledged polygamy



among its adherents. It was also the tradition of all Prophets (p.b.u.t.) except Jesus (p.b.u.h.). (215)

If this article were a review of Christian law rather than Islamic law, it would be difficult to show that Christianity had any objections to polygamy. To the contrary, a historical review of Christian law might show a strong support of the practice. (216) But today, in most Christian societies, secular legal systems have overtaken religious laws to ultimately prohibit the practice. (217) Since polygamy is becoming rare even in Muslim societies, some would argue there is no need to discuss change in this area. Just as it has in Christian societies, there is an argument that time is likely to lead to the prohibition of polygamy, even in Muslim societies. (218) Whether this is true or not, the fact remains that polygamy must cease completely for women to truly have equality. It is natural, then, to first consider whether polygamy is even legal under Islamic law.

The Quran makes clear in a number of references that men and women are equal before God:

And their Lord hath accepted of them, and answered them: Never will I suffer to be lost the work of any of you, be he male or female: Ye are from, one another. (219)

If any do deeds of righteousness--Be they male or female--and have faith, they will enter Heaven, and not the least injustice will be done to them. (220)

For Muslim men and women--for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, for men and women who engage much in Allah's praise--for them has

Allah prepared forgiveness and great reward. (221)

One Day shalt thou see the believing men and the believing women--How their Light runs forward before them and by their right hands: (Their greeting will be): Good News for you this Day! Gardens beneath which flow rivers! To dwell therein for aye! This is indeed the highest achievement. (222)

Clearly in Islamic law, men and women are equal before God. In fact, if there is any indication of who is superior on earth, it would be the one who is the most obedient to God:

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you ... (223)

Indeed, Islamic law further equalizes men and women by proclaiming that Adam and Eve were both equally responsible for their sin in the Garden. (224) Along this same line, the Quran does not blame women for the "fall of man," nor does it view pregnancy as punishment for Eve's transgression. (225) So then, if men and women are equal before God, why would polygamy ever be allowed under Islamic law?

A simple reading of stories in *A Thousand and One Nights* (226) might lead one to think that Islamic society views women as nothing more than chattel best suited for a harem. Frankly, many in Western society misunderstand the practice. (227) According to one author, "[a]ssociating polygamy with Islam ... is one of the most persistent myths perpetuated in Western literature and media." (228) Polygamy was already being widely practiced during the Jahiliyyah period (era prior to the introduction of Islam). In fact, the pre-Muhammad era was a world "rife with misogyny." (229) Women were not treated as full human beings and men were in supreme authority. (230) There is historical evidence of laws that permitted men to "pull out their wives' hair and cut their ears" if their wives were not obedient. (231) Further,

"[i]ncestuous marriages, slavery, concubinage, and unlimited polygamy were widely practiced." (232) Muhammad (233) sought to change all this, and in the end, the manner in which he accomplished this goal represented a major step forward for women's equality.

In its infancy, Islam did not outlaw polygamy, but it significantly regulated it. (234) After the Battle of Uhud, many Muslim men were killed, leaving behind a large number of widows and orphans. (235) Shortly thereafter, a passage in the Quran was revealed to the Prophet indicating what guidance should be followed to support these destitute souls:

If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice. (236)

Although Islamic law "adopted" polygamy, it did not leave a woman without options. A proposed second wife always could reject the marriage proposal, because a woman has a right to choose. (237) Additionally, if a first wife did not want to be a part of a polygamous relationship, she had a right to include that condition in her marriage contract. (238)

For an example of the proper manner in which to pursue a polygamous relationship, one need not look further than to the Prophet. Muhammad was first married to a very powerful woman, Hadija, who actually asked him to marry her. (239) Muhammad was married to Hadija for twenty-three years, took no other wives during this time, and did not remarry until some time after her death. (240) Much later, he married Aisha, who was the daughter of Abu Bakr. (241) This marriage was taken as a way for the Prophet to honor his friend who ultimately became the first Caliph upon Muhammad's death. (242)

Before his death, the Prophet continued to demonstrate the proper application of an acceptable form of polygamy. All of Muhammad's wives, with the exception of Aisha, were widows. (243) Among them, one was a widow because of the Battle of Uhud; two were facing poverty and destitution at the time of their marriage proposal; and another faced becoming a beggar because her Christian husband died, and she refused to abandon Islam and seek Christian aid. (244) Other wives joined Muhammad because of his genius at establishing

peace and his compassion for the war tom. Juwayriyah Harith, daughter of a chief from an opposing clan, was a captive from a military operation. (245) When she agreed to marry Muhammad, the remaining captives were released because they were now related to the Prophet by marriage. (246) Based on this generous action, the rest of the clan converted to Islam. (247)

Gradually after the death of the Prophet and with the passage of time, polygamy morphed from assisting destitute women to fulfilling selfish male needs. In a 2004 study in Egypt, male respondents were asked what would justify polygamy. Over 20 percent said that it would be justified if the wife could not have kids. (248) Over 13 percent indicated that polygamy would be justified if a wife had a chronic illness. (249) Only 12.5 percent of the total sample said that it was justified because "religion allows it." (250)

One of the reasons why it is difficult for a man to justify a polygamous relationship in Islam is because the Quranic justification makes clear that if a man has more than one wife, he must treat all of his wives equally. (251) This has been interpreted to require equal economic support. (252) Author Sandra Mackey gives an excellent anecdotal application of this rule:

The injunction to treat all wives equally is taken seriously. I once saw an old Bedouin man squatted down in the Dirrah gold souqs, (253) surrounded by four veiled wives huddled in a circle. In his hand, he clutched a large roll of SR 50 bills, which he was distributing one at a time around and around the circle. When he reached the end of the roll, each wife grabbed her share, stuffed it in her plastic purse, and scurried off to spend it with her favorite gold trader. (254)

Based on the requirement to treat each bride equally, many countries like Tunisia and Turkey found religious justification to end polygamy. (255) The argument is syllogistic. The Quran makes it clear that it is impossible to treat women equally: "ye are never able to be fair and just as between women, even if it is your ardent desire..." (256) Thus, if having more than one wife requires that the husband treat them equally, and it is impossible for anyone to treat wives equally (except maybe the Prophet), then no man may legally have more than one wife. This logic could very well have assisted President Habib Bourguiba in 1956 when he

sought to end polygamy in Tunisia. (257) Although he was a social progressive, he still made his reforms in an Islamic state.

Unfortunately, unlike Tunisia, men in countries like Saudi Arabia and the Sudan still use aya (258) 4:3 of the Quran to justify polygamy for reasons other than protecting widows. (259) As explained by Heather Johnson, "[p]roviding a man with a legal framework to keep multiple sexual partners not only does not 'serve any moral or social purposes that are compatible with the Quranic ideals of chastity and justice ... [it] also pervert[s] these ideals.'" (260)

It should be clear from this analysis that polygamy, while permissible under Islamic law, is nevertheless difficult to justify. It is also difficult to envision a manner in which a man can truly treat four wives equally. Irrespective of this challenge, men are still finding ways to continue the practice. But women do have at least one tool at their disposal to help end polygamy--divorce. Unfortunately, it too might be seen as unfairly balanced in favor of men.

## 2. Islamic Law and Divorce

In the United States, it is not uncommon for a spouse to first learn of a pending divorce while being served divorce papers by a justice of the peace. Imagine though, a wife who learns that she is divorced simply by receiving a text message on her cell phone. In Malaysia, the government's adviser on religious affairs said "as long as the message was clear and unambiguous it was valid under Islamic Sharia law." (261) While this advice was issued in 2003, it indicates that in at least one forum in the Muslim world, divorce for a man can be very simple.

The roots of a "cell phone" divorce trace back to the process of talaq in Islamic law. Talaq is the concept of repudiation, and it is either revocable or irrevocable based on the manner in which it is performed. (262) During a period of purity (263) if a man "repudiates" his wife by proclaiming such words as "I repudiate thee," he has effectively divorced his wife. This would be an example of a revocable, or talaq wahida, divorce. (264) The divorce is revocable because it is not finalized until after the period of idda. Idda is a "statutory waiting period following a divorce or a husband's death during which a woman is not allowed to remarry." (265) The duration of this waiting period is usually three menstruations; if the woman is unable to menstruate, then the period normally equates to three months. (266) If a woman is pregnant, the idda period is extended until after the birth of the baby. (267)

If the couple works out their differences during the idda, the marriage can continue by simple consummation prior to the end of the idda. (268) If, however, no consummation occurs during the idda, the marriage is over. (269) This is the preferred form of talaq. (270) Because of its simplicity, there is a defense mechanism built in to protect women from the whims of a divorcing man who might be inclined to divorce by repudiation and then seek to return to his wife continuously. The Quran states that "[a] divorce is permissible only twice; after that, the husbands should either retain their wives together on equitable terms, or let them go with kindness." (271) This means in practice that if a man repudiates his wife and then takes her back, he must be careful because he is only allowed to do this (talaq) one more time before a third repudiation would make the divorce irrevocable. (272) At that time, he would have to let her go.

A man can still remarry his wife after he has repudiated her three times, but there is a significant consequence. According to the Quran, if a man repudiates his wife (and thereby divorces her) three times, he cannot "after that, remarry her until after she has married another husband and he has divorced her." And, if this new husband divorces her, "there is no blame on either of them if they reunite." (273) Al-Imadi, a recognized Islamic legal advisor of the past, answered a question about how this works in practice:

QUESTION: There is a woman whose husband divorced her thrice, and she completed her waiting period. Then he married her to his adolescent slave in a legal marriage, and the slave consummated the marriage by inserting the tip of his penis into the meeting point of the lips of her vagina. Then he withdrew from her. The marriage was annulled, and her waiting period ended. Is she permissible to the first [husband]? ANSWER: Yes, and the matter is fully explained. (274)

From the above, it is clear that even though repudiation is a simple form of divorce for a man to practice, if he is not careful, he might have to permit his wife to remarry, consummate the marriage with another man, and then await a divorce from the second husband before he is allowed to have her back. (275) The reason the "cell phone" divorce can be disturbing is because some Islamic scholars have concluded that a man can repudiate his wife with three

successive declarations. (276) This would, in turn, create an irrevocable divorce within seconds. It follows that modern technology would permit a Malaysian husband to "text message" his wife with three repudiation messages, thereby terminating the marriage.

Most Islamic scholars agree with Joseph Schacht (277) that the triple renunciation divorce is highly discouraged, but still "recognized as valid" in Islamic law. (278) A woman has no similar right under Islamic law. (279) For this reason, a talaq divorce is one of the main reasons why much of the Western world considers Islamic divorce to be an example of where a woman's rights are not equal to a man's. (280) In Islamic law a woman must generally go before a qadi (judge) and have legal justification or agree with her husband to a khul divorce. She is, with few exceptions, not allowed to unilaterally end the marriage. (281) Thus, while Islamic law may protect a woman from the whims of a man using talaq, it does not adequately provide a mechanism for a woman to end a marriage on her own.

The first option of going to a judge is not without difficulties. For a woman to successfully obtain a divorce in court by the decision of a qadi, she would normally have to prove that her husband was either impotent, showed a lack of piety, or did not perform his Islamic duties. (282) The most common ground for divorce in this manner is the husband's inability to perform his requirements under the marriage contract. (283) If the wife proves her case, which normally requires the assistance of "acceptable" witnesses, then the qadi might grant her the divorce "without compromising her financial rights." (284)

Unfortunately, if a woman cannot make her case in front of the judge, the only other right she could normally resort to is that of the khul divorce, which is known as the woman's right to repudiation. It, however, is significantly different from that of talaq in that if a qadi grants a wife a khul divorce, the woman must forfeit any alimony, and most of the time she must also pay back her mahr (dowry). (285)

It is generally more profitable for a woman if her husband seeks the divorce. In cases of a talaq, upon the third divorce or proclamation thereof, a woman can demand immediate payment of her mahr. (286) If the pronouncement only occurred once, then the ex-wife can seek the total mahr after the idda period has expired--assuming of course that her husband has not yet taken her back. (287)

The rights of a woman seeking a divorce and the rights of a divorced woman who has been

subjected to a man's repudiation vary based on the type of society in which they live. In some more fundamentalist societies, a more patriarchal qadi may only allow a woman to seek divorce if the husband is "impotent or sterile, a leper, or insane." Further, "in certain cases, a one-year waiting period is allowed for therapy and if this fails, khul is initiated." (288) Other societies may not allow a woman any voice when it comes to divorce. For example, in societies that permit honor killings, a woman may have little chance to escape an abusive relationship without some consequence--financial or otherwise.

Because such societies often also discourage education of women, (289) it is hard for a woman to learn about her legal rights in the first place. If she were educated in Islamic law, she might learn that the Prophet highly discouraged divorce when he said, "Marry and do not divorce your wives, for divorce causes God's throne to tremble." (290) He also made it clear that the triple repudiation form of divorce was an absolute abomination. It is reported in a hadith narrated by Nasa'i that when the Prophet heard of such a divorce, he stood up in anger and declared, "You make fun of Allah's book and I am still among you!" (291)

This hadith is clear; nevertheless, many Islamic scholars still see triple repudiation divorces as valid. (292) It should come as no surprise then, that some (as in Malaysia) would agree that even a "text message" divorce is valid. For if a simple vocal utterance pronounced three times is valid, why not three text messages proclaiming the same?

So then, what can a woman do to obtain equal divorce rights within Islamic law? To answer this question, this article will look at international law's views of polygamy and divorce and then it will delve into the economic answers that can help improve these inequalities on behalf of Muslim women.

### 3. International Law's Response to Polygamy and Divorce

"Men and women of full age, without limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." (293) Although not binding in nature, the Universal Declaration of Human Rights (UDHR) unequivocally states the international legal standard with regard to marriage, polygamy, and divorce. Men and women are entitled to enter into a marriage and end a marriage on equal grounds. Although the UDHR does not use the word "polygamy," it goes without saying that giving a man a right to marry more than one bride



does not prove equal.

In addition to the UDHR, the CEDAW (294) also makes it clear that a woman has a right to enter and leave marriage on the same footing as a man. (295) CEDAW culminates an international effort designed to improve the status of women. Indeed, one could argue that CEDAW is reaching the status of customary international law, because the principles of CEDAW are exemplified by the legal obligation that nations have felt to "not discriminate against women." (296) This legal obligation, or *opinio juris*, has evolved via the women's movement that has become pervasive worldwide. (297) The women's movement also "demonstrates the second element of customary international law, widespread and consistent state practice involving the nondiscrimination norm." (298)

The discussion regarding the status of women's right from an international perspective could end here if CEDAW was unquestionably considered customary international law. The problem, however, is that many of the Islamic signatories to CEDAW have expressed reservations that undermine the convention's effectiveness. One could question the universal applicability of CEDAW, because these reservations demonstrate that many of these Islamic countries are actually "persistent objectors" to the norms surrounding women's rights. Indeed, more treaty-modifying reservations have been made to CEDAW than to any other convention. (299) While Islamic countries are not alone with regard to CEDAW reservations, they are often accused of establishing reservations that appear to be incompatible with the convention's object and purpose. (300)

Egypt, for example, objected to Article 16 and its equalizing provisions regarding marriage and divorce. (301) In its justification for their reservation, Egypt explained how dower and maintenance were important balancing factors in favor of women that were equalized by the more stringent rules placed upon a woman seeking divorce. (302)

According to Egypt, the country provided equal rights for women by following Islamic legal rules that favored women in some areas but disfavored them in others. (303) Thus, Egypt reasoned, even though certain rules looked discriminatory, placed in an Islamic legal context, the whole structure was fair. Morocco's reservations followed the same logic. (304)

Looking at these reservations, it is evident that in countries like Egypt and Morocco, signing CEDAW did not signal that much of the internal legal structure of their country would

change. In fact, in 1987 the UN Committee on the Elimination of Discrimination Against Women recommended a study to evaluate how women were fating in Islamic countries. (305) The study also would have examined why Islamic countries invoked Islamic law in not endorsing all parts of CEDAW. It did not get off the ground, however, because many Muslim countries, including Iran, Senegal, Morocco, Oman, Sudan, and Bangladesh, strongly objected, finding the study insulting. (306)

With strong and continuing reservations from Islamic countries regarding CEDAW, diplomatic pressure alone will not likely change all unfair and discriminatory practices in reserving countries. However, in addition to diplomatic pressure, economics offer an alternate approach that can help women acquire equal rights in the Middle East. This approach uses the rights women already have under Islamic law to help gain additional tightts elsewhere. Morocco and Egypt both maintain that dower and maintenance equalize the lack of rights women have regarding divorce in those countries. So the real question is: How can the pursuit of these rights lead to more equity for women with regard to divorce and polygamy?

#### 4. Financial Measures that Help Equalize Marital Rights

According to Professor al-Hibri, although the pace of change regarding women's rights in the Middle East is progressing slowly, any attempts to accelerate change without understanding its complexity could lead to an abrupt halt. (307) It is true that many Islamic cultures may live in such a way as to inhibit women's rights. Nevertheless, a proper reading of Islamic law in those societies would find that in fact the Quran "engages in affirmative action with respect to women." (308)

To protect a woman from the patriarchal world of 600-700 C.E., the Quran advanced women in many significant ways. For example, a woman retains her name after marriage. (309) In addition, "[s]he also retains her financial independence. She can own property in her own right whether she is married or single, and no one, not even her husband, may access her funds or property, or demand any form of financial support from her." (310) If she is to ever give her husband any money, it is considered a loan. (311) Placed in the context of the period, it is clear that these financial rights were in fact measures taken to progress women from the status of chattel to that of an equal voice in life and marriage.

Today, with the same infrastructure in place, it may behoove those wishing to progress

women's rights not to attack the system, but to educate women on how they can advance within it. As previously described, before a man may lawfully wed a woman, he is required under Islamic law to agree upon a proper dower. This dower can take the form of sadaq (designated property) or mahr (money). (312) Because of the nature of dower, some claimed that dower is simply a "bride price" and thus places a woman into the status of property. (313) This, however, misses the point completely regarding the power of dower. Recall that dower is money or property that is paid to the bride. It is hers and hers alone. She also has the right to negotiate the terms surrounding it. It is true that sometimes fathers negotiate the dower, and it is true that in some cases, "fathers do not adequately protect their daughters' interests." (314) But, as stated before, from a Quranic perspective, dower is meant to advance the interests of women.

Since marriages under Islamic law must be done pursuant to a valid contract and dower must be a part of that contract, dower is one area in which women can gain rights and thereby limit the potential discriminatory features of the more patriarchal societies. In addition to dower, a woman could also make certain conditions a requirement within the marriage that if not fulfilled would render the marital contract voidable. Unfortunately, not all countries look at the ability to negotiate certain terms within a marital contract in the same light.

Of the four major schools of Sunni thought, three of them (the Hanafi, Maliki, and Shafi'i) believe that "marriage contracts are of such importance that they may not be rescinded by voidable conditions and that they are too sacred to be treated merely as financial contracts for a consideration." (315) In essence, they would say there is no need to allow for a marriage contract to be voidable because a couple wishing to void a marital contract would simply need to resort to divorce.

Notwithstanding these interpretations, one exceptionally powerful school of Islamic thought sees negotiations surrounding a marital contract very differently. The Hanbalis, "permit any beneficial condition which the husband and wife may stipulate as long as it does not violate the religious texts." (316) According to this school of thought and more specifically Ibn Taimiya, the school's historical leader, "marriage contracts are so sacred and important and depend on the accord between husband and wife [that] such conditions are essential for lasting compatibility." (317)

Since the Hanbali school is the predominate school of Islamic thought throughout Saudi Arabia, (318) this open interpretation can prove very valuable for women who live in the extremely conservative country. With no civil code presently in Saudi Arabia, the incorporation of the Hanbali school of thought is particularly strong. (319) This can impact women's rights in that:

The Hanbali school is especially permissive concerning conditions to contracts which other schools of law prohibited. No distinction is made between conditions contained in financial contracts for a consideration, gratuitous dispositions, guarantees, or contracts of marriage and matters related to them. Every condition which either contracting party may choose to stipulate is permitted, unless it is contrary to the legal nature and purpose of the contract, or unless it implies the combining of two transactions in one, which the Prophet warned was suspect of usury. (320)

Living in Saudi Arabia, a woman may appear to have few rights; however, with the broad power of contract negotiation, she can limit the potential for discrimination significantly. For example, using the marriage contract in her favor, a prospective first wife can make it a condition of marriage that her husband practice monogamy. (321) Once accepted, this condition is binding. If the husband later chooses to seek out an additional wife, his first wife is entitled to divorce and to the financial rights associated with it. (322)

Thus, one way in which a woman can effectively counter polygamy is to negotiate a contingent marital contract. Her marriage could be agreed upon with a very high dower, some of which would be waived if the husband follows certain conditions (i.e. no polygamy). If the husband breaks the provisions of his marital contract and his actions lead to divorce, the contingent portions of the marital contract would impose a hefty financial penalty on the man for choosing to follow a discriminatory path. Many marriage contracts are already set up close to this arrangement. For example the Hanafi practice was for the dower to be split into two portions. (323) The first portion, or muqaddam, was paid at the time of the signing of the

marriage contract, and the second portion was paid at the time of divorce or death of the spouse. (324) Using this mechanism, a woman could agree to a small sum to enter marriage, but a large sum would be her entitlement should her husband cause a divorce.

Similarly, a woman has the power to equalize the divorce playing field by placing in her marital contract conditions that permit divorce. As long as these conditions do not run counter to the underlying principles of the Quran and the sunna (traditions of the prophet), they would likely be enforced. (325) This is especially true even in Saudi Arabia.

As discussed earlier in this article, the concept of *pacta sunt servanda* is not foreign to Islamic law; indeed it is central to the Islamic law of contracts. (326) This was demonstrated in the arbitration award case between Saudi Arabia and the Arabian American Oil Company. (327) In that case, a contract dispute was resolved in favor of an oil company that challenged Muslim leadership. In the end, "the principles of freedom of contract, the binding force of contracts, and the requirement that the Muslim ruler fulfill his obligations were all upheld." (328)

In a country that takes contractual obligations so seriously, it is fair to posit that even in a marital contract, Saudi Arabia would not discard obligations lightly. Certainly not all women in Saudi Arabia feel they are in a position to make bold assertions of their rights in all marital contracts. Many may not want to assert their rights at all. It is important, however, to note that these rights exist. Further, the more that women (and their families) begin to claim these rights, the more that discrimination will diminish.

While it is true that the Hanbali school is predominate in Saudi Arabia, a Sunni Muslim has the right to follow whichever of the four schools of thought he or she desires. (329) Thus if a spouse wanted to include within his or her marital contract a choice of law provision that called for the Islamic court (of whatever country in which they reside) to interpret the contract using Hanbali ideals, such a choice of law provision could be validated based on the overwhelming Islamic legal concept that obligations are to be followed. (330) How such a choice of law provision would be followed in any particular country is subject to enormous speculation. For example, in a country like Morocco where the Maliki school is predominate, the courts might ignore such a provision. Nevertheless, a Muslim woman is not prohibited from trying.

Equalizing the playing field regarding marriage in the Middle East will not take place overnight. However, each day that a spouse learns of her rights under Islamic law, the more that change can lead to equality. Just as Professor al-Hibri explained, change will not take place at exceptionally fast speeds, (331) but the more the world understands the framework of women's rights in the Middle East, the more the world can help women work within their own legal frameworks to achieve necessary equality.

### C. Right to Equal Protection under the Law

Human rights activists in the West sometimes view the 2005 enfranchisement of women in Kuwait with an "it's about time" attitude. However, it is important to recall that women in most Western countries did not acquire the right to vote until the twentieth century. (332) Great Britain gave women the right in 1918, the United States followed suit in 1920, France in 1944, and Switzerland in 1971. (333) While the democracies of the West have been in development for centuries, Muslim countries have only acted independently within the past few decades. (334)

From this perspective, impatience is illogical. Soon, women in the Middle East will all have the right to vote. It is only a matter of time before existing regimes recognize that women are entitled to equal protection under the law and that Islam does nothing to prohibit a woman from having equal rights in this area. In a number of ways, Islamic countries have led the world by example.

In 1988, Pakistan became the first Muslim country with a woman (Benazir Bhutto) as the head of the government. (335) Turkey elected Tansu Ciller as its first female prime minister in 1993, and Bangladesh has had two female prime ministers--Khaleda Zia and Hasina Wajed. (336) Indonesia, which is by far the most populous Muslim country, named its first female president in 2001, when Megawati Sukamoputri took office from Abdurrahman Wahid. (337)

While none of these administrations have been held in perfect esteem amongst their constituents, (338) they still offer an example to the West. The United States, for example, which is considered the West's preeminent super power, has never elected a woman as President or even Vice President. (339)

This background reveals why it is truly only a matter of time that women in Islamic countries will see equality when it comes to voting rights. The right to hold office may take longer, but

it too shall arrive. To demonstrate this, the article will now focus on Islamic law and politics and then turn to the international legal framework that women can use to help achieve equality.

### 1. Islamic Law and the Right to Vote and Hold Office

"Patriarchal societies have so heavily influenced the Maghreb states that Muslims now have difficulty differentiating which aspects of life are mandated by true interpretations of the Qur'an and which have resulted from the persistence of a male-dominated structure." (340) Indeed, "Islamic Governments, rather than Islam, are the true obstacles to women gaining equality in the public domain." (341)

Not only does the Quran state that on the day of judgment a woman will be absolutely equal to a man, (342) it also recurrently refers to "men and women" when referencing people and their duties. (343) Additionally several hadith of the Prophet indicate that women are to be treated equally. It is reported that the Prophet frequently stated that "all people are equal, as equal as the teeth of a comb. There is no merit of an Arab over a non-Arab, or of a white over a black person, or of a male over a female. Only God-fearing people merit preference." (344)

Because the Quran places men and women on the same footing before God, and because God is the source of Islamic law, a syllogism can be made that Islam recognizes the concept of equal protection of the law because men and women are equal before God. (345)

Unfortunately, bringing Islamic leaders to this interpretation is not easy. "[I]n many Arab countries, especially Saudi Arabia, progress is often reversed because sharia 'texts are often not so much interpreted, as twisted to fit pre-existing traditions.'" (346)

In Saudi Arabia for example, "[t]raditionalists argue that women could never be allowed to vote because they would have to mix with men in polling places." (347) Once again "tradition all but shuts women out of the economic and political system." (348) Tradition also has the negative impact of forbidding women from holding office as well. In one quoted hadith, the Prophet is reported to have said, "[n]ever will succeed such a nation as makes a woman their ruler." (349) As such, many traditionalists rely on this saying as justification for keeping women from entering politics.

What these fundamentalists oftentimes neglect to report, however, is the underlying basis for

this hadith. The Prophet made this statement after receiving news that "the people of Persia had made the daughter of Khosrau their queen." (350) Because the Persian rulers of the time showed great contempt towards the Prophet and did not live a proper life, some regard this statement as only a prediction by the Prophet of the Persian's "impending doom" for reason of their unjust empire. (351) Thus, because the statement refers to Persia, the argument continues that "such a nation" is really referring to one nation--Persia. No categorical exclusion of women can therefore be made regarding all leadership positions held by women. (352)

Regardless of the usage of this hadith, it does not detract from the fact that "the general rule in social and political life is participation and collaboration of males and females in public affairs." (353) In fact, there is strong "historical evidence of participation by Muslim women in the choice of rulers, in public issues, in lawmaking, in administrative positions ... and even in the battlefield." (354)

In one symbolic battlefield, women led the charge for the right to vote and won. Kuwait originally made several reservations to CEDAW because the country refused to give women the right to vote. (355) However, as mentioned at the beginning of this article, Kuwaiti women gained suffrage in 2005. The Susan B. Anthony of Kuwait, Rula Dashti, who is also the chairwoman of the Kuwait Economic Society, helped organize rallies outside the streets of parliament and did everything possible to encourage her government to change. (356)

Throughout her quest for equality, "[s]he stressed granting political rights to women would add to their positive role in the society and wouldn't cause any harm, adding 'the Sharia texts cited in all the marathon arguments and debates don't say a definite 'NO' for granting political rights to women.'" (357) Instead, Islamic law leaves the door open for interpretation. And that finally happened in 2005, when the Kuwaiti Parliament interpreted Islamic law to allow women the right to vote, leaving Saudi Arabia as the only Middle Eastern country where women have no such right. (358)

Unfortunately the debate surrounding the vote has not ended. To assuage hard-line Islamists, the Kuwaiti Parliament attached a proviso that women voters and politicians would still have to follow the precepts of Islamic law. (359) By adding this proviso, the door remains open for traditional Islamists to effectively control the new found right. Regardless, the



Middle East is beginning to see the significance of women's political rights. The right to vote and hold office violates neither Islamic law nor international law.

## 2. International Law and the Right to Vote and Hold Office

Some international legal scholars point to four primary documents as the "International Bill of Human Rights" (360)--the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Optional Protocol to International Covenant on Civil and Political Rights. (361) Within these documents, the UDHR calls for equal protection of the law. (362) It also asserts the right to hold office and the universal right to vote. (363) The ICCPR mandates that States Parties to the Covenant will "ensure the equal right of men and women to the enjoyment of all civil and political rights." (364) Finally, ICESCR also requires States Parties to the Covenant to take steps to "ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights." (365)

While a number of Islamic countries have expressed reservations to these mandated rights, (366) the fact that the right to vote and hold office is clearly expressed and the fact that so many countries have signed the underlying documents of the Bill of Rights, (367) indicate there is strong state practice in this area. Further, strong international pressure on states to ensure these rights indicates the world feels obligated to provide them. The right to vote and hold office is arguably therefore within the realm of *opinio juris*. Taken together, even in the Middle East, voting and political participation appear to be rights that have reached customary international legal status.

Some countries, like Saudi Arabia, could be considered persistent objectors for refusing to sign the UDHR, claiming its equality provisions were contrary to Islam. (368) However, as a signatory to the Charter of the United Nations, Saudi Arabia has reaffirmed "faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small." (369) Thus, notwithstanding any objections, Saudi Arabia is bound by signature and customary international law to principles of equality for all. The difficulty, therefore, is ensuring enforcement of these rights.

Fortunately, as women gain power, even countries like Saudi Arabia may soon find women in position to demand equal rights. This quest, however, will not be easy. Saudi Arabia, like

the Vatican, regards women's equality as contrary to authoritative moral norms. (370) Changing Saudi law may be as difficult as producing a change within the Vatican. Both do not view discriminatory practices against women (like no women in the priesthood) as discriminatory, because "[m]orality as set forth in natural law should be immutable," (371) and "true equality" for women entails "rights and obligations that [differ] from those enjoyed by men." (372)

Unlike the Vatican, however, Saudi Arabia has a large population of women who do not live there by choice. Indeed, unlike the nuns of Vatican City, Saudi Arabian women were predominantly born in Saudi Arabia, and they did not choose to live under rules that provide for certain forms of discrimination.

Today, women in the Middle East are proving that they have a choice. Just as Kuwaiti women took charge and fought for the right to vote, Saudi Arabian women will inevitably fight for this right. Like Kuwait, much of this fight will be rooted in economics. International pressure will undoubtedly aid in fostering change, but ultimately, the dollar will drive real change.

### 3. Economic Steps to Obtain Right to Vote and Hold Office

There is convincing proof that, at least in part, money strongly influenced the Kuwaiti parliament when it voted to grant women the right to vote:

Parliament extended political rights to Kuwaiti women [on May 16, 2005].... In an effort to win over some opponents, the Kuwaiti Cabinet met [that same day] to approve a pay increase for Kuwaiti state employees and pensioners that will cost the government \$445-million a year. [After the pay increase], [t]he government ... insisted Parliament vote on a women's rights bill it introduced a year ago to end the prohibition on women voting and running for office. (373)

Obviously, the money at issue in Kuwait did not come directly from Kuwaiti women. But the influence of women within the country certainly helped lead to change. This was especially true around the time of the first Gulf War, as one women's rights advocate stressed:

'Our women defended Kuwait during the Iraqi invasion, participated in resistance operations and marched in protest demonstrations against the invaders,' Sheikha Amthal said. 'They also did their part in explaining the aftermath of Iraqi occupation to the whole world.' All these factors prove Kuwaiti women's demand for political rights comes from a history of positive achievements and not out of nothing. (374)

Because of the participation of women and the assistance they have afforded Kuwait, Kuwait's emir, Sheik Jaber Al Ahmed Al Sabah, has been one of the strongest supporters of women's rights. (375) In 1999, he granted women political rights by decree. (376) It wasn't however, until 2005 that his grant came to fruition. And real change was due in no small part to financial incentives.

Indeed the advancement of women's rights oftentimes follows the economic results of women after either salvaging a country during war or helping it to prosper post war. In 1920, when women in the United States obtained the right to vote, the country was in the midst of an economic boom. Like Kuwait, the United States, and the world had just emerged from war. (377) As one commentator wrote: "Grateful to American women for their active participation during World War I (1917-1918), Congress passed a woman suffrage constitutional amendment by a narrow margin in 1919. It was ratified by the states in August 1920." (378)

After World War I ended, men like Henry Ford could focus on new ways to increase prosperity. Ford invented an affordable motor vehicle by the use of his concept of the assembly line. (379) With the postwar economic boom and new manufacturing processes, America began to realize it could no longer ignore the voice of half its population. Rather, America began to recognize women for what they gave the country, including their role in the nation's economy. (380)

Kuwait experienced similar change. In the years preceding Kuwaiti suffrage, Kuwaiti women had reached "high positions in the oil industry, education and the diplomatic corps." (381) Combined with the assistance women provided during the first Gulf War, it was only a matter of time before Kuwait, like the United States, would recognize a woman's right to be heard. As women in Saudi Arabia now fight for this fundamental right, they too will soon wield the

sword of economics to help gain the fight to vote. As explained previously, Saudi women in February 2006 experienced the first steps at achieving national suffrage when they ran for seats on a local chamber of commerce.<sup>382</sup> With thousands of firms owned by women, (383) and thousands of women already actively participating in their respective chambers of commerce, (384) it is only a matter of time before Saudi Arabia will also recognize a woman's right to vote.

#### D. Right to be Free from All Forms of Discrimination

The origin of the veil in Saudi Arabia is unknown. Face veiling in the Middle East is recorded as far back as the Assyrians (1500 B.C.), followed by a brief revival about the time of the Crusades. The most accepted theory about the specific veiling practices in Saudi Arabia is that when the eastern coastal areas were under Turkish control, women of high social standing wore veils, probably to protect their complexions against the brutality of the desert sun. The desire for status--an overpowering emotional need among Arabs--decreed, therefore, that every woman wear a veil so everyone could lay claim to being upper class. Another theory is that when Bedouin tribes made war on each other and raided the livestock of the rival tribe, the women were veiled so that the beautiful ones would not be carried off with the goats. Others say Bedouin women were such fierce fighters in these raids that, by a code of desert chivalry, women were veiled as a form of identity and kept out of battle so intrepid men were spared the risk of fighting them. (385)

Whatever the origin of the veil, whether to protect chattel or protect wealthy women from sunburn, the modern requirement for women to wear veils in many parts of the world demonstrates how women suffer discrimination. But is it really discrimination? One Arabic professor explained how the Saudi requirement doesn't bother her. (386) She felt that in one way it made life easier for a woman. All she had to do when going someplace outside was to throw on an abaaya (387) over her undergarments and she was ready to greet the world. There was no need for make-up, and no need to spend time doing her hair. For her, it was

liberating.

Other women readily agree. "Indeed, many Muslim women consider the head scarf a form of feminist expression, because it forces people to judge them by their character rather than their looks." (388) An American, Jennifer Fadel, who converted to Islam 10 years ago, also finds the hijab (389) as liberating. (390) In her own words: "it protects my dignity. I don't have to worry about looking good and doing my hair all up just to impress others." (391) Ms. Fadel, however, wears her hijab by choice. In countries like Saudi Arabia, women have no choice.

In addition to the veil, other restrictive covenants, such as the prohibition against driving cars, are imposed on women in Saudi Arabia and other Islamic cultures. Are these restrictions required under Islam? What does international law say about them? To demonstrate the power of economic amelioration, this article will consider the role of economics in ending these two restrictions and other forms of discrimination and inequity.

#### 1. Islamic Law and the Veil (392)

To justify the requirement that women wear a form of the veil, Islamic law requires a certain amount of interpretation. At least in Saudi Arabia, most of the dress code is designed so that "a woman cannot sexually arouse a man whom she casually passes on the street." (393) The Quran does not offer much support to arrive at this restriction, stating: "say to the believing women that they lower their gaze and guard their modesty: that they should not display their beauty and ornaments." (394)

Muslim scholars argue about the meaning of "ornaments" or "zinaf" in Arabic. Some claim it refers to external adornment or jewelry while others maintain it refers to a woman's natural beauty. (395) Either way, the Quran does not place the requirement to "restrain gaze" and to "control sexual passion" solely upon women. In the preceding verse, men are instructed to do the same thing. (396) Thus, arguing that the veil requirement is based on "not arousing a man's sexual desire" is folly, because men are required by Islamic law to control their own passions as well.

The traditions of the Prophet also offer little support for the requirement that women be fully covered. In one instance:

Asma, daughter of Abu Bakr, came to the Prophet, and she was

wearing very thin clothes (through which the body could be seen).

The Prophet turned away his face from her and said, 'O Asma! [W]hen the woman attains her majority, it is not proper that any part of her body should be seen except this and this,' pointing to his face and his hands. (397)

One could argue that this saying requires only that a woman should dress conservatively in sufficiently thick clothing that is not see

through. It does not necessarily follow that a woman should be completely covered. Taken literally, the passage at a minimum indicates that the woman's face and hands should be showing.

In another tradition that counters the idea of a woman being fully covered, the Prophet makes it clear that no woman shall put on a veil during the hajj. (398) If a woman is not allowed to use a veil during one of the most holy religious ceremonies, why should she be forced to wear one in a secular setting? Fundamentalists often justify veil wear and other discriminatory practices based on a need to keep women from intermingling with men so as to avoid sexual attraction. (399) Yet during the pilgrimage, women have a much greater chance of intermingling. (400) It seems counter-intuitive to require a veil outside the pilgrimage but not while the pilgrimage is being performed.

A survey of Muslim nations (401) and their laws demonstrates there is no agreement in Islamic law regarding the veil and its usage. Nazira Zin al-Din, who is considered the most serious and knowledgeable of women scholars, (402) explains this interpretation debate as follows:

When I started preparing my defence of women, I studied the works of interpreters and legislators but found no consensus among them on any subject; rather, every time I came across an opinion, I found other opinions that were different or even contradictory. As for the aya(s) concerning hijab, I found over 10 interpretations, none of them in harmony or even agreement with the others as if each scholar wanted

what he saw and none of the interpretations was based on clear evidence. (403)

The hijab requirement is often justified based on morality. The Quran, however, offers no proof of an obligation to be fully covered. Rather, it stresses modesty. Aya 24:31, for example, states that women should wear their head-coverings "over their bosoms." (404) From a historical context, this injunction makes sense. In pre-Islamic times, women were known to flaunt their beauty in many different manners including the exposure of their bosom. (405) This aya was therefore necessary to curb this practice and require women to dress modestly. It did not, however, mean that a woman should be completely covered.

In her writings, Zin al-Din has gone as far as to assert that the hijab requirement actually defeats the goal of morality. She points to the fact that thieves and murderers mask their identities to protect themselves from being caught doing something wrong. (406) Further, a mask eliminates one of the prime factors that keeps people from misbehaving--fear of social disgrace. (407) Thus, she explains, by being forced to wear the hijab, women are deprived of this social imperative. (408)

Recognizing, however, that the hijab is an obligation forced upon women, Zin al-Din believes the real reason for its usage is because men do not trust the women in their lives. (409) If the husband or father truly trusted their bride or daughter, why would they require them to cover themselves? Indeed, according to Zin al-Din, it makes no sense that Islam, which gives so much glory to the mother, would give so little faith in her own ability to choose right from wrong. (410)

One should also recall that Islam stands for the proposition that all men and women are equal before the eyes of God. If the veiling of women derived from the pre-Islamic custom of rich women, it would make no sense that Islam would encourage all women to adopt such a practice. (411)

In the end, no matter what interpretive gymnastics are performed, there is no clear proof in Islam that the veil is an absolute requirement. While modesty is indeed required, there is no proof that a woman has to be completely covered.

There are, however, further discriminatory practices that receive even less Islamic

authorization. One such practice is found in Saudi Arabia, where women are not allowed to drive a car.

## 2. Islamic Law and the Driving Restriction

The Permanent Council for Scientific Research and Legal Opinions (CRLO) is "the official institution in Saudi Arabia entrusted with issuing Islamic legal opinions." (412) When asked under what circumstances a woman would be allowed to drive a car, CRLO issued the following fatwa (413):

It is impermissible for a woman to drive an automobile, for that would entail unveiling her face or a part of it. Additionally, if her automobile were to break down on the road, if she were in an accident, or if she were issued a traffic violation, she would be forced to co-mingle with men. Furthermore, driving would enable a woman to travel far from her home and away from the supervision of her legal guardian. Women are weak and prone to succumb to their emotions and to immoral inclinations. If they are allowed to drive, then they will be freed from appropriate oversight, supervision, and from the authority of the men of their households. Also to receive driving privileges, they would have to apply for a license and get their pictures taken.

Photographing women, even in this situation, is prohibited because it entails fitnah and great perils. (414)

Not surprisingly, this fatwa offers little Quranic or other Islamic legal support for its propositions. Such support does not exist. In addition to holding powerful positions of leadership during the time of the Prophet, women also rode horses and camels. (415) Not allowing women to drive is not a concept that Islam (during the time of the Prophet) would have contemplated.

Since no Islamic legal support exists to justify this prohibition, the CRLO instead resorted to the Islamic jurisprudential concept known as sadd al-dhari'ah. (416) This literally means "the



blocking of a means." (417) According to the CRLO, driving may not be bad, but it leads to bad things. Thus, it must be prohibited because if allowed, a woman will likely do things she is not permitted to do. (418)

Irrespective of how reasonable this argument is (or is not), the fact remains that there is no direct Islamic legal source standing for the proposition that women should not be allowed to drive. It is therefore one example of outright discrimination that women face. From an international legal perspective, it is a form of discrimination that should end.

### 3. International Law's Response to the Veil and Driving

CEDAW defines "discrimination against women" as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (419)

While the CEDAW definition of discrimination clearly encompasses "all forms of discrimination," not all Islamic countries have adopted CEDAW. Further, as explained above, those countries that have adopted CEDAW frequently place reservations indicating acceptance only in terms of compliance with Islamic law.

Nevertheless, at least from an international perspective, outright discrimination is clearly contrary to accepted concepts of international law. Even though CEDAW does not specifically mention the prohibition on driving or the veil requirement, such discriminatory practices are forbidden internationally.

The real issue internationally is not whether these practices are contrary to international law, but how far a country will go to stop these practices. In some circumstances, it appears the pendulum has swung too far. Should a woman who wants to wear a veil be prohibited from wearing it? This issue has been grounds for a long and troublesome debate in France.

In 2004, France adopted Law number 2004-228, (420) which provides that students may not

wear religious displays or symbols while attending public schools. Although the law was not written in a way that directly targeted the wearing of the veil, a number of cases have involved Muslim women who wanted to wear the veil. (421) The fact that France in some circumstances prohibits women from wearing a veil by choice demonstrates how the veil requirement is seen as a universal form of discrimination in many places around the world.

Internationally, it is safe to conclude that overt forms of discrimination against women are not favored. Yet, such forms of discrimination continue to exist. So then, what can make them stop?

As has been maintained throughout this article, economics may prove to be the key factor.

#### 4. Economic Steps to End Discrimination

Women in Saudi Arabia have dealt with discrimination in their own way. Upper class women, including those in the royal family, often simply escape the discrimination by spending time abroad. (422) One princess spends a great deal of time in Europe and California, and she returns to Saudi Arabia with style even in her conformity, wearing a \$700 abaya with the initials of Dior discreetly initialed into the silk. (423)

Other women rebel against Saudi discrimination in their own way. It is estimated that each year the Saudi Arabian Public Transportation Company loses about Saudi riyal 4 million (a little over one million U.S. dollars) because women do not pay their fares when riding public buses. (424) These segregated women usually ride in a section of the bus separated from the men's section by a heavy metal wall. (425) Their fare box hangs on the back of the wall out of sight and reach of the bus driver. (426) Knowing that men are not allowed to touch them, (427) they depart the bus under the cover and secrecy of a black cloak.

In other sectors of Saudi Arabia, "educated Saudi women, many of them occupying positions of influence in the royal family," (428) are gaining enough strength to counter the voice of religious authorities and thereby demand change. Nevertheless, it does not appear that change will come from the wealthy. According to a one regional expert, the future of women in Saudi Arabia will come from the new middle class:

It is the new middle class that has experienced the greatest psychological impact from development and it

is there that much of the limited rebellion that is occurring is to be found. The women who most acutely suffer the pains of change are those who have lived abroad either as students or with their student husbands. Almost all speak a second and sometimes a third language. Returned to Saudi society, they float between two worlds. Since the King Faisal hospital was the most Westernized institution in Riyadh, women patients, dressed in traditional garb, entered the examining rooms of male physicians. Without hesitation, however, they removed their veils, allowing the doctor to examine them while they comfortably conversed in perfect English. Then they donned their veils again and emerged once more into the sea of black-clad women. (429)

Change in Saudi Arabia is likely to occur, but this change will be slow. Just as women in commerce will help Saudi women acquire the right to vote, so too will this economic prosperity help women end discrimination as well.

Veil and driving restrictions, are not, however, the worst forms of discrimination women in an Islamic world may face. In addition to honor killings, there is another reprehensible act that is sometimes speciously justified in the name of Islam--female genital mutilation.

#### E. The Right to be Free from Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment

The United Nations Human Rights Commission has been active in its pursuit to end violence against women. The list of cruelties committed against women is long. It includes such things as: woman-battering, marital rape, incest, forced prostitution, female infanticide, forced marriage, son preference, female genital mutilation, and honor crimes. (430) While it is difficult to justify any of these inhuman actions, female genital mutilation is especially troubling. It garners no legitimate support from any religious group, yet it is still widely practiced. Many have accused Islam of furthering female genital mutilation, but in reality, true

Islam offers no support for such a reprehensible practice.

In fact, the Quran has no reference to female circumcision. (431) Like most barbaric practices that sometimes find Islamic justification, female genital mutilation preceded Christianity and Islam. (432) Indeed, the most radical form of mutilation described above is also known as the "Pharaonic Procedure." (433) Thus, at least in name, it was practiced long before Islam came into existence.

Just like honor killings, female genital mutilation most frequently occurs in the poorer areas of the world. In Egypt:

Researchers often estimated that 50 to 60 percent of Egyptian women have been circumcised. The reason that the figures are quite high is related to the class divisions in Egyptian society. The far more numerous poorer classes, both Christians and Muslims, follow this Nile valley tradition, while the families of Turco-Circassian derivation, the main segment of the small historic elite, do not. (434)

While instantly increasing the economic strength of women in these types of communities would be ideal, only time and/or increased economic development will effectuate economic change. To prove this point, Professor Clair Apodaca has introduced the Women's Economic and Social Human Rights (WESHR) achievement index. (435)

The WESHR index provides a mathematical formula to track women's achievement in such diverse areas as a woman's right to work, rates of gainful employment, sex-differentiated literacy rates, and other rights to education. (436) Like a litmus test, the index ranges from 0 to 14. Low numbers indicate a low status of women in society, while higher numbers show that women's rights are absolute. (437) A score of 7 indicates a perfect balance between men's and women's rights. (438)

Scores from Islamic states indicate that women are gaining rights in some countries. (439) From 1975–1990, Kuwait went from 4.92 to an impressive 5.63. (440) Egypt, on the other hand, saw only a 0.25 increase in score from 4.45 in 1975 to 4.70 in 1990. (441) Compared to the

United States and Canada at 6.61 and 6.46, respectively, both countries have progress to make. (442)

While the index is not perfect, it offers a helpful indication of women's social and economic progress. Considering that violence against women is more likely to occur in areas of the world that are more economically challenged, the index helps identify states with a higher potential for abusing women. It can also indicate where international assistance might produce economic and social change that will end deplorable practices like female genital mutilation.

#### IV. CONCLUSION

Islamic law is often viewed as a repressive legal system which effectively denies women equal rights around the world. The truth is that Islamic law is fundamentally fair, and can be interpreted in such a way as to protect a woman's fundamental rights. Placed into context with international law, Islamic law can find conformity.

Unfortunately, because Islamic law is often taken hostage by customs and traditions that are clearly not Islamic, the fairness of Islamic law has been trumped at times by putative scholars trying to justify patriarchal traditions by misinterpreting Islamic law. When Islamic law is properly interpreted, however, one sees a system intended to benefit, if not advance, the rights of women.

To encourage states to properly interpret Islamic law so as to protect the basic human rights of women, a mechanism is needed to change the underlying attitudes that halt such interpretations. This underlying mechanism is the economic development of women. As women in Saudi Arabia, Kuwait, Egypt, and other Islamic countries begin to experience economic advancement, they will also by necessity experience improved human rights. In reality, when a woman acquires financial freedom, she is able to unshackle constraints on her preexisting legal rights, whether those rights are based in international human rights or Islamic fundamental rights of women.

(1) THE EURYTHMICS AND ARETHA FRANKLIN, SISTERS ARE DOIN' IT FOR THEMSELVES, (RCA Records 1985), lyrics available at <http://www.codehot.co.uk/lyrics/efgh/eurythmics/sisters.htm> (last visited Feb. 2, 2008).

- (2) Financial Times Information, Africa/Mid-East: The Arab Businesswoman-A Lucrative Niche, GLOBAL NEWS WIRE, Apr. 4, 2002.
- (3) Seema Shafi, Women Urged to Become Economically Strong, BUSINESS RECORDER, Apr. 16, 2006.
- (4) Financial Times Information, First Gulf Bank Launches Women's Ultimate Financial Friend, GLOBAL NEWS WIRE, Sep. 17, 2006.
- (5) Colbert L. King, Saudi Arabia's Apartheid, WASHINGTON POST, Dec. 22, 2001 at A23.
- (6) KAREN ARMSTRONG, ISLAM: A SHORT HISTORY 16 (2002).
- (7) Id.
- (8) Challiss McDonough, Kuwaiti Women Exercise Right to Vote, NEWS VOICE OF AMERICA, June 26, 2006.
- (9) Armstrong, supra note 6, at 16.
- (10) See id.
- (11) Id.
- (12) MAULANA MUHAMMAD ALI, A MANUAL OF HADITH 310 (2001).
- (13) ABDUL HAMID SIDDIQUE, SELECTION FROM HADITH 69 (1983).
- (14) QURAN 4:25 (Abdullah Yusuf Ali trans.).
- (15) Heather Jacobson, The Marriage Dower: Essential Guarantor of Women's Rights in the West Bank and Gaza Strip, 10 MICH. J. GENDER & L. 143 (2003).
- (16) Id. at 145.
- (17) Id. It is interesting to note that women in traditional Islamic societies often are seen wearing coins on their traditional dresses. These coins are not simply artwork, they are frequently her dowry. Because of the paucity of banks in rural settings, this is the best way for her to guard her worth.
- (18) Id. at 146.
- (19) JAMAL J. NASIR, THE ISLAMIC LAW OF PERSONAL STATUS 88 (Paperback ed., Springer 1990) (1987).

- (20) Azizah Y. al-Hibri, *An Islamic Perspective on Domestic Violence*, 27 *FORDHAM INT'L L.J.* 195, 199 (2003).
- (21) Nasir, *supra* note 19, at 88.
- (22) *Id.*
- (23) *Id.*
- (24) Abdul Varachhia, *Heirlooms Often Given as Gifts*, *BIRMINGHAM EVENING MAIL*, Feb. 28, 2006, at 26.
- (25) Nasir, *supra* note 19, at 90.
- (26) LAMIA R. SHEHADEH, *THE IDEA OF WOMEN UNDER FUNDAMENTALIST ISLAM* 33 (2003).
- (27) *QURAN* 4:24 (Abdullah Yusuf Ali trans. 2002).
- (28) Nasir, *supra* note 19, at 91.
- (29) See generally ASNE SEIERSTAD, *THE BOOKSELLER OF KABUL* (2002); AHMED RASHID, *TALIBAN* (2000).
- (30) ABUL A'LA MAUDUDI, *THE RIGHTS AND DUTIES OF SPOUSES* 91 (1994).
- (31) Debbie Hummel, *Utah Polygamist Convicted of Illegal Sex*, *THE ASSOCIATED PRESS*, Aug. 14, 2003, at 1.
- (32) Nasir, *supra* note 19, at 93.
- (33) Polygamy will be discussed later in this article.
- (34) See Jacobson, *supra* note 15, at 143, 160. See also MUHAMMAD BIN ABDUL-AZIZ AL MUSNAD, *ISLAMIC FATAWA REGARDING WOMEN* 214-215 (1996).
- (35) David Hodson, *Special Issue: Fourth Annual World Congress on Family Law and Children's Rights: Spare the Child and Hit the Pocket: Toward a Jurisprudence on Domestic Abuse as a Quantum Factor in Financial Outcomes on Relationship Breakdown*, 44 *FAM. CT. REV.* 387, 404 (2006).
- (36) While in Tunisia escorting students on an Arabic language immersion program, we were notified by the management to avoid the young men coming to our hotel. Apparently they

were prostituting themselves to wealthy European tourists in an effort to raise money for their dowry.

(37) Nasir, *supra* note 19, at 90.

(38) *Id.*

(39) Shehadeh, *supra* note 26, at 232.

(40) Jacobson, *supra* note 15, at 147.

(41) *Id.* at 155.

(42) *Id.* at 158.

(43) al-Hibri, *supra* note 20, at 199-200.

(44) *Id.* at 200.

(45) Jacobson, *supra* note 15, at 155.

(46) Zainab Chaudhry, *The Myth of Misogyny: A Reanalysis of Women's Inheritance In Islamic Law*, 61 ALB. L. REV. 511, 513 (1997).

(47) *Id.* at 513-514.

(48) *Id.* at 515.

(49) *Id.* at 527.

(50) *Id.* at 529.

(51) *Id.* at 531.

(52) QURAN 4:11-12 (Abdullah Yusuf Ali trans.). See also Chaudhry, *supra* note 46, at 537. After an extensive analysis of the different types of classes that may become sharers under Islamic law, Chaudhry shows how female inheritance would work in practice. He then demonstrates that inheritance is really not that unfair to females, and adds that:

[T]he female distributee inherits equally with a male distributee of the same class in two out of the four basic classes of relatives. These four groups of people represent the primary familial relationships of the deceased, and they are the relatives most likely to be his or her survivors. Also, in several cases, it



is possible to have a configuration of heirs where females receive shares greater than any of the males and sometimes even the entire estate. It is only the daughter or the full sister who receive half of what males of equal status receive, a son or full brother, respectively, if they are inheriting jointly as Residuaries.

His thorough analysis of female Islamic inheritance law is helpful for anyone seeking further information in this area.

(53) AMINA WADUD, QURAN AND WOMAN: REREADING THE SACRED TEXT FROM A WOMAN'S PERSPECTIVE 87 (1999).

(54) *Id.*

(55) *Id.* at 88.

(56) See QURAN 4:11-12 (Abdullah Yusuf Ali trans.).

(57) Nasir, *supra* note 19, at 223.

(58) Chaudhry, *supra* note 46, at 548.

(59) *Id.* at 527.

(60) Nasir, *supra* note 19, at 232.

(61) *Id.*

(62) *Id.* at 231.

(63) Shehadeh, *supra* note 26, at 153.

(64) Nasir, *supra* note 19, at 102.

(65) QURAN 2:233 (Abdullah Yusuf Ali trans.).

(66) QURAN 65:6 (Abdullah Yusuf Ali trans.).

(67) Nasir, *supra* note 19, at 103.

(68) *Id.* at 103-104.

(69) See Mary F. Radford, The Inheritance Rights of Women Under Jewish and Islamic Law, 23 B.C. INT'L & COMP. L. REV. 135, 148 (2000).

Like Islamic fundamentalism, Jewish fundamentalism dictates an inferior and submissive status for women. Jewish fundamentalism 'does not explicitly declare that a wife must be submissive and obedient to her husband [but] the overall structure of marriage and divorce laws delegates such a degree of authority and power to the husband as to allow him effectively to coerce his wife's obedience.' Additionally, Jewish fundamentalists, in the name of 'guarding women's chastity [and] preventing women from 'tempting' men into adultery,' segregate the sexes, relegate women to the home, and restrict women's public dress.

Id. (internal citations omitted)

(70) See 1 Corinthians 14:34-35 ("Let your women keep silence in the churches: for it is not permitted unto them to speak; but they are commanded to be under obedience, as also saith the law. And if they will learn anything, let them ask their husbands at home ....") See also Colossians 3:18-19 ("Wives, submit yourselves unto your own husbands, as it is fit in the Lord. Husbands, love your wives, and be not bitter against them.") Granted two scriptures do not prove complete Christian subservience to men, but the point is only that in certain Christian faiths, just like in certain Jewish and Islamic faiths, women are considered subservient.

(71) Nasir, *supra* note 19, at 103.

(72) Id. at 105.

(73) Id.

(74) Id.

(75) Shehadeh, *supra* note 26, at 105.

(76) Nasir, *supra* note 19, at 106.

(77) Id. at 107.

(78) Id. at 108.

(79) Id. at 111.

(80) QURAN 4:34 (Abdullah Yusuf Ali trans.).

(81) Washington Post, International Spotlight: Saudi Arabia--Women's Work, WASHINGTONPOST.COM, <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/saudi/art14.html> (last visited Jan. 25, 2008).

(82) See SANDRA MACKEY, THE SAUDIS: INSIDE THE DESERT KINGDOM 145 (1990).

(83) Anne-Birte Stensgaard, Al Islami Financial Services Starts Women Exclusive Branch, AME INFO (2006), <http://www.ameinfo.com/93858.html> (last visited Jan. 25, 2008).

(84) Id.

(85) Saudia On-Line, SR100b (\$26.6 billion) in Women's Bank Accounts Waiting to be Tapped in Saudi, SAUDIA-ONLINE (2002), <http://www.saudia-online.com/newsnov02/news19.shtml> (last visited Jan. 25, 2008).

(86) See Frank Gardner, Saudi Women Defy Business Curbs, BBC NEWS (2001), [http://news.bbc.co.uk/2/hi/middle\\_east/1128951.stm](http://news.bbc.co.uk/2/hi/middle_east/1128951.stm) (last visited Jan. 25, 2008). (87) Saudia On-Line, supra note 85.

(88) Yasmine El-Rashidi, More Middle Eastern Women Trading Stocks, POST GAZETTE (2005), <http://www.post-gazette.com/pg/05220/550638.stm> (last visited Jan. 25, 2008).

(89) Id.

(90) Id.

(91) Id.

(92) Id.

(93) See Samar Fatany, The Status of Women in Saudi Arabia, ARAB NEWS (2004), <http://www.arabnews.com/?page=7&section=0&article=52784&d=12&m=10&Y=2004> (last visited Jan. 25, 2008).

(94) Id.

(95) Id.

(96) Id.

(97) See Jim Krane, Saudi Women Trying to Break Down More Barriers in Chamber of Commerce Voting, SIGN ON SAN DIEGO (2006), <http://www.signonsandiego.com/news/>

world/20060220-1036-saudi-womencandidates.html (last visited Jan. 25, 2008).

(98) Id.

(99) Id.

(100) Id.

(101) Jordan Business 2006, Veiled Hopes, SAUDI ELECTION, <http://www.saudielection.com/en/vb303/showthread.php?p=3313#post3313> (last visited Jan. 03, 2007).

(102) Id.

(103) Maggie M. Salem, Saudi Women and the Jeddah Economic Forum, SAUDI-US RELATIONS (2004), [http://www.saudi-us-relations.org/newsletter2004/saudi\\_relations\\_interest-02-12.html](http://www.saudi-us-relations.org/newsletter2004/saudi_relations_interest-02-12.html) (last visited Jan. 25, 2008).

(104) Id.

(105) Id.

(106) Id.

(107) Jordan Business, Women Who Lead, ZAWYA (2006), <http://www.zawya.com/story.cfm/sidZAWYA20061003085826> (last visited Jan. 25, 2008).

(108) Id.

(109) Id.

(110) See Joe Kaesshaefer, Mission Statement for Saudi Businesswomen Reverse Trade Mission, SAUDI BUSINESSWOMEN REVERSE TRADE MISSION, <http://www.ita.doc.gov/doctm/saudibw.htm> (last visited Jan. 25, 2008).

(111) See Donna Abu-Nasr, The Veiled Life of Saudi Women, WASHINGTON POST, Dec. 08, 2000, at A.59.

(112) Jean-Pierre Lehmann, Rebuilding the Mideast: Women Are Key, THE GLOBALIST (2003), <http://www.theglobalist.com/DBWeb/printStoryId.aspx?StoryId=3065> (last visited Jan. 25, 2008).

(113) Id.

(114) See BBC, Q&A: So What is Microfinancing?, BBC NEWS (2006), <http://news.bbc.co.uk/2/hi/business/6047364.stm> (last visited Jan. 25, 2008).

(115) Id.

(116) Id.

(117) Id. It is interesting to note that Grameen literally means "village." The whole idea of the Grameen bank was to bring development to the village.

(118) Id.

(119) Id.

(120) Isobel Coleman, The Payoff From Women's Rights, FOREIGN AFFAIRS, Jun. 01, 2004, at 2.

(121) Id.

(122) Id.

(123) Id.

(124) Id.

(125) Id.

(126) Id.

(127) MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003).

(128) Id.

(129) See BBC, *supra* note 114.

(130) Edieth Y. Wu, Global Burqas, 14 TEX. J. WOMEN & L. 179 (2005).

(131) Id.

(132) Wu, *supra* note 130, at 181. See also TAHIR MAHMOOD, CRIMINAL LAW IN ISLAM AND THE MUSLIM WORLD 224-225 (1996). Both fornication and adultery are often referred to as zina (sexual impropriety) and looked upon equally as criminal sexual acts. There is a distinction in Islamic jurisprudence, but it is sufficient to note that in Nigeria the two acts are considered equally offensive.

(133) Id.

(134) See Jamal J. Halaby, In Jordan the Price of Honor is Women's Blood, WOMEN'S E-NEWS (2000), <http://www.womensenews.org/article.cfm?aid=339> (last visited Jan. 25, 2008).

(135) See Hank Roth, Honor Killings, HUMAN RIGHTS ABUSES, <http://pnews.org/art/1art/HONORkillings.shtml> (last visited Jan. 25, 2008).

(136) Azza Basarudin, Whose Honor? Muslim Women and Crimes of Honor, PAPILLONS ART PALACE, <http://www.papillonsartpalace.com/whohkse.htm> (last visited Jan. 25, 2008).

(137) BBC News, Fresh "Honour Killing" in Jordan, BBC NEWS (2003), [http://news.bbc.co.uk/1/hi/world/middle\\_east/3097728.stm](http://news.bbc.co.uk/1/hi/world/middle_east/3097728.stm) (last visited Jan. 25, 2008).

(138) Id.

(139) BBC News, Speaking Out Over Jordan "Honour Killings", BBC NEWS, (2003) [http://news.bbc.co.uk/1/hi/world/middle\\_east/2802305.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2802305.stm) (last visited Jan. 25, 2008).

(140) Id.

(141) Beg NORMA KHOURI, HONOR LOST: LOVE AND DEATH IN MODERN-DAY JORDAN (2003).

(142) BBC News, *supra* note 139.

(143) Halaby, *supra* note 134, at 2.

(144) QURAN 24:2 (Abdullah Yusuf Ali trans.).

(145) QURAN 4:25 (Abdullah Yusuf Ali trans.). See also THE HOLY QURAN, commentary # 1736, (M. Ali trans, and commentary, 1995).

(146) Id.

(147) Al-Bukhari is one of the most reliable sources of hadith.

(148) Siddique, *supra* note 13, at 132.

(149) Id. at 127

(150) SAHIH BUKHARI, Vol. 4, 23:61 (M. Muhsin Khan trans.), available at <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/056.sbt.html> (last visited Feb. 08, 2008).

- (151) THE HOLY QURAN, commentary # 1736, (M. Ali trans, and commentary, 1995).
- (152) Id.
- (153) Id.
- (154) QURAN 24:4 (Abdullah Yusuf Ali trans.).
- (155) Id.
- (156) Basarudin, *supra* note 136, at 3.
- (157) See al-Hibri, *supra* note 20, at 204.
- (158) Id.
- (159) QURAN 4:34 (Abdullah Yusuf Ali trans.).
- (160) al-Hibri, *supra* note 20, at 204.
- (161) Id.
- (162) See THE HOLY QURAN, commentary # 572, (M. Ali trans, and commentary, 1995).
- (163) Id.
- (164) See Roth, *supra* note 135.
- (165) These include: International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S., <http://www.ohchr.org/english/law/cescr.htm> [hereinafter ICESCR]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 21 U.N. GAOR, Supp. No. 16 (A/6316), 999 U.N.T.S. 302, reprinted in 6 I.L.M. 383 (1966) [hereinafter ICCPR]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 46, at 197, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 [hereinafter CAT]; and the Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 34 U.N. GAOR, Supp. No. 21 (A/34/46), at 193, U.N. Doc. A/RES/34/180, 1249 U.N.T.S. 14, reprinted in 19 I.L.M. 33 (1979) [hereinafter CEDAW].
- (166) THE CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN ch. 1, art. 2.
- (167) See, e.g., Kuwait's reservations to the CEDAW at United Nations, CEDAW Reservations, UN CEDAW SESSIONS, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last visited Jan. 25, 2008).

(168) *Id.* at 9.

(169) For a general discussion see Abdullah A. An-Na'im, Human Rights in the Muslim World." Socio-Political Conditions and Scriptural Imperatives, 3 HARV. HUM. RTS. J. 13 (1990).

(170) "agreements must be respected"

(171) MAJID KHADDURI, WAR AND PEACE IN THE LAW OF ISLAM 204 (1955).

(172) M. Cherif Bassiouni, Protection of Diplomats Under Islamic Law, 74 AM. J. OF INT'L L. 609, 611 (1980).

(173) QURAN 5:1 (Abdullah Yusuf Ali trans.).

(174) THE HOLY QURAN, commentary # 656, (M. Ali trans, and commentary, 1995).

(175) QURAN 16:91 (Abdullah Yusuf Ali trans.).

(176) QURAN 16:92 (Abdullah Yusuf Ali trans.).

(177) QURAN 8:55-56 (Abdullah Yusuf Ali trans.) ("For the worst of beasts in the sight of Allah are those who reject him: they will not believe. They are those with whom thou didst make a covenant."). This ayat was in response to Banu Quraiza's repeated treachery after making treaties with the Muslims and then breaking them.

(178) CEDAW, *supra* note 165 (emphasis added).

(179) ICCPR, *supra* note 165.

(180) *Id.*

(181) ICCPR, *supra* note 165, articles 2, 6, and 9.

(182) CEDAW Committee, General Recommendation 19, Violence against women, (Eleventh session 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HR\GEN\1\Rev. 1 at 84 (1994), (contained in document A/47/38), [paragraph] 9.

(183) Amnesty International USA, Culture of Discrimination: A Fact Sheet on Honor Killings, AMNESTY INTERNATIONAL USA, <http://www.amnestyusa.org/women/honorkillings.html> (last visited Jan. 25, 2008).



(184) Declaration on the Elimination of Violence against Women, 23 Feb. 1994 G.A. res. 48/104, 48 U.N. GAOR Supp. No. 49 (217), U.N. Doc. A/48/49 (1993), art. 4.

(185) See, e.g. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. res. 217A (III), U.N. Doc A/810 at 71 art. 3 [hereinafter UDHR]; American Declaration of the Rights and Duties of Man, Apr. 1948, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992); ICCPR, *supra* note 165, art. 6.1; European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 04, 1950, ETS No. 5, 213 UNTS 222, art. 2; The American Convention of Human Rights (Pact of San Jose), Nov. 22, 1969, art. 4; The African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5, art. 4 (1981), reprinted in 21 I.L.M. 58 (1982).

(186) Islamic Declaration of Human Rights, Sept. 9, 1981, 21 Dhul Qaidah 1401, articles 1 (a) and (b).

(187) Douglas Jehl, Arab Honor's Price: A Woman's Blood, ARAB WOMEN'S BLOOD (1999), <http://polyzine.com/arabwomen.html> (last visited Jan. 25, 2008).

(188) A Lexis-Nexis search for news articles on "Honor Killings" found only 40 results with the date restriction from 1985-1990, only 167 hits were found from 1990-1995. Over 3,000 hits appeared when the date was restricted from 1995-2005.

(189) See Alasdair Soussi, Women Challenge "Honor" Killings, CHRISTIAN SCIENCE MONITOR (2005), <http://www.csmonitor.com/2005/0302/p15s01-wome.html> (last visited Jan. 25, 2008).

(190) See Mazna Hussain, Take My Riches, Give Me Justice: A Contextual Analysis of Pakistan 's Honor Crimes Legislation, 29 HARV. J.L. & GENDER 223,228 (2006).

(191) *Id.*

(192) *Id.*

(193) *Id.*

(194) *Id.* at 229.

(195) *Id.* See also Neshay Najam, Honor Killings in Pakistan, CRESCENT LIFE, [http://www.crescentlife.com/articles/social%20issues/honor-killings\\_in\\_pakistan.htm](http://www.crescentlife.com/articles/social%20issues/honor-killings_in_pakistan.htm) (last

visited Jan. 25, 2008).

(196) *Id.* at 228.

(197) *Id.* at 229.

(198) *Id.*

(199) See Najam, *supra* note 195.

(200) Hassain, *supra* note 190, at 228. See also Kayla White, Honor Killings, THE WORLD Youth Manifesto Project, [http://www.pwc.kl2.nf.ca/cida/manifesto/honor\\_killings.htm](http://www.pwc.kl2.nf.ca/cida/manifesto/honor_killings.htm) (last visited Jan. 25, 2008).

(201) White, *supra* note 200.

(202) *Id.*

(203) The political reasons why this pressure may not come from the United States would be too much to explore in this article.

(204) White, *supra* note 200.

(205) *Id.*

(206) See Janet Afary, The Human Rights of Middle Eastern and Muslim Women: A Project for the Twenty-first Century, WOMEN'S RIGHTS: A HUMAN RIGHTS QUARTERLY READER 133, 146 (2006).

(207) See Coleman, *supra* note 120, at 2.

(208) *Id.*

(209) *Id.*

(210) *Id.*

(211) *Id.*

(212) WEDDING IN GALILEE (Marisa Films 1987).

(213) In most cases, Muslim weddings are usually performed in front of an imam or a qadi (judge). The marriage ceremony generally follows the customs of the country where the marriage is taking place. See Svetlana Ivanova, The Divorce Between Zubaida Hatun and

Esseid Osman Aga, WOMEN, THE FAMILY, AND DIVORCE LAWS IN ISLAMIC HISTORY 112, 115 (1996).

(214) According to the Prophet's teachings, a woman's consent was a prerequisite of a valid marriage contract. This is confirmed by one hadith wherein, "Ibn Abbas reported that a girl came to the Messenger of Allah, and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice ... (between accepting the marriage or invalidating it)." (Ahmad, Hadith No. 2469). Another version of the report states that, "The girl said: 'Actually, I accept this marriage, but I wanted to let women know that parents have no right to force a husband on them.'" (Ibn-Majah). See JAMAL BADAWI, GENDER EQUITY IN ISLAM 23 (2003).

(215) IBRAHIM A. AL-MARZOUQI, HUMAN RIGHTS IN ISLAM 236 (2000).

(216) See Heather Johnson, Special Collection: Seminar Papers on Women and Islamic Law: There are Worse Things Than Being Alone: Polygamy in Islam, Past, Present, and Future, 11 WM. & MARY J. WOMEN & L. 563 (2005).

(217) *Id.*

(218) *Id.* at 564.

(219) QURAN 3:195 (Ahdullah Yusuf Ali trans.).

(220) QURAN 4:124 (Ahdullah Yusuf Ali trans.).

(221) QURAN 33:35 (Abdullah Yusuf Ali trans.).

(222) QURAN 57:12 (Abdullah Yusuf Ali trans.).

(223) QURAN 49:13 (Abdullah Yusuf Ali trans.).

(224) QURAN 7:19-27 (Abdullah Yusuf Ali trans.); see also Badawi, *supra* note 214, at 7.

(225) Badawi, *supra* note 214, at 7.

(226) See A THOUSAND NIGHTS AND ONE NIGHT (J.C. Mardrus, Routledge 2001).

(227) See Johnson, *supra* note 216, at 563.

(228) Badawi, *supra* note 214, at 26.

(229) Johnson, *supra* note 216, at 575.

- (230) Id.
- (231) Id.
- (232) Id.
- (233) With the guidance from Allah.
- (234) Badawi, *supra* note 214, at 27.
- (235) Id. at 28.
- (236) QURAN 4:3 (Abdullah Yusuf Ali trans.).
- (237) Badawi, *supra* note 214, at 28.
- (238) Id.
- (239) Johnson, *supra* note 216, at 576.
- (240) Id.
- (241) Id.
- (242) Id.
- (243) Id. at 579.
- (244) Id.
- (245) Id.
- (246) Id.
- (247) Id.
- (248) See LYNN WELCHMAN, *WOMEN'S RIGHTS AND ISLAMIC FAMILY LAW* 52 (2004).
- (249) Id.
- (250) Id.
- (251) See Mackey, *supra* note 82, at 174.
- (252) Id.
- (253) Markets.
- (254) Mackey, *supra* note 82, at 174.

(255) See DAOUD S. EL ALAMI & DOREEN HINCHCLIFFE, *ISLAMIC MARRIAGE AND DIVORCE LAWS OF THE ARAB WORLD* 3 (1996).

(256) QURAN 4:129 (Abdullah Yusuf Ali trans.).

(257) See DIANA DARKE, *TUNISIA* 16 (1996).

(258) Verse.

(259) Johnson, *supra* note 216, at 586.

(260) *Id.*

(261) See BBC News, Malaysia Permits Text Message Divorce, *BBC NEWS* (2003), <http://news.bbc.co.uk/2/hi/asia-pacific/3100143.stm> (last visited Jan. 25, 2008).

(262) JOSEPH SCHACHT, *AN INTRODUCTION TO ISLAMIC LAW* 11 (1982), at 163.

(263) The wife is no longer menstruating. See Al-Marzouqi, *supra* note 215, at 267.

(264) *Id.* at 268.

(265) JUDITH E. TUCKER, *IN THE HOUSE OF THE LAW* 169 (1998).

(266) *Id.*

(267) *Id.*

(268) Nasir, *supra* note 19, at 119.

(269) *Id.*

(270) *Id.*

(271) QURAN 2:229 (Abdullah Yusuf Ali trans.).

(272) Schacht, *supra* note 262, at 163.

(273) QURAN 2:230 (Abdullah Yusuf Ali trans.).

(274) Tucker, *supra* note 265, at 88.

(275) See also Schacht, *supra* note 262, at 164.

(276) *Id.*

(277) Joseph Schacht is one of the most quoted sources regarding Islamic law.

(278) Schacht, *supra* note 262, at 164.

(279) *Id.*

(280) See Welchman, *supra* note 248, at 39. "Divorce law is a striking example of the [guardianship status of men over women]; talaq occurs at the wish of men, while women have to go to court to establish a cause if the wish to obtain a divorce against the wishes of their husband."

(281) *Id.*

(282) Abdal-Rehim Abdal-Rahman Abdal-Rehim, *The Family and Gender Laws in Egypt, WOMEN, THE FAMILY, AND DIVORCE LAWS IN ISLAMIC HISTORY* 96, 105 (Amira Sonbol, 1996).

(283) *Id.*

(284) *Id.*

(285) *Id.* See also Nasir, *supra* note 19.

(286) Tucker, *supra* note 265, at 92.

(287) *Id.*

(288) Shehadeh, *supra* note 26, at 34.

(289) *Id.* at 232.

(290) *Id.*

(291) *Id.*

(292) *Id.*

(293) Universal Declaration of Human Rights, G.A. Res. 217 A(III), U.N. Doc A/80, art. 16 (1948) [hereinafter UDHR].

(294) CEDAW, *supra* note 165.

(295) CEDAW, *supra* note 165, art. 16 (a)-(c).

(296) Chantalle Forgues, *A Global Hurdle: The Implementation of an International Nondiscrimination Norm Protecting Women from Gender Discrimination in International*

Sports, 18 B.U. INT'L L.J. 247, 255 (2000).

(297) Id.

(298) Id. at 262.

(299) See Ann E. Mayer, Rhetorical Strategies and Official Policies on Women's Rights: The Merits and Drawbacks of the New World Hypocrisy, FAITH AND FREEDOM: WOMEN'S HUMAN RIGHTS IN THE MUSLIM WORLD 104, 105 (1995).

(300) Id. at 106.

(301) Id.

(302) Id. (citing LARS ADAM REHOF, GUIDE TO THE TRAVAUX PREPARATOIRES OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 257 (1993)).

(303) Id.

(304) Id. at 112.

(305) Id. at 117.

(306) Id. at 118.

(307) See Azizah Y. al-Hibri, Muslim Women's Rights in the Global Village: Challenges and Opportunities, 15 J. L. & RELIGION 37 (1999).

(308) Id. at 47.

(309) Id.

(310) Id.

(311) Id.

(312) Id. at 48.

(313) Id.

(314) Id.

315 p. Nicholas Kourides, The Influence of Islamic Law on Contemporary Middle Eastern Legal Systems: The Formation and Binding Force of Contracts, 9 COLUM. J. TRANSNAT'L

L. 384, 430 (1970).

(316) *Id.*

(317) *Id.*

(318) *Id.* at 429.

(319) *Id.* at 428.

(320) *Id.* at 429.

(321) See Badawi, *supra* note 214, at 28.

(322) *Id.* It is also important to note that even if the condition against polygamy is not included in the marriage contract, under Islamic law, if the first wife does not want an additional wife to join the family, she is entitled to seek a marriage under the provisions of khul.

(323) See Tucker, *supra* note 265, at 52.

(324) *Id.*

(325) Kourides, *supra* note 315, at 430.

(326) *Id.* See also QURAN 5:1 (Abdullah Yusuf Ali trans.) ("O ye who believe! Fulfill all obligations.").

(327) Saudi Arabia v. Arabian-American Oil Co. (ARAMCO), Aug. 23, 1958, 27 INT'L L. REP. 117 (1963).

(328) Kourides, *supra* note 315, at 433.

(329) Interview with Fathalla Al-Meswari, Professor of Islamic Law at George Washington University, in Washington D.C. (Feb. 14, 2007).

(330) *Id.*

(331) See al-Hibri, *supra* note 307, at 37.

(332) See MIR ZOHAIR HUSAIN, GLOBAL ISLAMIC POLITICS 25 (2002).

(333) *Id.*

(334) *Id.*

(335) *Id.* at 26.



(336) Id

(337) Id.

(338) Id. Bhutto was dismissed from office in 1990 and later accused of corruption after her subsequent reelection. Ciller was accused of graft and corruption.

(339) Id. at 25.

(340) Joelle Entelis, International Human Rights: Islam's Friend or Foe? Algeria as an Example of the Compatibility of International Human Rights Regarding Women's Equality and Islamic Law, 20 FORDHAM INT'L L.J. 1251, 1300 (1997).

(341) Id.

(342) QURAN 4:124 (Abdullah Yusuf Ali trans.).

(343) QURAN 33:35, 33:36 (Abdullah Yusuf Ali trans.).

(344) Husain, *supra* note 332, at 24.

(345) See Entelis, *supra* note 340, at 1305 (citing Urfan Khaliq, Beyond the Veil?." An Analysis of the Provisions of the Women's Convention in the Law as Stipulated in Shari'ah, 2 BUFF. J. INT'L L. 1, 13 (1995)).

(346) Wu, *supra* note 130, at 189. (quoting Out of the Shadows, Into the World, ECONOMIST, June 19, 2004, at 28).

(347) Tucker, *supra* note 265, at 148.

(348) Id.

(349) See Al-Marzouqi, *supra* note 215, at 224.

(350) Badawi, *supra* note 214, at 38.

(351) Id.

(352) Id.

(353) Id. at 37.

(354) Id. See also BOUTHAINA SHAABAN, THE MUTED VOICES OF WOMEN INTERPRETERS, FAITH AND FREEDOM: WOMEN'S HUMAN RIGHTS IN THE MUSLIM

WORLD 61, 62 (1995).

(355) See Mayer, *supra* note 299, at 115.

(356) Eliana Benador, If She Can Die ... She Can Vote; Echoes of Asrar in Battle for Rights, ARAB TIMES, Mar. 07, 2005, at 1.

(357) *Id.*

(358) See Associated Press, Kuwaiti Women Win the Right to Vote, ST PETERSBURG TIMES, May 17, 2005, at 1.

(359) *Id.*

(360) See Entelis, *supra* note 340, at 1305 (quoting ANN E. MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS 38 (1995)).

(361) UDHR, *supra* note 185; ICCPR, *supra* note 165; ICESCR, *supra* note 165; First Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, available at <http://www.ohchr.org/english/law/ccpr-one.htm> [hereinafter ICCPR Protocol One].

(362) UDHR, *supra* note 185, art. 7.

(363) *Id.* art. 21.

(364) ICCPR, *supra* note 165, art. 3.

(365) ICESCR, *supra* note 165, art 3.

(366) See generally Mayer, *supra* note 299, at 105-115. States like Morocco, Egypt, Kuwait, and Saudi Arabia have all expressed reservations regarding women and Islamic law.

(367) 151 countries for ICESCR and 154 countries for ICCPR. See Blackstone's Statutes, INTERNATIONAL LAW DOCUMENTS 101, 108 (Malcolm D. Evans ed., 2005).

(368) See John Kelsay, Saudi Arabia, Pakistan, and the Universal Declaration of Human Rights, in HUMAN RIGHTS AND THE CONFLICT OF CULTURES: WESTERN AND ISLAMIC

PERSPECTIVES ON RELIGIOUS LIBERTY 35, (David Little, John Kelsay, and Abdulaziz Sachedina, eds., 1988).

(369) U.N. Charter, Preamble.

(370) Mayer, *supra* note 299, at 124.

(371) *Id.*

(372) *Id.*

(373) Associated Press, Kuwaiti Women Win the Right to Vote, *ST PETERSBURG TIMES*, May 17, 2005.

(374) Benador, *supra* note 356.

(375) Associated Press, *supra* note 373.

(376) *Id.*

(377) See Michael Duffy, War Timeline, *FIRST WORLD WAR* (2004), <http://www.firstworldwar.com/timeline/index.htm>.

(378) Elizabeth H. Pleck, Suffrage, *SCHOLASTIC*, <http://teacher.scholastic.com/activities/suffrage/history.htm> (last visited Jan. 25, 2008).

(379) See The Henry Ford, The Life of Henry Ford, *HENRY FORD MUSEUM*, <http://www.hfmgv.org/exhibits/hf/default.asp> (last visited Jan. 25, 2008).

(380) It is interesting to note that "the first woman in North American colonies to demand the vote was Margaret Brent, the owner of extensive lands in Maryland. In 1647 Brent insisted on two votes in the colonial assembly, one for herself and one for Cecil Calvert, Lord Baltimore, whose power of attorney she held. When the governor denied her request, Brent boycotted the assembly." See Pleck, *supra* note 378. Thus, even in 1647, money was one way in which women could powerfully impact society. See *id.*

(381) Associated Press, *supra* note 373.

(382) Krane, *supra* note 97.

(383) Fatany, *supra* note 93.

(384) *Id.*

(385) Mackey, *supra* note 82, at 143.

(386) Interview with Fadwa Nahhas, Professor of Arabic, USDA Graduate School, in

Washington D.C. (Nov. 30, 2006).

(387) "The abaaya, or black cloak, worn by women has large sleeves and hands over the head. Unlike the Iranian chador, it does not cover the face. Two styles of veils are seen on Saudi women. Rural women commonly wear a veil that drops from a velvet band across the forehead and leaves the wearer's eyes exposed. Urban women wear veils made of a heavy gauzelike fabric that completely covers their faces and is anchored at the top of the head by the abaaya." Mackey, *supra* note 82, at 12.

(388) Mackenzie Carpenter, *Muslim Women Say Veil is More about Expression than Oppression*, PITTSBURGH POST-GAZETTE, Oct. 28, 2001.

(389) A hijab is frequently just a simple head scarf whereas a niqab is a head scarf that covers the face, leaving the just eyes exposed.

(390) Carpenter, *supra* note 388.

(391) *Id.*

(392) When referencing the "veil," the intent is to include all categories of women's coverings: i.e., the abaaya, hijab, niqab, chador, or burqa.

(393) Mackey, *supra* note 82, at 142.

(394) QURAN 24:31 (Abdullah Yusuf Ali trans.).

(395) THE HOLY QURAN, commentary # 1751, (M. Ali trans, and commentary, 1995).

(396) QURAN 24:30 (Abdullah Yusuf Ali trans.).

(397) MAULANA M. ALI, THE RELIGION OF ISLAM 486 (1990).

(398) *Id.* at 485.

(399) Mackey, *supra* note 82, at 142.

(400) Ali, *supra* note 397, at 485.

(401) Turkey at one extreme, where the veil is outlawed, to Saudi Arabia and Afghanistan, which require full body cover.

(402) See Shaaban, *supra* note 354, at 64.

(403) *Id.* (quoting NAZIRA ZIN AL-DIN, AL-SUFUR WA'L-HIJAB 37 (1928)).

- (404) QURAN 24:31 (Abdullah Yusuf Ali trans.).
- (405) Ali, *supra* note 397, at 486.
- (406) Shaaban, *supra* note 354, at 68.
- (407) *Id.*
- (408) *Id.*
- (409) *Id.*
- (410) *Id.*
- (411) *Id.* at 72.
- (412) See KHALED ABOU EL FADL, SPEAKING IN GOD'S NAME 173 (2003).
- (413) Legal pronouncement.
- (414) El Fadl, *supra* note 412, at 272.
- (415) *Id.* at 190.
- (416) *Id.*
- (417) *Id.*
- (418) *Id.*
- (419) CEDAW, *supra* note 165, art. 1.
- (420) LOI no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics (Fr.).
- (421) See Elizabeth Bryant, Secular France Struggles with Veil, WASHINGTON TIMES (2003), <http://www.washtimes.com/world/20030913-112055-97or.htm>.
- (422) Mackey, *supra* note 82, at 156.
- (423) *Id.*
- (424) *Id.* at 178.
- (425) *Id.*

(426) Id.

(427) Id.

(428) Id. at 179.

(429) Id. at 157.

(430) See Report of the Special Rapporteur on Violence Against Women, U.N. Doc. E/CN.4/1999/68 (1999).

(431) Badawi, *supra* note 214, at 48.

(432) Id. at 47.

(433) Id.

(434) Id.

(435) See Clair Apodaca, Measuring Women's Economic and Social Rights Achievement, *WOMEN'S RIGHTS: A HUMAN RIGHTS QUARTERLY READER* 485, 487 (2006).

(436) Id. at 512-515.

(437) Id. at 489.

(438) Id.

(439) See *id.* at 516-519.

(440) Id. at 518.

(441) Id. at 517.

(442) Id. at 516, 519.

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