



THE STATUS OF WOMEN IN MALDIVES: WITH  
SPECIAL REFERENCE TO THE FAMILY LAW  
ACT 2001

BY

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A dissertation submitted in partial fulfilment of the  
requirements for the degree of Master of Comparative  
Law

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## **ABSTRACT**

The development of any country can be judged by the position and status enjoyed by women. This is because women are part and parcel of each and every society. However, from time immemorial women has been constantly subordinated by men. Their rights suppressed and sometimes even their very existence seems to be insignificant. This is the hard fact reality which exists through out the world and Maldives is no exception. It is with regret to note that their presence remains under the shadow of the ever looming presence of the males. Submerged under the dominancy of males, their due rights bestowed by Islam seem to occupy a secondary position. This fact is most obvious in the arena of their matrimonial life. Maldivian women used to be in the constant fear of arbitral divorce by their husbands, the never ending struggles of maintenance amidst the burden of managing the housework and the rearing of children without any support of their husbands. It was against this back ground of bitter reality, the Family Act came into existence in July, 2001. The emergence of this Act lifted the hopes and spirits of many women. Their hopes of freedom to contract marriages without compulsions, hopes of protection against rash and impulsive divorce and hopes of improving their maintenance rights. Therefore, five years after the Act, it is important to determine how far the Act has been successful in fulfilling these dreams of the women. Therefore, this research explores these issues and in doing so has adopted a comparative descriptive method, based mainly on the available literature related to the study and the various legislations from different countries. Due to the absence of research conducted on women's rights in Maldives, it is hoped that this study will contribute to promote their rights with a view towards suggesting legal reforms of the Act and policy recommendations relating to the matrimonial laws of the country.

## ملخص البحث

يمكن تقدير تطور أي بلد من البلدان عبر النظر لمكانة وموقع المرأة فيه نظرا لكونها جزءا لا يتجزأ من نسيج أي مجتمع. وقد وضعت المرأة في مكان ثانوي داعم للرجل منذ أزمنة طوال، وهضمت حقوقها، وبدا في بعض الأحيان أن وجودها لا قيمة له وهذه حقيقة مرّة منتشرة عبر العالم، ولا تشكل جزر المالديف استثناء لهذه القاعدة. وإنه لمن المؤسف أن وجود المرأة هناك يقع تبعا وظلا لوجود الرجل وتحت سيطرته بينما تحتل حقوق المرأة التي منحها إياها الإسلام مكانا ثانويا. وتبدو هذه الحقيقة جلية للعيان في مجال الحياة الزوجية حيث عاشت المرأة في خوف دائم من الطلاق الاعتباطي، وفي ظل كفاح دائم تحت أعباء المنزل وتربية الأطفال دون عون من الزوج. وفي ظل هذا الواقع المرّ، تم إصدار قانون الأسرة في يوليو ٢٠٠١ مما أعطى المرأة الأمل بتحقيق الزواج غير القسري، وحماتها من الطلاق التعسفي المتهور ودعم حقوقها في الرعاية والنفقة. وبالنظر لهذا فإنه من المهم بعد خمس سنوات على صدور القانون تحديد المدى الذي وصل إليه هذا القانون في تحقيق آمال المرأة. ولذلك يستكشف هذا البحث هذه المواضيع مستخدما المنهج الوصفي المقارن ومعتمدا على الدراسات والتشريعات ذات الصلة من بلدان مختلفة. ونظرا لانعدام الأبحاث عن حقوق المرأة في المالديف، فيؤمل لهذا البحث أن يساهم في دعم حقوق المرأة واقتراح إصلاحات على قانون الأسرة وتوصيات حول قوانين الزواج في المالديف.

## APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality as a dissertation for the degree of Master of Comparative Law.

.....  
Nora Abdul Hak  
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality as a dissertation for the degree of Master of Comparative Law.

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Dean, Kulliyah of Laws

## DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Minnaa Nafiz

Signature .....

Date .....

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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**THE STATUS OF WOMEN IN MALDIVES: WITH SPECIAL  
REFERENCE TO THE FAMILY LAW ACT, 2001.**

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This dissertation is dedicated to my parents:  
‘Abdullah Nāfīz and Rashīdha Muḥammad Didi,  
Especially to my mother.

## ACKNOWLEDGEMENTS

All praise be to *Allāh Subḥānahu Wata'āla* but for whose mercy and guidance I could not have undertaken or completed this humble work to fulfill this requirement for my masters degree. *Allāh Subḥānahu Wata'āla* has stated in the Qur'ān: “work ye sons of David with thanks, but few of my servants are grateful.” (*Sūrah Saba'* 34:13). Similarly, in a *Ḥadīth* of Prophet (S.A.W) it is stated that, “whoever does not thank people, does not thank *Allāh*.” Therefore, may I take this opportunity granted by *Allāh* to acknowledge those who contributed significantly to the completion of this dissertation. First of all, my deepest appreciation and gratitude goes to my parents who have been a constant source of support throughout my life. Especially, my mother who specifically prayed for me to study at IIUM and which I believe is the reason behind my opportunity to study here. I am also greatly indebted to Dr. Mohaimin Ayous, Assoc. Prof at IIUM, for if not without his help and encouragement, I would not be studying here at IIUM. He has portrayed an excellent example of a lecturer, who is always ready to help the students in need. He will always be remembered as a great lecturer, a motivating mentor and a compassionate human being. May I also take this opportunity to thank him for his hard work in improving the standards of Faculty of *Sharī'ah* and Law in Maldives. May *Allāh* bless him in this world and in the Hereafter. My utmost gratitude further goes to Dr. Najibah, Assoc. Prof at IIUM, for giving me the idea to choose this topic and who has been a source of support and inspiration to me. A very special thanks goes to my friend Mr. Yusuff Jelili Amuda for his encouragement and motivation. I am also deeply grateful to my friends Mithu, Firash and Shaugy for their assistance in solving for me the computer related technical problems. I also convey my gratitude to my sister Saeeda and brother Abdul Rasheed. Last but not least, my thanks to my supervisor, Dr Nora Abdul Hak and examiner Dr. Norliah Ibrahim. May *Allāh* bless them all. Amen.



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Mst. Resham Bibi v Khuda Baksh (1937) Lah 277.

Mohd Ahmad Khan v Shah Bano Begum, (1985) AIR S.C.945.

Syed Abdullah Al Shatiri v Shariffa Salmah (1998) JH 1

Syed Mohiuddin v Khatijabi, A.I.R.(1939) Bomb. 489

Saburunnessa v Sabdu Sheikh, AIR (1934) Cal.639

Siti Rohani v. Mohd Sazali. (1993) 2 MLJ 1

Smt Purnasahi Devi v Nagendra Nath Bhattachar Jee, A.I.R (1950) Cal 465.

Rashidan Bibi v Basher Ahmad (1983) PLD Lah 549 24

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Tengku Anun Zaharah binti Tengku Abdul Hamid v Dato' Dr. Hussein bin Mohamed Yusof (1980) 3 JH 125

Wajid v Ali Khan, ILR 1933 ALL 743

## LIST OF STATUTES

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#### **Jordan**

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#### **Kuwait**

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#### **Libya**

The Law of Personal Status (Law No 61 of 1976).

#### **Lebanon and Israel**

The Ottoman Law of Family Rights, 1917.

#### **Morocco**

The Moroccan Family Code (Moudawana) 2004.

#### **Malaysia**

Islamic Family Law (Federal Territories) Act 1984.

#### **Pakistan**

Muslim Family Laws Ordinance VIII of 1961.

#### **Singapore**

Muslim Marriage and Divorce Rules 1968.

**Syria**

Decree No. 59/ 1953 on the Personal Status Law amended by law No. 34/375.

**Sudan**

Circular (No. 54 of 1960).

**Tunisia**

Personal Status Code of 1956.

**Yemen**

The Law of Personal Status Law No. 20 of 1992.

## LIST OF ABBREVIATIONS

A.C	Appeal Cases
©	Copyright
C.L.J	Current Law Journal
e.g	Example
F.C.J	Federal Court Judge
Ibid	ibidem
i.e.	That is
J	Judge
L.J	Lord Justice
JH	Jurnal Hukum
J.M.C.L	Journal of Malaysian and Comparative Law
M.C	Malayan Cases
M.L.J	Malaysian Law Journal
n.p	No Publisher: no Place
Ors	Others
p	Page
pp	Pages
P.C	Privy Council
no./nos	Number / numbers
r.a	Peace Be upon Him
S.W.T	<i>Subhānahū Wa Ta'āla</i> ( Praise be to <i>Allāh</i> and the Most High)
Trans	Translated by
V	Versus

## TRANSLITERATION

ء	‘	ع	‘
ب	b	غ	gh
ت	t	ف	f
ث	th	ق	q
ج	j	ك	k
ح	ḥ	ل	l
خ	kh	م	m
د	d	ن	n
ذ	dh	هـ	h
ر	r	و	w
ز	z	ي	y
س	s	-َ	a
ش	sh	-ِ	i
ص	ṣ	-ُ	u
ض	ḍ	ا + -َ	ā
ط	ṭ	ي + -ِ	ī
ظ	ẓ	و + -ُ	ū

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## **CHAPTER ONE INTRODUCTION**

The development of any country can be judged by the position and status enjoyed by its women. This is because women are part and parcel of each and every society, occupying a significant proportion of the population. However, from time immemorial women has been constantly subordinated by men. Their rights suppressed and sometimes their very existence seems to be insignificant. This is the hard fact reality which exists through out the world and Maldives is no exception. In Maldives, it is regrettable to note that their presence remains under the ever looming shadow of their male counterparts. With male dominance established in society, women's due rights bestowed by Islam, seem to occupy a secondary position.

This fact is most obvious in the arena of their matrimonial life. Maldivian women used to be in constant fear of arbitral divorce by their husbands, the never ending struggles of obtaining maintenance after divorce; amidst the burden of managing their lives and custody of children, without any support from their former husbands. Similarly, societal attitude and the lack of educational opportunities dictated early marriages for women, which were sometimes contracted without any regard to their consent. In the same way, the status of women in polygamous marriages was beyond human dignity. It was against this background of bitter reality, the Family Law Act came into existence in July, 2001.<sup>1</sup> The emergence of this Act lifted the hopes and spirits of many women; their hopes of protection against impulsive divorce, the improvement of their maintenance rights, freedom to contract marriages without compulsions and the elevation of their dignity in polygamous marriages. Therefore, five years after the Act, it is important to determine how far the Act has been successful in fulfilling these dreams of the women in Maldives.

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<sup>1</sup> Hereinafter referred to as the Act.

## 1.1 OBJECTIVES OF THE STUDY

- i. To examine the extent of protection and the rights granted to the women under the Act, in the sphere of marriage and after divorce, in terms of the rights available to them under the *Shari'ah*. The answers to these issues will be determined by comparing and contrasting the various provisions, i.e., marriage, divorce and maintenance with the position in *Shari'ah* and the Acts of Muslim and non Muslim countries.<sup>2</sup>
- ii. To identify the weaknesses and loopholes in the present law and to come up with suggestions and recommendations.

## 1.2 STATEMENT OF THE PROBLEM

Before the enactment of the Act, women in Maldives had to experience many problems in their matrimonial life. One of the most severe issue the women encountered in their marriage was the problem of arbitral divorce by their husbands. The fact that Maldives has occupied the top position in the list of countries which has the world's highest divorce rates is a proof of this bitter reality.<sup>3</sup> This further led to the difficulties in obtaining maintenance for the children under their custody.<sup>4</sup> Similarly, women's right to consent and under age marriages were not given due recognition. Although consent was not a major issue, anecdotal evidence suggests that marriages without consent had been contracted to a considerable extent. This was more evident among the poor families where most of the girls were often pressurized to contract early marriages in order to relieve their financial burden from the family. Their very young age or the wide gap in age to the proposed partner was

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<sup>2</sup> Examples will be drawn mainly from the Arab countries such as Egypt, Jordan, Syria, Morocco, Algeria, Sudan, Kuwait, Iraq and Iran. In addition, Malaysian, Singaporean and Pakistani position in some aspects will be discussed to a certain extent.

<sup>3</sup> See, *World Divorce per 1000 people for the 'top 12' countries* (2004) <<http://www.divorcereform.org>> (accessed on 10 May, 2007).

<sup>4</sup> Aminath Rasheedha (house wife), Interviewed by Minnaa Nafiz, Male,' 3 September, 2006.

simply disregarded. The early marriages hindered the women in her educational development and dimmed her prospects for the future. Similarly, women were not fully protected against unjustifiable polygamous marriages. Polygamous marriage was and is not a common phenomenon.<sup>5</sup> However, the abuse of this right was manifested in the cases where it has been practiced. In most cases, the later wife received the benefits of maintenance, while the former wife was totally neglected. In consequent to this phenomenon, it is noted that they are economically and psychologically affected.<sup>6</sup>

### **1.3 HYPOTHESIS**

This study is based on the hypothesis that the problems encountered by the women in their matrimonial life are not adequately addressed by the Act. Most of the rights granted to them by the *Shari'ah* are not fully provided for under the Act. Solutions to these problems can be met by importing them from the *Shari'ah*. The writer is of the opinion that the divine guidance, if interpreted without any male chauvinism, is served as the best source to elevate the status of women especially in their matrimonial life.

### **1.4 SCOPE AND LIMITATIONS OF THE STUDY**

The scope of this dissertation is confined to the status of legal protection accorded to women under the Family Law Act, 2001 of Maldives. Therefore, the protection granted to women under other laws such as Criminal law, Civil law is outside the ambit of this research. Similarly, the status of women in other fields such as education and employment are outside the scope of this study. Under the Act, focus will be made specifically on the issues of marriage, divorce and maintenance. Therefore, any other issues such as custody

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<sup>5</sup> However, statistics obtained from the Ministry of Justice reveals that there is a large increase in the number of polygamous marriage within the past five years. In 2003, 30 polygamous marriages were recorded, while in 2006, 57 polygamous marriages were contracted in the country.

<sup>6</sup> Dhon Didi (housewife), Interviewed by Minnaa Nafiz, Male,' 3 September, 2006.

and property rights, which although relates to women will be outside the scope of this study. The target of the study in these areas is only from the perspective of protection granted to women under the Act, in the light of the rights granted to women under the *Shari'ah*.

This research is mainly confined to the available literature related to the subject. The study further covers a comparative analysis of relevant legislations from various countries. However, the study is not carried out on an empirical basis and therefore does not assess how far in practice, the law has been instrumental in solving the problems encountered by the women in the practical realities of life.

## **1.5 LITERATURE REVIEW**

There is a vast amount of literature written by many authors on the Muslim Family Law and the status of women in Islam. Some books further discuss on the leading judgments of the family law and others give a detailed account of the various provisions of the family law found in the statutes of different countries. However, none of these books deals with the situation in Maldives, which is the target of this research. There is however, one study which is a Master thesis written by a Maldivian on the Maldivian and Islamic family law but the focus of this thesis is confined only to the concept of *ṭalāq* under the Act.<sup>7</sup> Thus, the present research is necessary to illustrate the situation of women in Maldives with regard to the country's Family Law.

The various literatures available on the subject reveal that the rights of women in Islamic law have been examined mainly from a theoretical point of view in contrast to an empirical study. Nevertheless, the literature will be immensely beneficial for this study, since these will provide an insight into the *Shari'ah* point of view and provide

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<sup>7</sup> See footnote 27.

knowledge on the legal position of different countries, as can be illustrated from the following discussions.

Nik Noriani Nik Badli Shah,<sup>8</sup> in her book has raised controversial issues related to Muslim Personal Law. The book shows the reader that in Islam, women has been given equal treatment to that of men in matters of marriage, divorce and maintenance. The book further discusses on the problems faced by women in these areas. This book is highly relevant to the theme of this study since this study will focus on the rights provided in Islam for women and the extent in which these rights are utilized by law in order to protect them from being exploited by men in their matrimonial life. The author has cited various legislations from other Muslim countries such as Egypt, Syria and Jordan among others. However, this book does not discuss anything specifically on Maldives, which is the sole platform on which this study is based.

Khurshid Ahmad,<sup>9</sup> provides a critical commentary on the Report of the Commission of Marriage and Family Laws of Pakistan. The criticism is targeted on the law reforms suggested by the Commission. The interesting aspect in this book is that it contains both the Commission's and its opponent's arguments. Both arguments are based on authorities from Qur'ān and it has helped the writer for the present study to weigh the pros and cons of the arguments discussed on issues such as the age of marriage, unilateral divorce and polygamy which is part of this study.

Khan Noor Ephroz,<sup>1</sup> in her book has provided an in-depth research on Muslim Personal Law and its application in India. The author has attempted to assess in a neutral way the extent of the practical implementation of the laws. In the book, she

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<sup>8</sup> Nik Noriani Nik Badli Shah, *Marriage and Divorce: Law Reform within an Islamic Framework*, International Law Book Services, Malaysia, 2000.

<sup>9</sup> *The Family Law of Islam*, edited by Khurshid Ahmad, Chiragh-E-Rah Publications, Karachi, 1961.

<sup>1</sup> Khan Noor Ephroz, *Women and Law: Muslim Personal Law Perspective*, Rawat Publications, Jaipur and New Delhi, 2003.

interviewed people using a random sampling method. Interviewees were selected from different backgrounds of the society. This literature is highly useful for the present study, since it consists of an extensive discussion on the *Shari'ah* point of view as well as an analysis of the judicial interpretation of *Shari'ah*. Although the study is based on India, the issues raised are familiar to any society. Therefore, the results of the interviews helped the present writer to understand the problems that need to be addressed in the Act, which is the major focus of this study. In this book, the writer has clearly proven her point that *Shari'ah* has not been followed in the strict sense by the Indian legislations.

David Pearl,<sup>1</sup> in his book gives a precise account of the major provisions of Muslim family law. However, this book must be read with caution, since in certain chapters the reader gets the impression of an attempt to criticize Islamic family law. This is especially evident in the areas relating to *ṭalāq* in which the author comments the law as biased to men. However, the author's smooth flow and mastery in the English language helps the reader to grasp the law easily. Thus, it is in this way, the book has helped the present writer in this study.

Susan A. Spector, <sup>1</sup> provides a translation of the responses of Ibn Ḥanbal, the famous renowned founder of Ḥanbalī School and Ibn Rahwayh, the well-known Muslim jurist, on questions regarding various issues of marriage and divorce. Although the structural format of this book makes it difficult for the reader to follow its contents, it is one of the valuable source of information on Muslim Personal Law since the authority of Ibn Ḥanbal and Ibn Rahwayh are undisputed. This book has

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<sup>1</sup> Pearl David, *A Textbook on Muslim Personal Law*, Croom Helm Ltd, London, 2<sup>nd</sup> Edn, 1987.

<sup>1</sup> *Chapters on marriage and Divorce, Resposes of Ibn Ḥanbal and Ibn Rahwayh*, translated from Arab by Susan A. Spector, University of Texas Press, United States of America, 1993.