

# The Divine Protection of Women in Islam and International Humanitarian Law: A Comparative Study

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The dignity and protection of women stand at the essential of any just and humane civilization. This paper explores the conflicting approaches of Islamic law and international human rights systems in protection of women's rights, particularly in cases of sexual violence and social injustice. It begins by highlighting women's central role in human and social life, declaring that their honor reflects the moral strength of society. While international organizations such as the Inter-American Commission on Human Rights (IAHRC) and the European Court of Human Rights (ECHR) claim to protect women, their frameworks often remain limited to organizational and procedural justice. Cases like *Raquel Martín de Mejía v. Peru* (1996) and *Opuz v. Turkey* (2009) illustrate how these systems entangle victims in lengthy trials, failing to deliver emotional and moral refurbishment. In contrast, Islamic jurisprudence establishes a swift, moral, and socially balanced model of justice grounded in divine revelation. The Qur'an and the Sunnah uphold the holiness of women's dignity and ensure instant and public answerability for criminals, preventing further harm and social illness. Islam views justice not merely as punishment but as purification and protection for the community. Through this comparison, the study argues that international justice

(CC BY) license (<http://creativecommons.org/licenses/by/4.0/>). mechanisms often remain detached from the lived realities of women, offering symbolic judgments rather than tangible security. Eventually, the paper concludes that the Islamic framework, rooted in moral responsibility and collective welfare, provides a more holistic, restorative, and dignified form of justice for women than the procedural systems of the West. It highlights that true defense of women lies not in legal formalities but in moral conviction, timely justice, and social respect values deeply rooted in the Islamic worldview.

**Keywords:** peacekeeping education; higher education strategy; DEMATEL; analytic network process; mixed methods; defence diplomacy; Indonesia

### Introduction:

The dignity of women is one of the most holy and universal aspects of human life. From the beginning of civilization, women have been the foundation of moral strength, emotional equilibrium, and social continuity. They are mothers, educators, and moral guides, shaping peers through patience, compassion, and pliability. The respect and protection of women's rights, therefore, are not merely social duties but important indicators of a society's ethical prime of life. A civilization that fails to honor its women, nevertheless of its scientific progress or political power, stands morally insolvent. Ensuring women's safety, dignity, and justice is thus central to the preservation of humanity itself. In every age, the question of women's rights has reproduced the true nature of human societies. Their treatment defines the moral health of nations. Inappropriately, history bears witness that women have often been treated as property, silenced, and denied justice, particularly during times of war and conflict. In modern times, this injustice has taken more complex forms through institutional neglect, gender-based violence, and slow or ineffective judicial processes. While international laws and organizations such as the United Nations and the European Court of Human Rights claim to protect women, their systems often remain knotted in bureaucracy,

abstraction, and legal formality, offering words instead of genuine protection.

From the Islamic viewpoint, the status of women is one of honor, equality, and sacred trust (amanah). Islam was the first system to declare the spiritual, moral, and social equality of women with men. The Qur'an affirms: "*And for women are rights similar to those upon men, according to what is just*".<sup>1</sup> The Prophet Muhammad ﷺ practically confirmed this equality by giving women the right to property, inheritance, education, consent in marriage, and public participation rights unheard of in seventh-century Arabia. Islam regards the woman as a complete human being, not a dependent subject. Her protection is a godly command, and her dignity is inviolable. Even in cases of sexual violence or injustice, Islamic law delivers a swift and fair system of accountability where the offender, not the victim, faces public trial and punishment. The Prophet ﷺ said: "*The best among you are those who are best to their women.*" This moral declaration remains the keystone of Islamic gender justice.

In contrast, the Western viewpoint, though stranded in the language of equality and human rights, has largely changed through secular and material frameworks. Modern democracies and human rights institutions emphasize the legal

<sup>1</sup> (Al-Baqarah 2:228)

and procedural protection of women, yet often ignore the spiritual and social dimensions of their dignity. The concept of justice in the Western world tends to revolve around punishment pretty than prevention, legitimacy rather than morality. For instance, cases like *Raquel Martín de Mejía v. Peru* (1996) and *Opuz v. Turkey* (2009) exemplify how international courts often extend trials and expose victims to further humiliation in the name of due process. The offender is sometimes punished, but the woman's honor and emotional wellbeing remain unhealed. Justice, in such systems, becomes a mechanical formality rather than a living moral reality.

When both systems are compared, the contrast between Islamic and Western approaches becomes striking. The Western model is technical, delayed, and often detached from human sensitivity, whereas the Islamic model is

#### Discussions:

#### Concept of Social Justice in Islam and Western Democracies:

Many contemporary Islamic scholars have highlighted, perhaps even overstated, the range of rights and privileges that Islam discusses upon women. The dominant scholarly consensus keeps that men and women are equal in worth, though not identical in nature or roles. Abdalati explains this distinction by asserting that "*man and woman are not identical but they are created equals.*" He further clarifies that the Qur'an never assigns men a position of dominance over women, nor does it raise any question about a woman's possession of a soul an issue that existed in pre-Islamic or non-Islamic beliefs. Throughout Islamic history, no Muslim scholar has doubted the spiritual and moral honesty of women or their human spirit. Abdalati also forces that the Qur'an contains no critical expressions or labels concerning women. In Islamic teaching, woman is neither portrayed as the source of evil nor linked with Satan.<sup>2</sup>

immediate, ethical, and socially restorative. International courts may convict the criminal after years of litigation, but Islam delivers justice swiftly and conclusively, protecting the victim's dignity and discouraging future crimes. While Western laws focus on individual rights, Islam integrates these rights into a cooperative moral framework that safeguards the entire society. The Islamic vision of justice does not trust solely on sentences but aims at purification, prevention, and social peace ensuring that the woman is not only lawfully protected but also socially honored and spiritually uplifted. In spirit, Islam presents a justice system that unites legality with morality, while the Western system separates the two. The result is clear: where international justice often ends with a decision on paper, Islamic justice begins with the restoration of dignity, honor, and peace values that define the very essence of humanity.

Contrary to popular Western myths, Islam does not hold Eve solely responsible for humanity's first sin. The Qur'an explicitly narrates that both Adam and Eve were tempted, both blundered, and both were forgiven after regret, as God addressed them equally.<sup>3</sup> This balanced portrayal underscores Islam's fundamental principle of moral accountability shared by both sexes.<sup>4</sup> Islam equally rejects the concept that the creation of woman was an extra. It affirms her genuine role as man's partner in the continuation of human life. The Qur'an states:

*"O mankind! Verily we have created you from a single (pair) of a male and a female, and made you into nations and tribes that you may know one another"*<sup>5</sup>

This verse enshrines the principle of equality at the level of creation, emphasizing that distinctions among humans happen for recognition, not for dominance. Hence, the equality of man and

<sup>2</sup> Abdalati, Hammudah (1975). *Islam in Focus*. American Trust Publications. PP:187

<sup>3</sup> (Surah 2:35-36; 7:19, 27; 20:117-123)

<sup>4</sup> Abdalati, Hammudah (1975). *Islam in Focus*. American Trust Publications. PP:187

<sup>5</sup> (Surah 49:13; 4:1)

woman in Islam extends to all scopes of human effort, intellectual, spiritual, and social. According to Abdalati, Islam grants women equal access to education, the right to freedom of speech and association, and the freedom to contract, earn, and own property independently. Their life, honor, and wealth are held sacred, identical to those of men. When a woman commits an offense, her punishment is neither harsher nor lighter than that of a man under similar conditions.<sup>6</sup> The Qur'an clearly condemns those who treat women as inferior beings or disagree them human dignity.<sup>7</sup>

With regard to religious observations, Islam grants women certain exemptions based on their physical and social circumstances. During menstruation and postnatal periods, women are excused from prayers and fasting. They are also exempt from attending the Friday congregational prayers. Economically, Islam does not impose upon them any monetary responsibilities. Moreover, the status of motherhood in Islam is glorious beyond measure. The Qur'an honors mothers, commanding compassion and gratitude toward them.<sup>8</sup> The Prophet Muhammad ﷺ reinforced this dignity when he declared that "*Paradise lies under the feet of mothers.*" In moral instruction, a mother is deemed worthy of three parts of family affection and kindness, while the father is entitled to one. Furthermore, as a wife, a woman is entitled to a *mahr* (dowry) that remains her private property. Her husband is responsible for her complete financial repairs, and she is under no pressure to work or contribute to family expenditures. This economic provision is not a sign of reduction but a recognition of her role and the social justice surrounded in Islamic family law. Another debated issue in contemporary discourse concerns the positioning of women behind men in congregational prayers. Abdalati defends this practice as a matter of dignity and discipline, not

as a marker of inferiority. He notes that Muslim prayer involves coordinated bodily movements standing, bowing, and prostration and mixed rows could lead to distraction or disorder. Thus, this arrangement confirms spiritual focus and mutual respect within worship, rather than establishing any hierarchy of worth.<sup>9</sup>

The hunt of gender justice and equality among human beings is a universal human aspiration. This ideal echoes in historical statements such as the *American Declaration of Independence* (1776), which asserts that "all men are created equal"<sup>10</sup>. In spite of such declarations, Stern observes that practical equality remains indescribable. Similarly, the *Declaration of the Rights of Man and of the Citizen* adopted by France's National Assembly in 1789 affirmed that "*All men are born free and equal in rights*"<sup>11</sup>. The *United Nations Charter* (1945) also pledges to promote "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"<sup>12</sup>. The *Universal Declaration of Human Rights* (1948) repeats this by stating that "*All human beings are born free and equal in dignity and rights.*"<sup>13</sup> While this represents the moral vision of modern humanity, many religious frameworks including Islam interpret equality through typical theological principles. In numerous societies, women still occupy secondary positions in social, political, and religious life, and certain theological interpretations continue to depict the creation of woman as secondary to man.

In Islamic teaching, however, gender justice finds partial authorization within the Qur'an and

<sup>6</sup> (Surah 2:178; 4:45, 92–93)

<sup>7</sup> (Surah 16:57–59; 42:47–50)

<sup>8</sup> (Surah 31:14–15; 46:15)

<sup>9</sup> Abdalati, Hammudah (1975). *Islam in Focus*. American Trust Publications. PP:187

<sup>10</sup> Stern, Philip Van Doren (ed.) 1975. *The Pocket Book of America*. New York: Pocket Books. PP:165

<sup>11</sup> Omeregbe, J. (1994). *An Introduction to Philosophical Jurisprudence*. Ikeja, Lagos: Joja Press, PP:82

<sup>12</sup> Reoch, Richard (1994). *Human Rights: The New Consensus*. London: Regency Press, PP:265

<sup>13</sup> *Universal Declaration of Human Rights* (1948)

Sunnah. The Qur'an declares, "*And men are a degree above them (women)*"<sup>14</sup>, and further, "*Men are the protectors and maintainers of women because God has given the one more strength than the other*".<sup>15</sup> The accepted exegesis of *Surah* 2:228 understands this "degree" not as superiority in worth but as an added level of responsibility. Likewise, *Surah* 4:34 emphasizes protection and maintenance, indicating the physical capacity and duty of care trusted to men. Islam thus entrusts men with leadership in the domestic domain, a concept which Nijole Benokraitis terms "*masculine paternalism*" "a polite yet authoritative approach that can appear protective while protective male supremacy."<sup>16</sup> Feminist scholars often read these verses as sanctioning perpetual suppression of women. Muslim scholars, however, counter that such an interpretation twists the Qur'anic intent. According to Cragg, these verses are contextually confined to family relations, where men assume protective and financial responsibilities. Therefore, rather than institutionalizing discrimination, these teachings delineate complementary roles founded on mutual respect.<sup>17</sup>

### **Veil as a Choice: Religious Obligation or Social Restriction?**

The dialogue on veiling and women's liberation in Islam gained momentum at the turn of the twentieth century, largely influenced by the writings of Qasim Amin. His two important works, *Tabrir al-Mar'ah* (*The Liberation of Woman*) and *Al-Mar'ah al-Misriyyah* (*The Egyptian Woman*), published in 1899, became the keystone of modern Arab feminist thought. In these texts, Amin promoted for the recognition of women's

social and educational rights, calling for access to primary education for girls and for critical reform in laws governing polygamy and divorce. Leila Ahmed, in her *Women and Gender in Islam*, speaks well of Amin's courage and vision, asserting that he "*paid the price for the liberation of women in Arab culture and society*" particularly in his challenge to prevailing customs concerning women's dress and the elimination of the veil.<sup>18</sup>

The feminist engagement that followed Amin's writings took a more visible and radical form in the early twentieth century. Around the mid-1920s, Egyptian reformer Huda Sha'rawi made a powerful symbolic gesture by removing her veil publicly, protesting against the restrictive customs imposed on women. Similarly, Dora Shafik and her group of female activists organized protests at the Egyptian parliament, demanding women's inclusion in political representation.<sup>19</sup> In spite of these courageous efforts, *The New Encyclopedia Britannica* <sup>20</sup>observes that a woman's social position still inclines to be defined by her biological role as the potential bearer and caregiver of children, especially during infancy a perception that continues to shape gender discourse even in modern contexts.

From an Islamic standpoint, modesty remains a foundational virtue that governs both public and private manner. The Qur'an instructs the wives of the Prophet Muhammad ﷺ to maintain decorum and modesty when interacting with unrelated men, as an act of modesty and respect.<sup>21</sup> The principle innovative this injunction covers to the general moral framework of Islamic society, which discourages unrestricted combining of the sexes in

<sup>14</sup> (Surah 2:228)

<sup>15</sup> (Surah 4:34)

<sup>16</sup> Benokraitis, N. V. (1989) "How Subtle Sex Discrimination Works". *Seeing Ourselves: Classic, Contemporary, and Cross-Cultural Readings in Sociology*. John J. Macionis and Nijole V. Benokraitis (eds.). New Jersey: Prentice Hall.

<sup>17</sup> Cragg, Kenneth (1985). *The Call of the Minaret*. Maryknoll: New York: Orbis Books.

<sup>18</sup> Ahmed, Leila (1992). *Women and Gender in Islam*. New Haven: Yale University Press. PP:145

<sup>19</sup> Cragg, Kenneth (1985). *The Call of the Minaret*. Maryknoll: New York: Orbis Books. PP:16

<sup>20</sup> "The Status of Women". *The New Encyclopedia Britannica*. Vol. 19th, 1975. PP:906

<sup>21</sup> Smith, Jane I. (1989) "Women in Islam", in *Seeing Ourselves: Classic, Contemporary and Cross-Cultural Readings in Sociology*.

order to preserve moral order. When a woman needs to appear in public, Islamic tradition advises simplicity in dress and modest covering, confirming that her body remains veiled except when necessity dictates otherwise. Classical scholars such as Maududi noted that women are permitted to unveil only in situations of genuine need, and should continue covering once that need passes.<sup>22</sup>

Over time, the practice of veiling has developed in form and appearance. Variants include the *niqab*, which hides the face below the eyes, and the *chador* or *burqa*, which covers the entire body, often with a mesh screen to enable vision.<sup>23</sup> The Islamic concept of bodily covering, known as *satr*, aims to promote purity, self-discipline, and moral honesty. Abdalati highlights this spiritual dimension, stating that the veil safeguards a woman's soul from weakness, her mind from glut, her eyes from temptation, and her character from moral decline. He emphasizes that Islam prioritizes a woman's spiritual and moral integrity, her chastity, and the protection of her dignity.<sup>24</sup>

Modern Muslim feminists, however, challenge traditional readings of the veil. They argue that no obvious Qur'anic verse orders complete bodily covering from head to foot. The Qur'anic directive regarding the Prophet's wives that they speak to unrelated men from behind a partition is, according to these scholars, context-specific and not meant as a universal order applicable to all Muslim women across time and cultures. In contemporary Muslim societies, many women are redefining their relationship with the veil, adopting

modesty in ways that harmonize with modernity while remaining faithful to Islamic values.

In Western discourse, veiling has often been portrayed as a symbol of oppression and gender-based defeat. Yet, many Muslim women interpret it differently as an act of faith, identity, and self-respect. Some also take caution in unveiling to ensure that their choices are not perceived as imitation of Western cultural imperialism but rather as expressions of agency within an Islamic framework. Thus, the practice of veiling in Islam remains a multifaceted issue simultaneously religious, cultural, and political reflecting diverse interpretations across societies and historical contexts.

### **Concept and Essence of Woman Marriage in Islam:**

Marriage, in its essence, is a mutual agreement between two consenting adults of opposite genders to live together within the moral and social approval of their community. It is built upon respect, devotion, and equality, not subordination or supremacy. The Qur'anic concept of marriage rejects any view of slavery, viewing both buddies as collaborators in sustaining unity and compassion within the home. In Arabic, the term *al-Nikah* literally means "union," suggesting its foundational role in establishing families the most essential institution of society. As the World Book Encyclopedia observes, "*Family is the oldest and most important human institution... entire civilizations have survived or disappeared depending on whether family life was strong or weak*"<sup>25</sup>

In Islam, marriage is regarded not as a sacred ceremony but as a lifelong legal and moral contract. Women are entitled to negotiate its terms, determine and retain their *mahr* (dowry), and enjoy full legal rights within the marital basis. The Qur'an allows Muslim men to marry up to four wives only under the condition of absolute

<sup>22</sup> Maududi, Abul'Ala (1960). Towards Understanding Islam. Riyadh: WAMY Making Your Family Life Happy. New York: Watchtower, 1978.PP:170-71

<sup>23</sup> Smith, Jane I. (1989) "Women in Islam", in Seeing Ourselves: Classic, Contemporary and Cross-Cultural Readings in Sociology.PP:343

<sup>24</sup> (Qur'an 24:30–31/ Abdalati, Hammudah (1975). Islam in Focus. American Trust Publications.PP;190-91

<sup>25</sup> Awake, Help for Battered Women. Watchtower, November 8, 2001PP:09

justice, while women may marry one man at a time. Muslim men may lawfully marry Jewish or Christian women, but Muslim women are bound to marry within the faith.

*"This day all good things have been made lawful to you... and chaste women from among the believers and chaste women from among those who were given the Scripture before you."*<sup>26</sup>

Islamic marital unity is multidimensional physical, spiritual, and emotional. Physical unity is realized through intimacy as Allah declares:

*"He (Allah) it is who created you from a single soul, and from it He created its mate that he might find peace in her"*<sup>27</sup>.

Spiritual unity emerges from shared faith and acts of worship, while emotional unity is captured in the Qur'anic metaphor:

*"They (your wives) are a garment for you, just as you are a garment for them"*<sup>28</sup>. This image symbolizes mutual defense, comfort, and emotional interdependence. Doi interprets this verse as highlighting "mutual upholding of reputation, affection, and consolation in bad luck"<sup>29</sup>.

Marriage in Islam also functions as a safeguard for moral and psychological solidity. Celibacy is discouraged, as indicated in the hadith:

*"He who is able to marry should marry, for it keeps the eyes cast down and preserves chastity; and he who cannot should fast"*<sup>30</sup>. The Prophet ﷺ further said, *"Nikah (marriage) is my Sunnah, and he who abstains from my sunnah is not of me"*<sup>31</sup>.

The Qur'an permits polygyny within strict limits:

*"Marry such women as seem good to you, two, three, or four; but if you fear that you cannot deal justly, then only one"*<sup>32</sup>.

Contemporary scholars view this verse as a conditional concern rather than a universal command, since perfect justice among multiple wives is practically impossible.<sup>33</sup> Kenneth Cragg notes that the husband remains the "sole judge" of his skill to act fairly, and failure to do so only becomes evident afterward.<sup>34</sup>

Modern Muslim civilizations have progressively restricted or reinterpreted plural marriage in line with changing social realities. Countries such as Pakistan Turkey and Tunisia have banned polygyny, while, Iraq, Egypt, Morocco, and Lebanon have introduced legal requirements like court permission or first-wife consent before additional marriages. This trend echoes a growing global leaning toward marriage, harmonizing Islamic principles of justice with contemporary ideas of gender equity.

### **Domestic Violence and the Islamic Perspective of Justice under International Law:**

The Qur'an mentions curative measures within marriage but only as a last option for resolving serious domestic discord. The verse in *Surah 4:34* states: *"...As for those from whom you fear disobedience, admonish them, leave them alone in beds, and beat them."* This verse, however, has often been misinterpreted as sanctioning domestic misuse. Classical and modern scholars underline that the verse intends a representative and highly calm measure, not a license for violence. In contemporary Islamic thought, wife-beating is strongly discouraged and regarded as unpredictable with the Prophet's ﷺ example, who never raised his hand against any lady. In modern

<sup>26</sup> (Surah Al-Mā'idah, 5:5)

<sup>27</sup> (Surah 7:189)

<sup>28</sup> (Surah 2:187)

<sup>29</sup> Doi, A.R. I. (1981). *The Cardinal Principles of Islam*. Zaria: HudaHuda.PP:126

<sup>30</sup> Ibid:127

<sup>31</sup> Bukhari Muhammad bin Ismail Bukhari, *Sahih Al-Bukhari, Book Awakening the desire for marriage, Book 67, Hadith 1*

<sup>32</sup> (Surah 4:3)

<sup>33</sup> Cragg, Kenneth (1985). *The Call of the Minaret*. Maryknoll: New York: Orbis Books. (Cragg 1985:152)

<sup>34</sup> Ibid (1985:153).

legal and ethical dissertation, any form of domestic violence is convicted.

*The United Nations Declaration on the Elimination of Violence against Women* defines such violence as “any act of gender-based violence that results in, or is likely to result in physical, sexual, or mental harm or suffering to women... whether occurring in public or private life”<sup>35</sup>

Acts like spousal exploitation, rape, sexual harassment, forced prostitution, female infanticide, and genital mutilation constitute grave violations of women’s bodily autonomy and human dignity. Globally, violence against women persists across cultures despite legal frameworks and religious teachings promoting respect and equity. The *Vienna Declaration* (World Conference on Human Rights, 14 June 1993) reaffirmed the international commitment to combat gender-based violence, urging the elimination of sexual exploitation, harassment, trafficking, and gender bias within judicial.<sup>36</sup>

Within Islam, such forms of abuse contradict the moral spirit of the Qur’an, which calls for kindness, compassion, and justice between spouses. The Prophet Muhammad ﷺ consistently upheld women’s honor and forbade meanness, making it clear that marital discipline cannot be associated with harm, humiliation, or cruelty.

### **Creation of Woman and the Principle of Complementarity in Islam:**

<sup>35</sup> United Nations. (1993). Declaration on the Elimination of Violence against Women (A/RES/48/104). United Nations General Assembly. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women//Awake, Help for Battered Women. Watchtower, November 8, 2001.>

<sup>36</sup> United Nations. (1993). Vienna Declaration and Programme of Action. World Conference on Human Rights, Vienna, 14–25 June 1993. United Nations. United Nations, 1993, Part I, para. 18 Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action> Reoch, Richard (1994). Human Rights: The New Consensus. London: Regency Press. PP:215

and jurisprudence, the creation of woman is observed as a divine act intended to complement man, establishing a relationship of cooperation and mutual dependence between the two. Unlike some other religious civilizations, Islam does not regard woman as the origin of evil or temptation. The Qur’an clarifies that both Adam and Eve jointly disobeyed God’s command by approaching the prohibited tree, which resulted in their removal from Heaven. However, this act is not defined as a sexual lapse, nor is it associated with the “*tree of knowledge*.” According to Ismail al-Faruqi, Islam considers sexuality as a natural and positive aspect of human existence and knowledge as a sacred quest, both free from sin or pollution. The Qur’an also records that Adam and Eve repented, and their sorrow was accepted by God.<sup>37</sup> Thus, the concept of a “*fall of man*” or the doctrine of “*original sin*” does not exist in Islamic thought.<sup>38</sup> Within this framework, woman is seen not as a source of moral downfall, but as a partner, comforter, and a source of joy and fulfillment for man. Sexual relations in Islam are considered healthful and necessary, as marriage is encouraged and celibacy discouraged by the Prophet (peace be upon him), who declared marriage as part of his Sunnah. Moreover, woman in Islam is recognized as an independent legal entity owning fundamental rights. Therefore, marital closeness must always be grounded in mutual desire and harmony. Any form of sexual immorality or infidelity is prohibited, as it violates the sanctity of the marital bond and moral honesty.

### **Plural Marriages: Social and Humanitarian Motivations Exemplified by Prophet Muhammad (PBUH)**

Both the Qur’an and Hadith clearly demonstrate the Prophet Muhammad’s deep sympathy, respect, and affection for women. This attitude is reflected

<sup>37</sup> (Qur’an 20:115)

<sup>38</sup> Al Faruqi. Isma'il (1979). Islam. Illinois: Argus. PP:46

in the Qur'anic injunction: "...But live with them kindly; for if you dislike them, it may be that you dislike a thing in which Allah has placed much good." <sup>39</sup>The Prophet's care and regard for women were obvious in his personal conduct and family life. His first marriage to Khadijah (RA) was a faithful and devoted union, marked by mutual love, trust, and emotional strength. After her passing, the Prophet entered into several other marriages, many of which were motivated by social and humanitarian reasons rather than personal wish. Scholars differ on the exact number of his wives. Gerhard Nehis and Walter Eric estimate them to be thirteen, Kenneth Boa and J.J. Saunders suggest ten to twelve, while Kenneth Cragg emphasizes that the Prophet's plural marriages, though exceeding the general limit prescribed in Qur'an (4:3), were divinely authorized and not meant as a model for others. Saunders also highlights that the Prophet's plural marriages took place after Khadijah's death and that most of his wives were widows of men who had died in the service of Islam. His intelligence of duty and compassion moved him to care for these women and their families. While Orientalist scholars sometimes misunderstood this as a reflection of sensuality, Islamic tradition views it as an act of moral accountability and social welfare.

Across cultures, widowhood has often brought with it deep sorrow, loneliness, and economic distress. The Prophet Muhammad (PBUH) sought to restore dignity to widows through both personal example and teaching. He encouraged the community to backing and support widowed women and even encouraged their remarriage a practice that elevated their social standing and provided safety. The Prophet declared: *"The one who strives to support a widow or a poor person is like the warrior in the path of Allah, or like one who fasts during the day and prays at night."* <sup>40</sup>Thus, in Islam, care for widows and women in distress is not merely a

social obligation but a spiritual act of devotion and virtue, rooted in the Prophet's exemplary sympathy and mercy.

### **Islamic Laws as Foundation for Women Rights in modern warfare:**

The Holy Qur'an and the Sunnah of the Prophet (PBUH) constitute the foundational sources of Islamic law, which assurance comprehensive protection of women's rights, even in times of war. According to Islamic jurisprudence, armed conflict cannot be declared against neutral states or individuals, regardless of ideological disagreements. Islam advocates peace and coexistence with neutral parties, strictly prohibiting aggression and emphasizing the sanctity of human life and blood. The Qur'an explicitly commands:

*"Allah does not forbid you as regards those who did not fight you on account of faith and did not expel you from your homes, that you do good to them, and deal justly with them. Surely Allah loves those who maintain justice".* <sup>41</sup>

This verse highlights Islam's constant call for moderation and justice, even among warfare. The religion forbids wanton destruction and prohibits the killing of innocent civilians, including non-Muslims. Islam is unique among world religions for establishing a codified set of ethical principles governing warfare. Under Islamic teachings, it is strictly forbidden to kill, harm, or violate the dignity of women, even during armed conflict. A Hadith records that when a woman was found dead during one of the Prophet's (PBUH) battles, he strongly disapproved of killing women and children.<sup>42</sup> Likewise, several other narrations reported by Imam Abdul Razzaq, Imam Shafi'i in his Musnad, Imam Tahawi in Sharh Ma'ani al-Athar, and Imam Bayhaqi in Al-Sunan al-Kubra confirm that the Prophet (PBUH) explicitly forbade his army from killing women and

<sup>41</sup> (Al-Qur'an 60:8)

<sup>42</sup> Al-Bukhari, M. ibn Isma'il. Sahih al-Bukhari, Hadith 3015, Book of Jihad and Expedition. Muslim, I. ibn al-Hajjaj. Sahih Muslim, Hadith 1744, Book of Jihad and Expedition.

<sup>39</sup> (Qur'an 4:19)

<sup>40</sup> (Sahih al-Bukhari, Hadith 6006)

children.<sup>43</sup>Similarly, Imam Ibn Abi Shaybah narrates from Hazrat Rashid bin Saad that the Prophet (PBUH) prohibited the killing of children, women, and those unable of fighting<sup>44</sup>These traditions demonstrate the Prophet's (PBUH) profound concern for the rights and safety of non-combatant women and children during war. Islam places huge value on the sanctity of human blood regarding it even more sacred than the sanctity of the Ka'bah. Unjust bloodshed is condemned, and even during war, Muslims are forbidden from incoming enemy homes without consensus. The Prophet (PBUH) also emphasized protection of personal dignity and privacy, often described as "*Chadar aur Chardivari*" (veil and home). Sunan Abi Dawood narrates from Hazrat 'Irbad bin Sariyah Salmi (RA) that during the campaign of Khaybar, the Prophet (PBUH) was challenged by the chief of Khaybar who asked whether it was acceptable to harm their women and take their produce. The Prophet (PBUH), visibly annoyed, declared that such actions were forbidden and proclaimed: "*Allah has forbidden you from entering homes without permission and from harming their women or consuming their fruits*".<sup>45</sup>This statement reflects his deep commitment to the protection of women's rights even in war. Through all battles in which the Prophet (PBUH) contributed, he never allowed women to be taken as prisoners. During the Battle of Badr, for example, when women attended the enemy troops, the Prophet (PBUH) instructed the Muslim fighters not to pursue them or the injured.<sup>46</sup> Islamic law therefore does not sanction the capture or addiction of women in conflict. Afterward the Prophet's (PBUH) passing, his companions faithfully followed to these principles. Hazrat Abu Bakr (RA), the first Caliph, strictly followed the Prophet's guidance in all military matters. Likewise, Caliph Umar (RA) gave

detailed instructions to his commander Usama bin Zaid, saying:

*"Stop, O people, and let me give you ten rules of conduct in battle. Do not commit treachery or depart from the path of righteousness; do not mutilate the dead; do not kill women, children, or the aged; do not destroy fruit trees or inhabited places; do not slaughter animals except for food; do not burn date palms; do not steal or act cowardly... You may encounter monks devoted to worship leave them unharmed"*

This timeless guidance of Caliph Umar (RA) bring into line remarkably with the fundamental principles of modern International Humanitarian Law (IHL), proving that Islam laid the foundation for human rights and ethical conduct in warfare long before modern legal frameworks occurred.

### **Female Genital Mutilation as a Form of Conflict Violence in light of IHL:**

Women are among the main victims of armed conflicts, suffering from multiple forms of gender-based violence such as killing, sexual assault, forced prostitution, and illegal confinement. The breakdown of families during wars further disrupts women's social and gender relations.<sup>47</sup>In spite of the protection guaranteed under International Humanitarian Law (IHL), non-combatant women and children normally endure severe destructions, including sexual violence done by armed forces. Practices like Female Genital Mutilation (FGM), although globally forbidden, persist in conflict zones as a form of gender violence.<sup>48</sup>Civilian victims form the overwhelming majority in modern conflicts since 1990, about 90% of war-related deaths have been civilians, mostly women and children.<sup>49</sup>Recognizing this grave issue, the

<sup>43</sup> Al-Bayhaqi, I. (n.d.). Al-Sunan al-Kubra (Vol. 9)

<sup>44</sup> Shaybah, I. A. (n.d.). Al-Musannaf Ibn Abi Shaybah.

<sup>45</sup> Al-Bayhaqi, I. (n.d.). Al-Sunan al-Kubra (Vol. 9)

<sup>46</sup> (Muslim I.)

<sup>47</sup> Baban, R. F. (2020, July). The International Protection of Women in Armed Conflicts. Cihan University-Erbil Journal of Humanities and Social Sciences, 4(1), 69-78.

<sup>48</sup> Ivanciu, C. (2016). The protection of women during armed conflicts. Scientific Research and Education in the Air Force Afases, 2, 2-3

<sup>49</sup> Otunnu, O. A. (2002). Special Comment on Children and Security, Forum du Disarmement, No.3.

President of the UN Security Council on 26 October 2006 expressed deep concern over war crimes such as rape, murder, and genocide against women, emphasizing the need to end impunity for perpetrators.<sup>50</sup>

The ongoing violations of IHL and UN Human Rights moralities by Israeli forces in the Occupied Palestinian Territories (OPT) illustrate this brutality. Since 1967, Palestinian women and children have been frequent victims of indiscriminate attacks.<sup>51</sup> Particularly, on 16 May 2021, Israeli airstrikes on Gaza targeted civilian infrastructure homes, hospitals, and media offices killing over 200 civilians and injuring more than 1,230, most of them women.<sup>52</sup> Similarly, on 16 June 2021, Israeli forces shot dead Mai Afanah, a 29-year-old Palestinian doctoral student, in the working West Bank.<sup>53</sup> These incidents represent clear violations of International Humanitarian Law, underscoring the persistent failure of global organizations to hold aggressors liable.

### **Disembodied and Colonial Justice in International Human Rights Responses to Violence Against Women**

International Human Rights (IHR) organizations frequently equate justice for violence against women (VAW) with criminal punishment. Their

dominant approach adopts that investigation, prosecution, and punishment mechanically prevent violence, protect survivors, and patch-up harm. This belief forms the basis of what the author calls “*disembodied justice*” a kind of justice detached from women’s real experiences and rooted instead in abstract legal principles. In practice, IHR bodies treat the activation of the penal system as the state’s “*due diligence*” duty. Courts such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) view illegalization as the primary tool of protection. For example, in *Volodina v. Russia* (2019),<sup>54</sup> the ECtHR held Russia responsible for failing to protect women because it had downgraded some national violence crimes from criminal to managerial violations. The Court concluded that the lack of criminal legislation not structural disparity constituted state failure. Similarly, in case of *Opuz v. Turkey* (2009),<sup>55</sup> although the Court admitted that punishment had not discouraged domestic violence, it still insisted on harsher authorizations rather than addressing why discouragement failed or how the state might provide safety, support, and empowerment to women. This overreliance on consequence reveals the system’s abstract nature. The IHR model continues to promote the belief that stricter punishment ensures prevention, despite feminist research proving otherwise. The ECtHR repeatedly defends the idea of “general prevention” assuming that fear of imprisonment dissuades crime. Yet, evidence from cases like *Opuz* shows that violence persists even when the penal system is fully active.

The Inter-American Court of Human Rights, in *Penal Miguel Castro Castro v. Peru* (2006),<sup>56</sup> took

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(pp. 3-4). Geneva: United Nations Institute for Disarmament Research

<sup>50</sup> McCormack, T. H., & Kleffner, J. K. (2006). Year Book of International Humanitarian Law 278. Berlin: Springer  
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<sup>51</sup> UN, General Assembly, Doc. A/60/L.1. (2005). Para. 58(f). Available from: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_R ES\\_60\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_R ES_60_1.pdf). [Last accessed on 2021 June 30].

<sup>52</sup> TRTWORLD. (2021, May 16). Retrieved from <https://www.trtworld.com/middle-east/israel-launches-heavy-airstrikes-on-gaza-as-death-toll-nears-200-46748> (TRTWORLD, 2021).

<sup>53</sup> ALJAZEERA. (2021, June 16). Retrieved from <https://www.aljazeera.com/news/2021/6/16/palestinian-woman-shot-dead-by-israeli-forces-near-jerusalem>

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<sup>54</sup> *Volodina v. Russia*. 2019, 41261/17. European Court of Human Rights.

<sup>55</sup> *Opuz v. Turkey*. 2009, 33401/02 Third Section. European Court of Human Rights

<sup>56</sup> *Penal Miguel Castro Castro Vs. Perú*. 2006, Serie C No. 160 . Corte Interamericana de Derechos Humanos

this logic further by declaring that its judgment itself served as a form of compensation. The case involved state-led sexual violence against imprisoned women during Peru's counterinsurgency operations in 1992. Ironically, the Court presented the same penal and carceral institutions responsible for the violence as gadgets of justice. This illustrates the deep contradiction in the IHR approach: the very system that produces harm is portrayed as the path to healing. In *Aydin v. Turkey* (1997),<sup>57</sup> the ECtHR reinforced the idea that justice is incomplete without criminal proceedings, ruling that compensation alone was insufficient unless followed by punishment of the criminals. Such reasoning confines justice within the boundaries of trial and custody, while ignoring survivors' psychological, social, and economic needs.

In sum, the IHR framework constructs penalty as justice itself, assuming that punishment can both prevent and repair violence. This abstract model separates law from lived experience and upholds a colonial logic, impressive Western disciplinary ideals on diverse societies. By focusing narrowly on the penal system, international justice mechanisms often overlook deeper social inequalities, silencing alternative understandings of justice such as healing, rehabilitation, and structural conversion that could truly address violence against women.

In *Raquel Martín de Mejía v. Peru* (1996), the Inter-American Commission on Human Rights (IACHR) addressed the case of a woman raped by a soldier during a counterinsurgency operation in 1989. The Commission convicted the use of military courts for such defilements, stating that they lead to exemption, and repeated that ordinary penal courts should handle human rights cases. However, the Commission also noted the victim's hesitation to report the crime. Raquel Mejía clarified that after being raped, she was in shock

and afraid of public shame. Many women, she said, do not report sexual abuse because they feel shamed and fear their family's reaction. This case shows that even though human rights institutions rely heavily on criminal justice, they often overlook the emotional pain, social pressure, and fear that prevent women from seeking lawful help.<sup>58</sup>

Raquel Martín de Mejía, a Peruvian woman, was raped by a fellow of the military during counterinsurgency operations. Later, both she and her husband were suspect of terrorism by the same state forces. In *Raquel Martín de Mejía v. Peru* (1996), the Inter-American Commission on Human Rights (IACHR) addressed the case of a woman raped by a soldier during a counterinsurgency operation in 1989. The Commission convicted the use of military courts for such defilements, stating that they lead to exemption, and repeated that ordinary penal courts should handle human rights cases. However, the Commission also noted the victim's hesitation to report the crime. Raquel Mejía clarified that after being raped, she was in shock and afraid of public shame. Many women, she said, do not report sexual abuse because they feel shamed and fear their family's reaction. This case shows that even though human rights institutions rely heavily on criminal justice, they often overlook the emotional pain, social pressure, and fear that prevent women from seeking lawful help.<sup>59</sup> This approach overlooked her emotional trauma and the social disgrace attached to reporting rape in traditional societies. Instead of exploring alternative ways to support and protect her, the Commission repeated the same disciplinary logic that often fails women. Thus, the

<sup>57</sup> *Aydin v. Turkey*. 1997, 57/1996/676/866. European Court of Human Rights

<sup>58</sup> *Raquel Martín de Mejía v. Perú*. 1996, Case 10.970 Report No. 5/96. Inter-American Commission on Human Rights.

<sup>59</sup> *Raquel Martín de Mejía v. Perú*. 1996, Case 10.970 Report No. 5/96. Inter-American Commission on Human Rights.

IACHR's decision reflected a disconnect between legal ideals and lived experience.

Rosendo Cantú v. Mexico (2010) In this case, Rosendo Cantú, a 17-year-old Native girl from Mexico, was raped by two military officers during a security process. She faced threats, language barriers, and deep fear of the military system, which made it very difficult for her to seek justice. The Inter-American Court acknowledged the structural barriers faced by Native women, yet the final decision mainly emphasized investigation and punishment of the criminals. This narrow penal focus ignored the broader reality that Native women often lack access to legal, psychological, and cultural support. The Court did not engage with the colonial and patriarchal power structures that continue such violence. Hence, the case shows that even when institutions recognize discrimination, they often fail to go beyond legal formalities to achieve true restorative justice.<sup>60</sup> International justice systems, particularly under the framework of human rights law, often appear to protect women through legal machineries such as criminal prosecution, penal examination, and law reforms. However, in practice, these systems normally become trapped in *bureaucratic procedures and formal legality* rather than delivering real justice. A woman who has suffered rape is often forced to relive her trauma during police reporting, medical examinations, and public hearings, where her character and family honor are questioned. This process not only delays justice but also adds layers of disgrace and emotional harm. In contrast, Islamic law ensures both justice and dignity for women by combining moral responsibility with swift legal action. The Qur'an and Sunnah establish a system in which punishment for rape (*zina bil-jabr*) is severe and critical either death for the rapist or one hundred lashes, depending on the nature and proof of the

crime. This restrictive ensures protection of women and discourages further violations. Moreover, Islam shifts the burden of investigation from the victim to the state and judicial authority (qazi), thereby sparing the woman from re-traumatization or public shame. Her privacy (*haya*) and honor (*ʿizzah*) remain central through the judicial process. While international courts often prioritize procedure over outcome treating written judgments as symbolic justice Islamic law emphasizes real-world protection, moral renovation, and community safety. Islam does not separate justice from empathy or social context; it recognizes that true justice lies not in endless legal documents but in safeguarding the dignity, body, and soul of the oppressed. Therefore, where international systems may offer abstract or delayed justice, Islam provides a comprehensive, humane, and effective model that balances punishment with preservation of women's honor and social harmony.

#### **Suggestions for Development regarding Woman Rights via both Perspective:**

- Islamic jurisprudence (fiqh) should be revisited in light of *maqāṣid al-shari'ah* (objectives of Islamic law), which emphasize preservation of life, intellect, faith, property, and honor. Modern jurists and scholars can reinterpret classical rulings concerning women's status, participation, and protection under these higher objectives ensuring that evolving social realities are addressed without departing from Qur'anic principles.
- States such as Pakistan, which are signatories to CEDAW and other IHL conventions, should harmonize their domestic laws with Islamic moral standards and international human rights norms. Areas like domestic violence, inheritance, workplace harassment, and access to justice can be strengthened

<sup>60</sup> Rosendo Cantú y otra Vs. México. 2010 Serie C No. 216. Corte Interamericana de Derechos Humanos

through mutual alignment and standard enforcement mechanisms.

- Misinterpretation of religion often leads to cultural discrimination. Educational campaigns led by religious scholars (*'ulama'*), women activists, and legal experts can clarify that Islam guarantees women the right to education, property, dignity, and justice. Integrating such themes into religious sermons, madrasa curricula, and public education can change social attitudes.
- Legal aid units grounded in both Shariah and human rights values should be established to guide women through family disputes, domestic abuse cases, and property claims. These centers can function under the supervision of Islamic jurists and human rights lawyers jointly, ensuring justice consistent with both legal traditions.
- Training programs for *qadis* (Islamic judges), religious scholars, and legal professionals should include modules on

IHL principles such as non-discrimination, humane treatment, and protection during conflicts. This will encourage juristic reasoning that respects international norms while staying rooted in Islamic ethics.

- Empowering women to serve as scholars, muftis, and legal counselors aligns with the early Islamic tradition of women scholars such as Aisha (RA) and Umm Darda. Their active participation ensures interpretations that reflect women's lived experiences within the framework of justice and equity.
- Muslim-majority nations should participate in global human rights forums with an emphasis on presenting Islamic principles of *adl* (justice), *rahmah* (compassion), and *karamah* (human dignity) as complementary to universal humanitarian ideals rather than oppositional.

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