Pre-Islamic Legal System in Arabia

(Al-jahleah)

Santa Clara University- School of Law

By. Bakr Alsulami

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**Introduction**

It is very significant to understand about political, economic, social and religious conditions of Arab before Islam while writing about the pre-Islamic historical period. When we talk about pre-Islamic Arabia, we refer towards Arabian Peninsula in 630’s before the rise of Islam. Many settled communities in Arab region were developed into distinctive civilization. Some of the prominent civilization include Thamud which remained from 3000 BCE to 300 CE, Dilmun which remained from the end of the fourth millennium to 600 CE. When the first millennium of BCE began, Southern Arabia accommodated a number of kingdoms such as Sabaeans Eastern Arabia, and Sassanians from 300 BCE.

Before the arrival of Islam, the Arab region comprises of indigenous polytheistic beliefs which include Judaism, Ancient Arab Christianity, Nestorian Christianity and Zoroastrianism. The early Arab traders of Arabian Peninsula established Christianity first when they heard the gospel from Peter the apostle at Jerusalem. In the areas of Southern Arabia, the Ancient Arabic Christianity was strong. Najran was the center of Christianity. In Eastern Arabia, Nestorian Christianity was the dominant religion before the arrival of Islam in that region. Later on, before the start, if Islamic era Christianity was divided into some unorthodox sects such as Gnostics.

The Arabs of the pre-Islamic period begin with Arabists when they learned to decipher epigraphic Old South Arabian (10th Century BCE) and Ancient North Arabian and other pre-Islamic Arabian writings. With the rise of Himyarite, the Arabian history became more tangible, with the gradual integration of Nabataeans with Qahtanites an expansion of Muslim conquests exceeded in the 7th century. The Islamic Scholar, later on, researched the history through archaeological evidence, oral traditions, and foreign accounts. The number of ancient Arab documents survived into the medieval times revealed the pre-Islamic history of Arabs.

Arab was without any form of a political organization before Islam. Yemen was exceptional otherwise, no part of Arabian Peninsula had any form of government ruling the region. The ruling groups were only the chiefs of the Arab tribes, and Arabs never acknowledged any other authority. The chiefs of the tribes used to be chosen on the basis of their character and personalities. Their authority was moral rather than political.

Arab was a male dominant society before the arrival of Islam. Women had no status and used to suffer enough. Islam provided women a status, respect, and security. Islam specifies the rights and duties of women clearly. Women were protected and strong after the spread of Islam in Arab. Islam specifies the rights of each and every person on society. Islam teaches us the ways to live in a society. Islam has taught human beings their limits and specifies the human rights clearly (Al-Islam. org).

**Their Religions**

Before the arrival of Islam in the Arab countries, there were several religions that were being followed by the people including Judaism, polytheism, and Christianity. However, the most dominant form of religion in Arab before Islam was polytheism. Polytheism was based on the worship of deities along with many other rituals. They had made their own Gods and Goddesses and used to worship them which were named as Hubal, al-Lat, Al-Uzza and Manat. They used to worship them at local shrines such as Kaaba at Makkah. Prior to Islam Kaaba was said to have 360 idols placed in it. People of Arab used to worship idols and consider them as God especially in Kaaba. They had placed their idols at Kaaba, which later on became the holiest sacred site in Islam where millions of Muslims perform pilgrims every year from all around the world.

The adjacent Roman, Aksumite, and Sasanian Empires had great influence and resulted in the Christian community in the region of Northwest, south of Arabia and northeast. But the impact of Christianity was not very much strong, still, it saved some conversions in the remaining Peninsula. Miaphysitism was the dominant form of Christianity along with Nestorianism in the Persian Gulf and northeast. As a result, a diaspora community was accompanied by local converts. Sasanian Empire causes Iranian religions in a peninsula. Zoroastrianism was being followed in south and east.

Since the times of Romans, Jews were migrating to a peninsula. Jews were strong economically so they were ruling the Arab. They were economically strong and they were the owners of assets such as arable lands in Hijaz. Farming was their main occupation. So Jews were considered as the best farmers. Moreover, they were the entrepreneurs and traders. However, with arrival of Islam in Arab the economic, social and political systems were transformed completely into fair and transparent systems.

Polytheistic religion was practiced in almost all the Arab countries till the fourth century. Despite the emergence of the Jewish and Christian minorities polytheism remained the dominant belief system in Arab before Islam. The beliefs and practices of nomadic Bedouins were far away from the tribes settled in the towns such as Makkah. The belief systems and practices of nomadic Bedouins were believed to have Fetishism, worship of the dead and totemism. They did not think about the philosophical question of the life after death (afterlife). They were just concerned about their immediate problems. On the other hand were the settled urban Arabs who were thought to believe in more complex pantheons of deities. However, the settled residents of Hejaz worshiped their assumed gods at the permanent shrines in towns. The information regarding pantheon was collected from inscription and carvings and remnants idols they used to worship. The references from the poetry are also found by the poet Zuhayr bin Abi Sulma. Still, the information was short. (Alkhateeb, 2013).

**The Marriage and Divorce System before Islam**

The traditions that were being followed in Arab before Islam were extreme. That is why the time period before Islam was called as Jahiliyah. Hazrat Aisha (R.A) the wife of last Prophet Muhammad (P.B.U.H) told that in Jahiliyah the marriage was of 4 types. The first type was the marriage that is similar to the marriage today, where a man engaged his daughter to another man and later given her dowry and then he got a permission to marry her daughter with that man. Another type of man who said her wife when she gets purified from her menses ‘Send to N and ask to have intercourse with him;’ her husband does not then go near her until all gets clear that she is pregnant by another man. When it gets clear that she is pregnant her husband intercourse with her. This kind of marriage is called as nikah ak-istibda which means the marriage seeking intercourse.

There was another type when a group of men i.e. less than ten men visits a woman and had intercourse with her. If she became pregnant and gives a birth to a child and when some night had passed after the birth she was again sent to them and not a single man refuses. She would say to them, this is your child and the man does not refuse it.

Another type of marriage was when many men come to a woman and she cannot keep herself from them who come to her. Such women were called as prostitutes. The use banners outside their homes as a sign. Whoever wants to go to them? If she became pregnant they all come to her and make her do abortion. Then they give the name to a child of his father and he remains his son with no objection to this course.

When Muhammad (P.B.U.H) came with the preaching of Islam, He (P.B.U.H) terminates all such marriages of Jahiliya except the one that people practice today. In some societies of Arab before Islam, the guardians also used to marry their daughter. Women had not rights to say No and pushed into a forced marriage frequently. Another classification of marriage includes marriage by agreement, marriage by capture, marriage by inheritance, marriage by purchase, temporary marriage etc. There were some other types of marriages such as cohabitation in which a woman is visited by a man she loved and this kind of marriages were not considered shameful.

**Divorce**

Like marriage, divorce was also an arrangement between the husband and the father of a wife. The father had to return a dowry to cancel the marriage of his daughter. Unless the husband did not get back the dowry the women could not be free as the husband has exclusive right to use his wife whenever he wants. Even after a divorce, the woman could be claimed as her ex-husband heirs. Islam has forbidden remarrying a pregnant woman but before Islam, a woman under an agreement with her former husband could be taken by another man (Salah ud din & Niaz, 2011).

**The Heritage when someone died**

Before Islam, the Arabians used to exclude women from the inheritance, and unfortunately this was a common tradition. The reason behind this inequity was again the tribal structure of the society before Islam. In each tribe, the number of men who was able to participate in a war was considered as the strength of a society. So the law of inheritance in Arab before Islam was based on “comradeship in arms” as men are stronger physically as compare to a woman and better fighter. Due to these reasons, women were excluded from the inheritance.

In some tribes women did get their right in inheritance these were the tribes where the traces of the ancient matriarchal culture is found according to which the women remained with her tribe even after the marriage. The reason behind it was that whatever she gets through the inheritance it would stay within the tribe and passed on her children who belonged to her people. However, the other types of marriages in which women left their tribes, their rights in inheritance are reduced as much as possible so that the inheritance would not go in the hand of the other tribes (Muslim Women’s League, 1995).

In Medina before Islam, marriage by purchase was the common rule. She was considered as the part of her husband’s inheritance that is why she could not inherit. In fact, when Islam determines the share of women in the inheritance, men of Medina protested against the rule.

The laws of Makkah regarding inheritance were much advanced; it might be due to the commercial contacts of Makkah with Persia, Palestine, and other Arab regions.

The laws of inheritance in Islam allowed the woman live independently just like Hazrat Khadija (the first wife of Prophet P.B.U.H). She was the wealthiest woman of Makkah at that time and gave her daughter Zainab a house. All this happened before the advent of Islam in Makkah, so it can be concluded here that women in Makkah before Islam could hold property (Zaki, 2016).

**The Rule of War**

To command the army during the war was the main responsibility of the leaders of the tribes. Determining the tracks to be adopted during the war, designing the strategies of war and rescuing the prisoners of war were the responsibilities of the leaders of the tribes. The warriors in the pre-Islamic period bring the towns and cities under their rule and then form a united entity or kingdom over the land.

Most the wars before Islam in Arab were fought for land and resources. The powerful dominates the weak and ultimately gets the control over his belongings. War was something very common before the advent of Islam. Many Muslim states and empires had been involved in warfare before Islam. The Islamic jurisprudence, later on, differentiates the illegitimate warfare from the legitimate one.

The power of the pre-Islamic world includes Persian Empire which was located in the North and the East of Arabian Peninsula. Persian Empire constantly dominated the Arabian Peninsula. On the other hand, Romans dominated the Mediterranean Sea. Both these powers had the potential to conquer the Arabia. In 24 BC they tried to expand their empire with an invasion of Arabian Peninsula but they failed utterly. Roman was specialized in fighting a war in a Mediterranean climate, not in the deserts of Arabia. So they never tried again to expand their control. Persian Empire was another major power of the pre-Islamic world. It also attempted to dominate the area. They kept the area into a constant conflict with Romans. Syria and Iraq were the frontline states during the war between Romans and the Persians. Arab remained at a war with its northern neighbors.

As a result, Arab maintained their decentralized nature to political control that increased the freedom of the individual. The wars in Arab before Islam were very common between the Tribes. Most of the wars took place to expand the control over the land and expand their empire. Arab remained in a constant state of war throughout the history before Islam. They never realized their suffering due to war for them it was a pastime, a dangerous sport. They were unaware of eternal peace. War provided them the opportunity to show their skills like archery, horsemanship, and fencing. War provided them an opportunity to distinguish themselves by their heroism and become an honor for their tribes. (Utku, 2013)

**Political Situation**

The Arab society before the advent of Islam was without any political organization of any form. Except for Yemen, no part of Arabia had any form of government any time. Arabs only recognize the authority of their chiefs of the tribes. It is unbelievable for today’s historians that the Arabs lived generation after generation without any government. Due to lack of proper government system, there was no proper law and order. People of Arab used to take revenge which led to long term vengeance between the families and tribes. This system of revenge led to the horrific acts of brutality. This vendetta consumed the entire generations of Arabs.

The tribe was the only place where a man could get protection as there was no law, no policy, no judge or magistrate. Tribes were obliged to protect their members even if they are the trouble makers. The tribe which was unable to protect its members was considered lower and exposed itself to contempt. Those societies were far away from ethics before Islam. The Arabians were trapped in ceaseless warfare due to their anarchy instincts and lack of government. The constant state of tribal war and the ability of desert to support the only limited number of people controlled the growth of population (Al-Islam. Org).

**Lending Money**

Lending money in Arab before Islam was purely based on Riba (usury). It’s the word used by Arabs before Islam which means increase. In Islamic jurisprudence, the definition of Riba was “surplus value without counterpart.” Usury basically was unjust exploitative gains made in business and trade. Riba is condemned in Quran in several verses. Riba was common before Islam during the process of lending money. In fact, money lenders and capitalists made the most powerful class of Arabs. They charged the higher rates of interest on the principle amount. They designed this system to make themselves richer and richer and the borrower became poorer with time. The citizens of Makkah were quite rich most of them were merchants and money lenders (Shafaat, 2005).

**Slavery system**

Slavery was the economic institution of Arabs. Both male and female slaves were sold and bought markets like animals. The class of slaves was the most depressed and lower class in the Arab society. They were treated inhumanly. After Islam in Arab, the Muslims bought many slaves and set them free.

This system was first developed in pre-Islamic Arabia. Almost 11.5 million and 14 million slaves were held in Arab before Islam. During the pre-Islamic era, slaves served in various economic and social roles. They were also used in plantation labor like America. Later on, the harsh treatment of the slaves led them to destructive slave revolts, for example, Zanj Rebellion. Slaves were employed widely in the fields of mining, irrigation, and pastoralism. Every male in Arab had almost two female slaves (Segal, 2002).

In a pre-Islamic society of Arab two classes of slaves existed which include a purchased slave and a slave born in the house of the master. Those who were born in the house of Masters gave complete rights to the master of his ownership; such slaves were not sold or disposed of by their masters. It was common to force female slaves into prostitution to earn.

The society of Arab countries before Islam was not organized. The legal system of Arab before Islam was weak. The rich people were dominant until Islam introduced them to a system of equality and justice (Al-Islam. Org).

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