

**ASSIGNMENT No.1**

**Q.1 Compare the human rights mentioned in Quran to those mentioned in Universal declaration of human Rights.**

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world.

I sincerely hope that this Declaration of Human Rights will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God.

This Declaration of Human Rights is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th Century of the Islamic era, the first being the Universal Islamic Declaration announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and his Message, held in London from 12 to 15 April 1980.

The Universal Islamic Declaration of Human Rights is based on the Qur'an and the Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all aware.  
(Al Qur'an, Al-Hujurat 49:13)

**Preamble**

WHEREAS the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

WHEREAS the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

WHEREAS Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

## **Course: Women Right in Islam (880)**

### **Semester: Spring, 2022**

WHEREAS the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

WHEREAS by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

Therefore we, as Muslims, who believe

a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;

b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;

c) in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;

d) that rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;

e) in inviting all mankind to the message of Islam;

f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;

g) in our obligation to establish an Islamic order:

i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;

ii) wherein all human beings are born free;

iii) wherein slavery and forced labour are abhorred;

iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;

v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;

vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;

vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;

viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunnah;

ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (Shura) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;

- x) wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;
- xi) wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;
- xii) wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;
- xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;
- xiv) wherein every effort shall be made to
  - (a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,
  - (b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.

#### **I. Right to Life**

- a) 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.
- b) 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.

#### **II. Right to Freedom**

- a) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.
- b) Every individual and every people has the inalienable right to freedom in all its forms<sup>3/4</sup> physical, cultural, economic and political — and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

#### **III. Right to Equality and Prohibition Against Impermissible Discrimination**

- a) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.
- b) All persons shall be entitled to equal wage for equal work.
- c) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

#### **IV. Right to Justice**

- a) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.

- b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.
- c) It is the right and duty of every person to defend the rights of any other person and the community in general (Hisbah).
- d) No person shall be discriminated against while seeking to defend private and public rights.
- e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

#### **V. Right to Fair Trial**

- a) No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.
- b) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.
- c) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.
- d) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.
- e) Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

#### **Q.2 Write in detail about Khutba Hujja tul Wida given by Prophet of Islam and its relevance with women's life.**

The last sermon of the Prophet-peace be upon him- is known as khutba hajjatul wida'. It is mentioned in almost all books of Hadith. Following Ahadith in Sahih Al-Bukhari refer to the sermon and quote part of it. (See Al-Bukhari, Hadith 1623, 1626, 6361) Sahih of Imam Muslim also refers to this sermon in Hadith number 98. Imam al-Tirmidhi has mentioned this sermon in Hadith nos. 1628, 2046, 2085. Imam Ahmed bin Hanbal has given us the longest and perhaps the most complete version of this sermon in his Masnud, Hadith no. 19774.

The khutba hajjatul wida of the Prophet-peace be upon him- was long and it contained much guidance and instructions on many issues. The Prophet-peace be upon him- gave this sermon in front of a large gathering of people during Hajj.

Whosoever heard whatever part of the sermon reported it and later some scholars put it together. It is a great khutbah and we should all pay attention to its message and guidance. Following are the basic points mentioned in this khutbah:

#### **O People**

Lend me an attentive ear, for I know not whether after this year, I shall ever be amongst you again. Therefore listen to what I am saying to you very carefully and take these words to those who could not be present here today.

**O People**

Just as you regard this month, this day, this city as sacred, so regard the life and property of every Muslim as a sacred trust. Return the goods entrusted to you to their rightful owners. Hurt no one so that no one may hurt you. Remember that you will indeed meet your Lord, and that He will indeed reckon your deeds. Allah has forbidden you to take usury (interest); therefore all interest obligation shall henceforth be waived. Your capital, however, is yours to keep. You will neither inflict nor suffer any inequity.

Allah has Judged that there shall be no interest and that all interest due to Abbas Ibn 'Abd al Muttalib (the Prophet's uncle) shall henceforth be waived.

Beware of Satan for the safety of your religion. He has lost all hope that he will ever be able to lead you astray in big things, so beware of following him in small things.

**O People**

It is true that you have certain rights in regard to your women, but they also have rights over you. Remember that you have taken them as your wives, only under Allah's trust and with His permission. If they abide by your right then to them belongs the right to be fed and clothed in kindness. Do treat you women well and be kind to them, for they are your partners and committed helpers. And it is your right that they do not make friends with anyone of whom you do not approve, as well as never to be unchaste.

**O People**

Listen to me in earnest, worship Allah, say your five daily prayers (Salah), fast during the month of Ramadan, and give your wealth in Zakat.

Perform Hajj if you can afford to.

All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over a black, nor a black has any superiority over a white- except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood. Nothing shall be legitimate to a Muslim, which belongs to a fellow Muslim unless it was given freely and willingly. Do not therefor, do injustice to yourselves.

Remember one day you will appear before Allah and answer for your deeds. So beware, do not stray from the path of righteousness after I am gone. People, no prophet or apostle will come after me and no new faith will be born. Reason well therefore, O people, and understand words which I convey to you. I leave behind me two things, the Quran and the Sunnah (Hadith), and if you follow these you will never go astray. All those who listen to me shall pass on my words to others and those to others again; and may the last ones understand my words better than those who listened to me directly. Be my witness, O Allah, that I have conveyed your message to your people."

**Q.3 What is legal capacity as per Islamic law? State in detail about the five levels of the legal capacity.**

The definition of contract from an Islamic point of view is "an expression of the matching between a positive proposal made by one of the contractors and the acceptance of the other contractor in a way which has an impact on the subject of the contract". Shariah commercial law in Islamic legal term known as fiqh muamalat, constitutes an important branch of law dealing with issue of contract and the legal effects arising from a contract that can be valid, void, or avoidable contract. For a valid contract in shariah law, certain conditions are to be met. It can be appears as a valid contract bases on several elements of valid contract which are offeror and offeree, offer and acceptance, and the subject matter and the consideration. As for the parties to a contract, they must be legally capacity to enter the contract. The capability to transact in Islamic law is measured by two aspects, namely prudence and puberty.

The first element of valid contract in shariah law is offeror and offeree. As for the parties to a contract, they must be legally competent to enter into a contract. The competence to transact in Islamic law is measured largely by two aspects, namely prudence and puberty as revealed in surah al-Nisa' verse 6 "Observe the orphans through testing their abilities until they reach the age of marriage; then if you find them capable of sound judgement, hand over to them their property ". The most important part of each party is the possess capacity. It has been describe with capacity (ahliyyah) according to Shari'ah 'Islamiyyah. Therefore, the Islamic scholar defined the capacity as a quality, which makes a person qualified for acquiring rights and undertaking duties and responsibilities.

The second element of valid contract in shariah law is offer ('ijab) and acceptance (qabul). Offer means a specific action that reflects consent or willingness of its maker that presumed from the word first uttered by one of the contracting parties. Offer may be verbal or in writing. Under shariah law, word qabul (acceptance) is used to represent a statement uttered indicating assent to the 'ijab(offer). Muslim Jurist takes two different approaches interpreting qabul. The majority view is that qabul is made by the buyer or the person to whom the subject matter of the contract is addressed regardless as to whether this comes first or later. Whereas the Hanafi school holds a more flexible approach when qabul is defined as the word uttered later corresponding to the terms of a subsisting later. And it may be expressed by either the seller or the buyer. This is somewhat similar to common law. Offer and acceptance also may be concluded by means of representatives or modern communication systems such as the telephone, telex, fax, e-mail and letter.

The third element contract in the shariah law is subject matter (mahal al-'aqd). Mahal al-'aqd must be mal (property or wealth) mal is defined as something which can be secured for use at the time of need. The term mal here is generally translate as property and the word property is applicable only to objects which have a perceptible existence in the outside world that is to say things sold which is a thing fixed and individually perceptible as designated at the sale. A contract has to have a place or reference (mahal al-'aqd) which is the subject matter of the contract. The place of reference in contract is its subject matter which is the place of

application of its rule and which does not go against its purpose. Islamic law focused on the lawfulness, existence, deliverability and precise determination. Lawfulness requires that the object must be lawful, that is something, which is permissible to trade and must be of legal value that is, its subject matter and the underlying cause “sabab” must be lawful. The parties to a contract must legally own the object “qabd”. The issues of existence presuppose that the object of a contract must be in existence at the time of contract. The object must be capable of certain delivery and it must be determined precisely as to its essence, its quantity and its value. According to

Islamic jurisprudence, the subject matter of a contract could be corporeal property as in granting sale and mortgage and benefit as in rent. In case the subject’s nature was not of the kind that admits this kind of transaction, then the transaction and the contract are nullified. Thus, a contract involving sale of endowed property is nugatory, albeit a contract involving rent of such property is correct and acceptable. There are several conditions for subject matter;

- (i) the subject matter must exist,
- (ii) the subject matter can be delivered,
- (iii) the subject can be ascertained,
- (iv) suitability of the subject matter.

As for the consideration of price, Islamic law does not restrict it to a monetary price, but it may be in the form of another commodity. The Islamic prohibition against uncertainty requires that the price must be in existence and determined at the time of the contract and cannot be fixed at a later date with reference to the market price, nor can it be left subject to determination by a third party.

The fourth element of valid contract in syariah law is legal capacity (ahliyyah). Capacity is one of the elements of a contract for the purpose of acquiring legal rights and mutual benefits and to facilitate the imposition of the obligations on the parties. The right to contract and the obligations can only exist where there is capacity to contract. In syariah law, no person can validly conclude a legal transaction without first having attained physical and intellectual maturity that being the equivalent of majority to enjoy full capacity, a person, should attain physical puberty and enjoy sound judgment known also as prudence in his or her judgment.

Based on the requirements for a valid contract that had stated earlier, there are some examples of cases that related to sharia law.

#### Facts

Nash is a tailor who had entered into a contract to supply Inman who is a Cambridge undergraduate student with among other things, 11 fancy waistcoats and he was a minor. Unfortunately for the tailor, however, it was further decided that they were not necessary, as he already had sufficient clothing that from his father. When Nash claimed the cost of these clothes Inman wanted to rely on lack of capacity and succeeded at first instance. Minors are only under a legal obligation to pay for things necessary for their maintenance although even then

they will only be required to pay a reasonable price for any necessities purchased. So, no contract was enforceable.

“An infant, like a lunatic, is incapable of making a contract of purchase in the strict sense of the words; but if a man satisfies the needs of the infant or lunatic by supplying to him necessities, the law will imply an obligation to repay him for the services so rendered, and will enforce that obligation against the estate of the infant or lunatic.

The defendant’s father proved the infancy, and then proved that the defendant had an adequate supply of clothes, and stated what they were. That evidence was un-contradicted. Not only was it not contradicted by any other evidence, but there was no cross-examination tending to shake the credit of contradicted evidence the judge came to the conclusion.”

**Q.4 Write about the feminist critique on institution of Dissolution (Talaq).**

Under Islamic law, marriage or “nikkah” is a contract that is entered into by both the parties i.e. a man and a woman by their consent. This contract has both legal as well as religious aspects attached to it, which make the contract binding on parties. For a valid nikkah, four conditions need to be met. These are as follows:<sup>[1]</sup>

1. A mutual offer and acceptance by both the man and the woman
2. Entered into with free consent of the parties
3. For an indefinite period of time
4. The parties must not be related to each other by blood, fosterage or affinity

However, Islam (unlike Christianity or Judaism) does allow for the dissolution of the marriage between the spouses either in the form of talaq (pronounced by the husband) or in form of khula (which is exercised by wife with the involvement of court) and also allows for the remarriage of both the spouses after the dissolution. In Christianity, marriage is “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.” The idea of divorce does not exist in Catholic Church law. The only way the spouses can get separated is via annulment. Annulment is not equivalent to a divorce; rather it sets on the idea that the marriage was not valid in the first place. If you do get married after a civil annulment, you are not committing bigamy, as your new marriage is your only valid one. If you have already remarried, that is, you have married before an order of annulment was made by the court, your second marriage may have appeared invalid and bigamous.

Similarly, in Jewish law, divorce is allowed; however, it is only exercised by the man. The official divorce document called “get” is the only way through which the wife is officially free from her previous husband and can use the document as proof that she is not married anymore and therefore can contract another marriage. However, increasingly though, men do not provide this document to the women and as a result, they get stuck in



the limbo where they are no longer living with their husbands but at the same time cannot marry another man as well because of non-provision of the get document.

In Islam, the right to pronounce talaq is an absolute one that resides with the husband. “Talaq is of three kinds:

- 1) Revocable divorce ( talaq-i-rajaee ), in which the husband pronounces divorce once and at some later stage realizes that he made a mistake and decides to rescind the pronouncement unconditionally and resumes the normal spousal relationship;
- 2) Irrevocable divorce of minor degree ( talaq-i-bain sughra ), in which the parties if they both agree, can re-enter into the marriage contract;
- 3) Irrevocable divorce of major degree ( talaq-i-bain kubra ) in which the husband cannot re-enter the marriage contract with his divorced wife unless she, after having married and establishing conjugal relations with her new husband, is divorced for some reason and is willing to re-enter into a marriage contract with her former husband.”<sup>[6]</sup>

Halala is the situation where a divorced woman marries another man regularly with the solemn intention of living with him, but again, unfortunately, separates from him due to his death or divorce. She is then allowed under Islamic law to remarry her former husband if she so wishes.<sup>[7]</sup>

“And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know.”

“And when you divorce women and they have fulfilled their term, do not prevent them from remarrying their [former] husbands if they agree among themselves on an acceptable basis. That is instructed to whoever of you believes in Allah and the Last Day. That is better for you and purer, and Allah knows, and you know not.”<sup>[9]</sup>

The aforementioned verses point to the fact that remarrying the ex-husband is allowed but does this mean halala should be with the intention to get divorced? Probably not. This article aims to explore the legal and social framework that governs the practice of halala in Pakistan and then view it from a feminist lens.

### **The practice of Halala in Pakistan**

In Muslim countries including Pakistan, halala follows on from the infamous practice of triple talaq. Often, men who have pronounced the triple talaq in haste tend to repent but are told that their wife has to undergo a halala marriage if they are to remarry. Thus, the least women-friendly interpretation of the religious text is employed. Whilst there is a feeling of unease among ordinary Pakistani Muslims at the injustice of these supposedly Islamic laws, they find themselves unable to accept an alternative interpretation challenging this practice. The Muslim Family Law Ordinance (MFLO) 1961 attempted to address the situation by Islamizing the statutory procedure for the dissolution of marriage. The basic protection that s.7 of MFLO provided is the requirement that the husband follows a procedure for talaq by notifying the legal authorities. This procedure, without explicitly stating incorporates a form of divorce call talaq e ahsan in s.7(3) that reads: “ Save as

provided in subsection (5), talaq unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of 90 days from the day on which notice under subsection 1 is delivered to the chairman.”<sup>[10]</sup>

That 90-day period is conterminous with a compulsory waiting period (iddat) during which the marriage is suspended but not terminated. By holding the husband to this period, after which the divorce becomes irrevocable, a man’s unilateral right to divorce is toned down and chances of reconciliation are kept alive until the waiting period has expired. Section 7(4) requires the parties to appear before an Arbitration Council during the 90 days to attempt reconciliation.<sup>[11]</sup> Section 7(6) minimizes the requirement for an intervening halala marriage by the woman in cases where former spouses wish to remarry. It states that “ Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without any intervening marriage with a third person, unless such termination is for the third time-effective.”<sup>[12]</sup>

In other words, lack of halala marriage is no bar to remarriage to the same husband if talaq has not been pronounced three times. Muslim women through the centuries have borne the brunt of need for halala resulting from a hasty pronouncement of the triple talaq.

The MFLO, by providing a breathing space, resulted in respite for women from the humiliation of marrying another man simply to remarry the husband who had so summarily divorced her.

So here we have a seeming women-friendly article of family law legislation. Yet a review of reported case law from the Pakistani courts reveals just a few scattered cases on halala marriages and triple talaq but extraordinarily little learned discussion or challenges to the negative interpretations and meanings placed on these terms. By and large, courts engage in damage limitation to save the marriage as best they can.

In *Attiq Ahmed Khan v Noor-ul- Saba*, the Balochistan High Court declared that a single pronouncement of khul (upon declaration by a judge) does not constitute an irrevocable divorce and that the wife did not require a halala marriage in order to remarry her husband. This ruling, it may be noted, went beyond the position of classical Islamic law of khul (where a pronouncement by a judge makes it final and irrevocable).<sup>[13]</sup> In *Ghulam Muhammad v The State* a man who had divorced his wife became repentant and wanted to resume marital relations with her and revive their marriage. However, since he did not revoke the divorce within the stipulated period but has resumed sexual relations with her, they were accused of zina. The court decided that the divorce pronounced by the man had become effective and could not be withdrawn by him.<sup>[14]</sup> Thus, the accused had not remarried the female co-accused and no halala had taken place, and cohabitation between the two after their divorce, therefore, amounted to zina. Their conviction of zina was maintained, but in light of their not being aware of the legal consequences of living together after non-withdrawal of the divorce, their sentences were substantially reduced.

Hence it can be seen that despite how oppressive the practice of halala for women is, it is still prevalent in Pakistan and the legal framework is insufficient to curb this repressive tradition.

### **Feminist Lens**

The Quranic evidence of Halala clearly does not indicate towards an arrangement whereby events are planned to make the ex-wife permissible for her husband as practiced by the Muslim communities; rather it is talking about a possibility, however slight, which may arise over a natural course of time in an unplanned manner. According to the Quran, one of the purposes behind religious scriptures was to give females equality which is why the religion also asked for female infantilized to be banned. In light of all this, halala seems to be contradictory to the Islamic teachings. The original purpose of halala as a concept, according to al- Baqarah, was to deter men from abandoning and connecting with their wives according to their will.<sup>[15]</sup> Another purpose of halala was to make sure that a woman's dignity would be maintained and that she would not be forced to go back to an abusive and exploitative husband as per his wishes. The primary purpose of halala as recommended in Quran was to strengthen marriage as a sacred institution. Even though divorce is permitted, it is the least preferable in the hierarchy of permissible acts due to its social implications.

Unfortunately, it is quite easy to misconstrue moral religious laws that are interpreted by men. Halala is not an exception because even modern rights are misconstrued by those with unethical ambitions. An example of this can be observed in the way people use their freedom of speech to justify hate speech and the right to choose to impose tangible harm upon other individuals. In certain instances, the right to self-defense has also been similarly misused. This goes to show that the act within itself is not bad and does not justify immoral consequences intentionally, even though many manipulate the essence of it merely to justify their own misdeeds.

The current practice of Halala, therefore, appears to be a scam where an irrevocably divorced woman is married to a man who will divorce her soon after consummation. Such marriages have also been denounced by the Prophet: "Curse is upon the one who marries a divorced woman with the intention of making her lawful for her former husband and upon the one for whom she is made lawful."

The law in Pakistan provides for the practice of halala in case the husband divorces the wife thrice and they decide to reconcile. Under Islamic law, the practice of halala is only allowed where it happens in the natural course of action, not when it is planned. However, as discussed, the practice of halala has been misconstrued and used in such a manner that is degrading for women. It has been turned into a commercial business, where a woman is married off to another person in exchange for money so that he can divorce her later and she could go back to her former husband. The practice of halala has been oppressing women for years and it is no solution. Such practices can result in women falling prey to exploitation, blackmail, and sexual abuse. This can even lead to the woman getting trapped in the halala marriage if the second husband defaults on his promise, leaving no course of action for the woman, either Islamically or legally. Furthermore, it can be observed that the woman (wife) is the only stakeholder in such practices, whose constitutionally protected fundamental rights are infringed upon such as Article 14 (right to inviolability of dignity) and Article 25 (equal rights to all the citizens and prohibits discrimination on the grounds of sex) of the Constitution.<sup>[24]</sup> Women in India are already fighting against the practices of halala, whereas in Pakistan, this practice has never been questioned. Therefore, the

abolishment of such abhorrent and anti-Islamic practices is really the need of the hour as it is not only disrespecting the women but also it is safeguarding evil in the name of religion. It is a high time that the State take steps and introduce a reform in the current legal framework through an Act of Parliament that adequately addresses this issue and ensures the provision of constitutionally protected fundamental rights to women.

**Q.5 What are the international frameworks and instruments to ensure availability and provision of human rights to all? Please explain.**

Persons with disabilities often are excluded from the mainstream of the society and denied their human rights. Discrimination against persons with disabilities takes various forms, ranging from invidious discrimination, such as the denial of educational opportunities, to more subtle forms of discrimination, such as segregation and isolation because of the imposition of physical and social barriers. Effects of disability-based discrimination have been particularly severe in fields such as education, employment, housing, transport, cultural life and access to public places and services. This may result from distinction, exclusion, restriction or preference, or denial of reasonable accommodation on the basis of disablement, which effectively nullifies or impairs the recognition, enjoyment or exercise of the rights of persons with disabilities.

Despite some progress in terms of legislation over the past decade, such violations of the human rights of persons with disabilities have not been systematically addressed in society. Most disability legislation and policies are based on the assumption that persons with disabilities simply are not able to exercise the same rights as non-disabled persons. Consequently the situation of persons with disabilities often will be addressed in terms of rehabilitation and social services. A need exists for more comprehensive legislation to ensure the rights of disabled persons in all aspects - political, civil, economic, social and cultural rights - on an equal basis with persons without disabilities. Appropriate measures are required to address existing discrimination and to promote thereby opportunities for persons with disabilities to participate on the basis of equality in social life and development.

There also are certain cultural and social barriers that have served to deter full participation of persons with disabilities. Discriminatory practices against persons with disabilities thus may be the result of social and cultural norms that have been institutionalized by law. Changes in the perception and concepts of disability will involve both changes in values and increased understanding at all levels of society, and a focus on those social and cultural norms, that can perpetuate erroneous and inappropriate myths about disability. One of the dominant features of legal thinking in twentieth century has been the recognition of law as a tool of social change. Though legislation is not the only means of social progress, it represents one of the most powerful vehicles of change, progress and development in society.

Legislation at country level is fundamental in promoting the rights of persons with disabilities. While the importance - and increasing role - of international law in promoting the rights of persons with disabilities is recognised by the international community, domestic legislation remains one of the most effective means of facilitating social change and improving the status of disabled persons. International norms concerning

disability are useful for setting common standards for disability legislation. Those standards also need to be appropriately reflected in policies and programmes that reach persons with disabilities and can effect positive changes in their lives.

All international human rights instruments protect the human rights of persons with disabilities, as they apply to all persons. This principle of universality is reinforced by the principles of equality and non-discrimination, which are included in human rights instruments.

The core United Nations human rights human rights conventions are:

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment ;
- Convention on the Rights of the Child;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

Some international and regional human rights conventions protect the rights of persons with disabilities specifically, or have provisions concerning persons with disabilities. These include:

- ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons)
- Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities
- Convention on the Rights of the Child (article 23);
- African Charter of Human and People's Rights (art. 18(4));
- the African Charter on the Rights and Welfare of the Child (article 13);
- European Social Charter (article 15); and
- Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ) (article 6 & 9)

International human rights treaties are binding on States Parties that have ratified the instruments. Some universal instruments, such as the Universal Declaration of Human Rights, and some specific provisions, such as the principle of non-discrimination, have become part of customary international law and are considered binding on all States, even those that have not ratified a human rights treaty that embodies norms of customary law.

(b) International instruments that are non-binding, such as declarations and rules, and are useful in interpreting international standards and implementing them in national legislation.

International instruments, such as declarations, resolutions, principles, guidelines and rules, are not technically legally binding. They express generally-accepted principles and represent a moral and political commitment by

States. They also can be used as guidelines for States in enacting legislation and formulating policies concerning persons with disabilities.

General policy instruments, such as the outcome documents of world summits and conferences, are applicable to persons with disabilities. These instruments include, for example, the Copenhagen Declaration and Programme of Action adopted at the World Summit for Social Development (6-12 March 1995), and the Millennium Declaration and the Millennium Development Goals adopted at the United Nations Millennium Summit in September 2000.

Several disability-specific non-binding international instruments have been adopted at the international level. The instruments include:

- Declaration of the Rights of Mentally-Retarded Persons,
- Declaration on the Rights of Disabled Persons,
- World Programme of Action concerning Disabled Persons,
- Tallinn Guidelines for Action on Human Resources Development in the Field of Disability,
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care,
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities,
- ILO Recommendation concerning Vocational Rehabilitation of the Disabled,
- ILO Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons),
- Sundberg Declaration on Actions and Strategies for Education, Prevention and Integration, adopted by the UNESCO World Conference on Actions and Strategies for Education, Prevention and Integration, Malaga (Spain), 2 - 7 November 1981,
- Salamanca Statement and Framework for Action on Special Needs Education, adopted by the UNESCO World Conference on Special Needs Education: Access and Quality, Salamanca (Spain), 7 - 10 June 1994 .

In addition, a General Comment on persons with disabilities has been given by the Committee on Economic, Social and Cultural Rights. General Comments are authoritative statements of the Committee of its understanding of rights enshrined in the International Covenant on Economic, Social and Cultural Rights. General Comments, adopted by most human rights treaty bodies, can be used to guide States in the implementation of international human rights norms, and to measure the level of compliance of States Parties with regard to the specific rights contained in human rights conventions.

### **3. Application of International Conventions, Standards and Norms to Domestic Law**

#### **(a) Application of international law.**

Translation from an international convention, standard or norm to national law and then to local implementation is slow and complex but fundamental. States are primarily responsible for transforming legislative, administrative and judicial practices, to empower persons with disabilities to exercise their rights. States that have become Parties to an international convention are legally bound to implement the provisions contained in

the convention in their domestic jurisdiction. International law leaves it to States to adopt such legislative and other measures, consistent with their constitutional processes, to give effect to the obligations which they undertake to implement and ensure that any person whose rights or freedoms are violated have an effective remedy justifiable before independent and impartial tribunals.

Three main methods are available to implement international legal instruments in domestic law:

(1) Direct incorporation of rights recognised in the international instrument into what may be termed a "bill of rights" in the national legal order.

(2) Enactment of different legislative measures in the civil, criminal and administrative laws to give effect to the rights recognised in international legal instruments.

(3) Self-executing operation of international legal instruments in the national legal order.

The course of the legislative process will differ according to the relevant domestic legal systems. For instance, incorporation of international human rights principles and norms in national constitutions - or similar documents - remains the most important way of bringing national laws in conformity with international standards.

In relation to economic, social and cultural rights, implementation will differ from one country to another, depending on their level of development. Yet, all countries require major programme efforts. The obligation of States Parties in the international human rights instruments to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities.

**(b) Role of domestic courts - incorporation of international norms and standards by domestic courts.**

Direct application of international law by domestic courts also can play an important role in implementing international human rights norms applicable to persons with disabilities by means of compliance with relevant international standards and citing precedents in other jurisdictions. Due process of law has to be followed in matters of disability legislation.

Furthermore, judicial initiatives may propel executive and legislative branches of Governments to act with regard to drafting, enforcing and evaluating disability legislation. Courts also may encourage various interest groups to take up action on certain issues.

The greater the extent to which international norms on disability is widely known, the greater the possibility of domestic courts complying with these norms. This allows courts to play a major role in interpreting and developing international norms and standards, by applying international standards in domestic issues of disability.