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Analysis of Women's Rights and Law from Ancient History to The Present

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Abstract Makale Bilgisi

Woman, one of the two members of humanity, has not enjoyed (satisfied) the social status she deserves in the society she has lived in since the beginning of the history. Even though she has become a goddess from time to time, she has lagged the physical superiority of men. However, women have always shown that they are equal to men with their intelligence, skills and fighting power beyond physical strength and have been in constant struggle for equal rights. It would not be easy for men to change their understanding of domination over women as a vested right granted to them by centuries and beliefs, and it would not be easy to take away their power to rule women. This struggle, starting from civilizations in ancient times and extending to the present day, in different cultures and religions, although they have won some of them, women have still not fully achieved the rights they deserve. This study will analyze the changes in the rights granted to women since ancient times until today

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Antik Tarihten Günümüze Kadın Hakları ve Hukukunun Analizi

Özet Anahtar Kelimeler

kadın, haklar, hukuk, eski tarih, günümüz

İnsan ırkının iki üyesinden biri olan kadın, tarihin başlangıcından beri yaşadığı toplumda hak ettiği sosyal statüyü görmemiştir. Zaman zaman tanrıçalaşsa da erkeğin fiziksel üstünlüğünün gerisinde kalmıştır. Oysa kadın, fiziksel gücün ötesinde zekâsı, becerileri ve mücadele gücüyle de erkeklerle eşit olduğunu her dönemde göstermiş ve eşit haklar için sürekli mücadele içinde olmuştur. Erkeklerin, yüzyılların ve inançların kendilerine tanıdığı kazanılmış bir hak olarak kadınlar üzerindeki tahakküm anlayışlarını değiştirmeleri ve kadınları yönetme güçlerinin ellerinden alınması kolay olmayacaktır. Kadim dönemlerde medeniyetlerden başlayarak günümüze kadar uzanan bu mücadelenin, farklı kültürlerde ve dinlerde, bir kısmını kazanmış olsalar da yine de kadınlar hak ettikleri haklara tam olarak ulaşamamışlardır. Çalışmayla, kadim dönemlerden itibaren kadınlara verilen hakların günümüze kadar değişimi analiz edilecektir.

Introduction

Women, who have been despised in social life from ancient times to the present day, have always been seen as the oppressed group since ancient civilizations (Indian, Hebrew, Greek, Egyptian, Chinese). Even philosophers such as Aristotle and Plato, who contributed to the formation of the philosophical foundations of today's civilized world, saw woman as an incompletely created being.

Woman is the most vivid and important figure in Turkish epics. She is the Ak-Ana of the creation epics, Eve, the reason for expulsion from paradise, the woman who should not be kept secret in the Manas Epic, and Ay-Va Hatun in the Türeyiş Epic.² The Oghuz Khan Epic gives a lot of space to women, while the book of Dede Korkut frequently mentions the respectable personality of women complementing men. In the ancient Turks, every beautiful subject such as birth, goodness, love, etc. has a sacred woman motif.³ The woman is sometimes depicted as a goddess, and sometimes as a weak, secret-keeping other whose duty is to serve her man.⁴

In Western culture, the situation is even more complex. Socrates preferred to educate only boys and did not consider girls sufficient for philosophy lessons. His disciple Plato, on the other hand, thought that boys were created more perfect than girls, and therefore the duties related to the administration of the state belonged to boys, and the duties related to household management to girls.⁵ Greek women had an insignificant position in the site. Aristotle openly expressed his doubts about women's possession of virtues such as prudence, justice, courage or moderation and austerity.⁶ Hegel, one of the leading theorists of German idealism, was one of those who thought like Aristotle. According to him, civil society is the work of men, and the spirit that leads the individual from the family to civil society and then to the state is absent in women.⁷

According to the traditional understanding, the perception of woman's primary duty as motherhood has imposed a serious responsibility on women. While this perspective and understanding did not remove the responsibility from men, it dragged men to the platform called the public sphere. Therefore, men's visibility in the public and economic spheres paved the way for their dominant position in history.

Although historiography does not bring women to the forefront in state administrations, dozens of women have taken place alongside male rulers and rulers in the historical process or ruled their countries as rulers themselves. In the ancient Turkic state administration before Islam, the wives of the Khagan had a say in the administration with the title of "Hatun". It was also a common method for women to take an active role in the administration as regents until the rulers who came to power at a young age reached the age when they would have the power to rule.

During the reign of Queen Elizabeth I of England, England made a breakthrough in the seas and established a great colonial empire, turning England into the most powerful empire of its

² İsmail Doğan, "Kadın Toplumsallığında Tarih ve Gelenek", Düşünen Siyaset Journal, 1999, p.30.

³ Burhan Göksel, Çağlar Boyunca Türk Kadını ve Atatürk, Ministry of Culture and Tourism Publications, Ankara, 1988, p.112.

⁴ İsmail Doğan, mentioned article, p.32.

⁵ İsmail Doğan, mentioned article, p.33.

⁶ Ney Bendason, Başlangıçtan Günümüze Kadın Hakları, İletişim Publications, İstanbul, 1994, p.23.

⁷ İsmail Doğan, mentioned article, p.34.

⁸ Kemal Kara, Genel Türk Tarihi, Önde Publications, İstanbul, 2002, p.96.

time. Queen Victoria of England colonized the Mughal Empire and declared herself Queen of India. In Ottoman history, Valide Turhan Sultan, the mother of Mehmet IV, who brought Köprülü Mehmet Pasha, one of the successful chief viziers, to power, and Kösem Sultan, the mother of Murat IV, who ruled the Ottoman throne on behalf of her son as regent for eight years due to Murat IV's young age, have gone down in history as influential women sultans in the government.

The last period of the Ottoman Empire and the War of Independence is commemorated with the heroic stories of women. Nene Hatun, who left her baby in the cradle and went to the front to stop the Russian armies marching on Erzurum during the Ottoman-Russian War of 1877-1878. She made history with the saying "Turkish baby can be without a mother but not without a homeland", Şerife, the wife of Köse Mehmet Aga, Kara Fatma, Topal Gülizar, Haydar's girl Hürmüz, Kadir's girl Name are some of our women who sacrificed themselves together with men in the 93 wars. In the War of Independence, Şerife Bacı, Halide Onbaşı, Kara Fatma, and the members of the Anatolian Women's Society for the Defense of Homeland, who made all kinds of sacrifices at the front and in the rear services, also took their rightful place in history.

As will be discussed extensively in the study, with the reforms initiated by Mustafa Kemal Atatürk after the victory, very important steps were taken, especially towards the restoration of the fundamental rights of our women, which had been usurped for thousands of years, the establishment of an equal, free and common life with men, and becoming the most respected member of the civilized world. The 1924 Law on Unification of Education eliminated the inequality between men and women in education, the adoption of the Civil Code eliminated gender discrimination and restored and protected all civil rights, the 1930 and 1934 amendments to the electoral laws paved the way for women to freely elect rulers and be elected to administrative positions.

Although the struggle that our women have been waging for hundreds of years to gain their rights has reached a certain level today, it still seems that the difficulties experienced in breaking the glass ceilings on them in coming to certain positions in private or public services will continue for a while, ignoring their lifestyles, freedoms and the legal rights that some male state administrators decide.

1. The Legal Status of Women in Ancient Civilizations (Sumerian-Akadian, Babylonian, Hebrew, Indian and Chinese):

Sumerian-Akadian Period: This period, which is accepted as the beginning of written history, has been determined to date back to 6 thousand years BC. However, the laws of Urukagina, perhaps the first social reformist king in history, (Urukagina Laws) (2350 BC) are the oldest known written legal rules of Sumer and humanity. Subsequent laws written in Sumerian include those of Ur-Nammu (2100 BC); Ana-Ittishu (2000 BC) and Lipit-Ishtar (1900 BC). Laws written in Akkadian: Laws of Eshnunna (1770 BC) and Hammurabi (1750 BC). Then the Middle Assyrian Laws (1450-1250 BC) and the New Babylonian Laws (625-539 BC). The existence of similar rules on women's rights in Sumerian-Akkadian law has been observed. Although they were a male-dominated society, it has been observed that they practiced a more advanced law on women's rights than some modern-day societies. Although marriage was considered a unilateral

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⁹ Kemal Kara, mentioned book, p.93.

¹⁰ Hukuk Tarihi, (Ed: Fethi Gedikli), Anadolu University Open Education Faculty Publications, Eskişehir, 2019, p.4.

contract, rules such as inheritance, custody and monogamy increased the value given to women. Some of the rights granted to a married woman include the right to dispose of her property as she wishes, the right of a man to sign an unilateral document in the presence of witnesses promising to fulfill his duties to the woman he marries, the right to give a specified amount of nudunnu (marriage gift) to the woman he marries, the right of custody to the father, but in his absence it passes to the mother, and the inability of a man to take a second wife or a concubine without the consent of his wife (inability to bear children, persistent illness - even in this case on condition that he takes care of his wife for life).¹¹

Babylonian Period: In the Code of Hammurabi, a written document was required for marriage to be legally legitimate and valid. Actual unions without a marriage contract were not considered marriage. As in Sumerian law, the rule that a woman was given shuktu by her father and nudunnu (money as a wedding gift) by the person she would marry was also valid in Babylonian law. The purpose of this was that it remained the property of the woman even in the event of divorce and was a guarantee for her in the event of widowhood or an unjustified divorce. The woman who did not receive nudunnu continued to inherit the property of her deceased husband. ¹² Monogamy was like Sumerian law. The most important reason for the existence of a second wife was the lack of children with the first wife. In this case, the status of the first wife would continue as before, and the second wife would never become equal to the status of the first wife. The Code of Hammurabi granted both parties the right to divorce if there were some justifiable reasons. For example, the husband could divorce his wife if she did not bear children. It is observed that the provisions on inheritance in the Code of Hammurabi are the same as those of the Sumerians. The legal and natural heirs of the father were his children, not his wife. Sons and daughters who did not inherit from their fathers, even if they were from different mothers, inherited equally. Although the status of women in Babylon was generally inferior to that of women in ancient Egypt and Rome, it was no worse than in ancient Greece and medieval Europe. She could own and dispose of property; she could buy and sell, inherit, bequeath, and make wills. She could also freely go out of the house and do her business in the bazaar.13

Hebrew Law: Hebrew Law gave the husband the right to divorce his wife at any time. In order to exercise this right, it was sufficient for the husband to give a "certificate of divorce" to the woman he divorced. According to Hebrew Law, in the early periods, only male children could inherit from their fathers. However, it is understood that later on, in cases where the deceased had no male children, daughters were allowed to inherit. Marriage usually took place as a result of a bargain between families and the "purchase of the woman" by the man by paying a price. This was called "ketūba", which amounted to two hundred for girls and one hundred "zuz" (silver coin) for widows. In some cases, there were also provisions that obliged people to marry: For example, if the husband of a childless woman died, she was obliged to marry her deceased husband's brother, who in turn was obliged to marry her sister-in-law, and the first child born from this marriage was considered the child of the deceased husband. ¹⁴

Indian Law: The Hindu/Brahman Law divides legal marriages into two types: acceptable and honorable marriages and marriages that are legal but not acceptable or honorable and prescribes

¹¹ Hukuk Tarihi, mentioned book, p.4-5.

¹² Hukuk Tarihi, mentioned book, p.8.

¹³ Hukuk Tarihi, mentioned book, p.11.

¹⁴ Hukuk Tarihi, mentioned book, p.14.

eight types of marriages. The most important features that distinguish acceptable and honorable marriages are that the woman's father consents to the marriage and bears the costs of the marriage; the man gives a sum of property (stridhana: "mehir" = money/coin as a wedding gift) to the woman to be married, to be her property; and the marriage is performed with a religious ceremony. In India, the right/duty to marry off a daughter was given first to the father, then to the paternal grandfather, brother, and uncle; the mother's right to marry off her daughter came after these. A married woman was under the guardianship of her husband. A woman lived under guardianship from birth until her death. First her father, then her husband and then her sons. Divorce was very rare. The husband was the only one who could divorce his wife in case of unchastity, but the wife could not divorce her husband for any reason.¹⁵

Chinese Law: Marriage was a "purchase of a woman". The father of the man would buy her by sending a valuable gift to the girl's father, and the girl's side would reciprocate by sending a considerable dowry. A man could divorce his wife for any reason, from childlessness to babbling. The wife, on the other hand, could not divorce her husband, but she could leave him and return to her father's house and reside there, and the husband might even be obliged to provide for her. However, this was very rare. The divorce had to be documented in writing. A woman who was divorced and returned to her father's house would again come under his authority. Adultery was an absolute ground for divorce. In this case, the guilty woman could only marry someone other than her accomplice, and the husband could sell his offending wife if he wished. According to the ancient Chinese view of marriage, a man could only marry one woman and only once. Even in the event of the death of his wife, it was no longer possible for the man to marry again in the real (first/essential) sense. 16

2. Status and Rights of Women in Central Asian Turkish Societies before the Adoption of Islam:

Ziya Gökalp, who best expresses the value given to women in Central Asian tribes in his research; "Among the ancient tribes, none of the tribes have given rights and respect to women as much as the Turks" and explains the importance given to women by Turkish tribes in a single sentence.¹⁷

In Turkish societies, the family shows more of a "patriarchal" structure. ¹⁸ The father has a democratic responsibility over his wife and children. Family members are never the property of the father as in the patriarchal family. He could not kill them or sell them. He had no right of disposition. He only had a right of protection. And this had a democratic character. It was called "fatherly custody" or "husband custody". ¹⁹

Due to the nomadic life, they lived, Turkish women had a respected place in the society because of the work they did and the responsibility they took. Although she was valued, in some cases she could not escape from oppressive traditions. For example, in the Gokturks, if a man poked out the eye of a man from another clan, the guilty man had to give his daughter to the man whose eye was poked out. Another example of the subordinate position of women is the fact that

¹⁵ Hukuk Tarihi, mentioned book, p.17.

¹⁶ Hukuk Tarihi, mentioned book, p.21.

¹⁷ Ziya Gökalp, Türkçülüğün Esasları, (Prep Mehmet Kaplan), Ministry of Culture Publications, Ankara, 1976, p.156.

¹⁸ Necla Arat, Kadın Sorunu, Say Publications, İstanbul, 1986, p.17.

¹⁹ Ziya Gökalp, mentioned book, p.152.

whether the child born to a woman is a boy or not determines her position in society. In the event of the death of the father, the mother would preside over the community on behalf of her young son and exercise administrative authority. However, this was not a right for the woman, but for the male child. A woman whose husband died was married off to one of the husband's brothers or stepson. This shows that although some rights and powers were granted to women, they were not freed from their subordinate position.²⁰

Men and women of marriageable age were free to choose their spouses. As required by the era, this freedom was determined by a sword fight between a young girl and a young man. So much so that a woman would not even consider marrying the man she defeated.²¹

Gökalp talked about the equality of men and women in marriage and stated that there was only one wife. However, it is noteworthy that this situation was different for khans and beys. Gökalp, referring to the status of the odalisques called "Kuma (other wife)" who lived in other provinces, states that "these kumas did not have the status of a real wife. Turkish tradition did not officially recognize them as wives".²²

Although polygamy was not widespread, it was still practiced in the society. Although the first wife was given a special status by the society, in a patriarchal society, women did not have full freedom and were entitled to enter the lineage of their husbands only by giving birth to male children, which gave the appearance that they were married to their descendants rather than their husbands.²³

Women also had political rights. These rights not only left women among the ruled, but also gave them a say in the administration. As important as it was to find the name of the Hittite Queen under the first written treaty in history, it was equally important to find the name of the "hatun", that is, the wife of the Hakan (Turkan-Bilge Hatun) in the orders issued by the Turks. If the decree started with the words "Hakan commands", it would not be accepted. For it to be accepted, it had to start with "The Khaqan and Khatun command". 24

Foreign diplomats were not admitted if the khan was alone. They were accepted when the khan and khaness were together. They were introduced to the khan standing on the right and the khan and khaness next to him. The khan and the khaness were present together in kurultai, worship and rituals, war and peace. Decisions were taken jointly and were considered the result of common thinking.²⁵

Gökalp states that women in Central Asian Turkic tribes were "Amazons"; "horsemanship, swordsmanship and heroism were as much in Turkish women as in Turkish men". Women could be direct rulers, castle guards, ambassadors and governors. They could wield swords like men and fight with them. This not only showed women's courage and resourcefulness but was also accepted by the society.²⁶

²⁰ İbrahim Kafesoğlu, Türk Milli Kültürü, Boğaziçi Publications, İstanbul, 1986, p.216-217.

²¹ Emel Doğramacı, Türkiye'de Kadın Hakları, Universal Publishing House, Ankara, 1982, p.4.

²² Ziya Gökalp, mentioned book, p.155.

²³ Doğan Avcıoğlu, Türklerin Tarihi, First Book, Tekin Publications, İstanbul, 1972, p.232.

²⁴ Ziya Gökalp, mentioned book, p.152.

²⁵ Emel Doğramacı, mentioned book, p.4.

²⁶ Ziya Gökalp, mentioned book, p.154.

This freedom in Turkish society not only ensured women's economic freedom but also regulated their social life. Women had every right of disposition over their own property. They could use them as they wished, and in case of divorce, they could claim not only the property they inherited from their father, but also the property they had acquired and disposed of when they got married.²⁷

In general, starting from Central Asia until the adoption of Islam, for Turks, a woman is not only a person who gives birth to children and takes care of household chores and serves her man, but also a person who shares the common life with the man. She had an exemplary life, not only giving birth to children and taking care of them, but also being an alpine (valiant) enough to participate in wars with men, if necessary, free enough to choose her own spouse, a ruler enough to sign all decisions alongside the hakan, and a leader enough to rule her tribe, union and country and win wars if necessary.

3. Women's Rights in Religions

Although the view of women in religions is different in each religion, the common feature is that the woman is seen as a being whose function is to serve the man and to ensure the continuation of the man's progeny by giving birth. For this reason, women were considered to be under the custody of their fathers before marriage, their husbands after marriage, and if they were not present, they were under the custody of their sons.

The Indian Manu Laws of 200 B.C. state that "A woman should be under the authority of her father in her childhood; in her youth she should be under the authority of her husband, and when he dies, she should be dependent on her sons and never be independent".²⁸

The common understanding is that the man was created by God by being carefully molded from clay and given life, while the woman was created from the rib bone as a part of the man. He even misled the man into eating the forbidden apple in the Garden of Eden and was expelled from paradise. According to the religion of Zoroastrianism, which is widespread in Iran, "woman is the symbol of all kinds of filth, evil and badness. She is seen as the mother of all evil."²⁹

In Judaism, women are seen as secondary and as the property of men. The Torah defines woman as a lust-giver, a destroyer and companion of man, a sneak, and a creature that degrades man in three steps and dishonors him unconditionally.³⁰

"God created man in his own image, initially succeeding in the experience of wisdom and knowledge. God gave Adam a deep sleep. While Adam slept, God took one of his ribs and covered its sweat with flesh. From the rib he took from Adam he made a woman and brought her to Adam. She will be called woman because she was taken from the man. God said to her, "I will make you suffer in childbirth. "You will give birth in pain, and you will desire your husband and he will rule over you."³¹

Ziyaeddin Fahri Fındıkoğlu, İçtimaiyat Dersleri, İstanbul University Publications, İstanbul, 1971, p.205.
 Türker Alkan, Kadın-Erkek Eşitsizliği Sorunu, Ankara University Faculty of Political Sciences

Publications, Ankara, 1981, p.75.
²⁹ Emel Doğramacı, mentioned book, p.6.

³⁰ Ameneh Baseri, "Semavi Dinlerde (İslam, Hristiyanlık, Yahudilik) Kadına Şiddet Ve Saygının Karşılaştırılması Hakkında Araştırma", Karamanoglu Mehmetbey University Social and Economic Research Journal (Special Issue I) (3), 123-127, 2014, p.123.

³¹ Torah, 26-31.

It can be said that the Jewish tribes, influenced by the Mesopotamian tribes, regarded woman as an inferior being to man. Religiously, it was believed that Eve, who followed the devil, was the cause of Adam's expulsion from paradise, thus women were considered the cause of the first sins and characterized as "shameless and treacherous creatures".³²

The Torah's view of women is very superficial and accusatory. Adam's sin, caused by Satan's misguidance, is the beginning of the story of the creation of woman. According to the Torah, a man must protect himself against the evil plans and conspiracies of the devil. Under the temptation of the woman, and if every woman is free from sin and obedient, he agrees to be her husband.³³ According to the conception, the woman appears to be his slave (submissive) in all spheres of life. In the Bible, according to the general procedure, every man has unlimited power in his own home.³⁴

On the other hand, the Torah also regulates the issue of respect in the family, honoring the woman as a mother.³⁵ "Your days will be long if you honor your father and mother in the land that God is giving you."³⁶ But the position of the father is more perfect than that of the mother. The father is more respected than the mother.

Christianity has been greatly influenced by Judaism, and its view of women shows similar characteristics. St. Paul, who is considered the first Pope of the Christian world, states in a letter written in the First Testament: "Man is not men, but woman is man's; woman was created for man, but man was not created for woman".³⁷ In Christianity, the woman is expressed as an incomplete companion created for the man and positioned as a being created only to fulfill the needs of men.³⁸

Moreover, the thoughts and teachings of Christian priests in this area are evidence of this negative attitude: The status of women, in the thoughts and teachings of Christian priests, shows that their rights are violated and cause chaos. Because, according to the priests, woman was the cause of man's degradation and decline. This situation reached such a point that, according to a law issued by King Henry VIII of England, women, pirates and evil spirits were forbidden to touch the holy book, and the most important part of Christian theological ideas (Trinity belief) was faith. God breathed his spirit into Mary and Jesus Christ implanted as an embryo in his mother's womb. In other words, the spirit of God became Jesus Christ and was formed in his mother's body. In this case, God created his own son out of his own essence, but he was formed in the body of a woman. According to the Christian view, the woman serves the man as a complement to his deficiencies, is dependent on him and serves him as his slave, while at the same time the man always protects himself from her evils.³⁹

Before Islam, the situation of women in the Arab tribes was very bad. "Daughters were considered a disgrace and a disgrace to the father and mother. For this reason, it was not enough

³² Torah, 21-24.

³³ Torah, 16.

³⁴ Necip Ali, Kadın Hukuku, Hâkimiyle Milliye Publications, Ankara, 1931, p.114-115.

³⁵ Torah, 20.

³⁶ Ameneh Baseri, mentioned article, p.124.

³⁷ Gospel, p.177.

³⁸ Ameneh Baseri, mentioned article, p.124.

³⁹ Ameneh Baseri, mentioned article, p.124.

to bury newborn girls alive in the ground, a custom called "Veit" but not only that, they were sold as slaves or even exchanged for an animal as a wife." but not only that, they were

Although the humiliating rules applied to women by the Arab tribes were partially eliminated with the proclamation of Islam and with the ijma, jurisprudence and fiqhs put forward by the caliphs and religious scholars who came after the death of the Prophet Muhammad and remained under the influence of the traditional structure, women could not attain their fundamental rights and freedoms during the periods when Islam dominated the social order.

However, the Prophet Muhammad, in his hadiths, stated the equality of men and women by saying "Paradise is under the feet of mothers and women are only half of men". On the other hand, it is important in terms of showing the greatness of the value given to the woman, who is seen by the Jews as the cause of Adam's expulsion from paradise, by attributing a quality that is even above paradise. In another hadith, he said, "A woman is precious because she carries you in her womb for nine months, then brings you into the world with difficulty and feeds you with milk."

In Will Durant's works and writings, it is known that the Qur'anic commands are for the omnipotent personality (woman): Girls were freed from being buried alive, men and women had equal legal rights and financial autonomy. Women were given permission to work, the right to trade on their own and to own property. She had the right to receive inheritance and to establish her own business. The Qur'an has abolished the belief that women are a household item in the house and the Qur'anic commands always promote women's happiness.⁴³

In some verses of the Qur'an, there is a difference and superiority between men and women. This difference is purely an economic advantage given to the man. When the conditions of the period are evaluated, it is understood that the man was obliged to provide for his family and endure all external conditions, while the woman had to give birth and strive for the healthy growth of the children, which led to the necessity of family structuring in the form of a division of labor with the man. In a period that is incomparable to today's life, the man must be strong, protect his family with his strength and earn the economic values that will sustain his family's life.

Surah al-Nisa: "Men have dominion over women because Allah has made some superior to others and because men spend their wealth (An-Nisa: 34)." As can be seen in ancient civilizations, the economic assets of daughters are the device (dowry) they receive from their fathers and the mehir received from their husbands at marriage. Since they could not create an economic value of their own at that time, they had to depend on the economy of men, and this was seen as a superiority and dominance for men. This is expressed in the 34th verse of Surah Nisa as follows: "Men are the guardians of women. This is because Allah has given different qualities to each of mankind and men are responsible for the maintenance of the household."

Again, when the verse is analyzed periodically, it will be seen that the ages of marriage for men and women are different. It was customary in Arab society for girls to be married when they reached the age of puberty (after 13 years of age). Men, on the other hand, were usually over the age of thirty for reasons such as being above a certain age and having a strong economy. The age

⁴⁰ Necip Ali, mentioned book, p.119.

⁴¹ Ahmet Ağaoğlu, İslamiyette Kadın, (Trans Hasan Ali Ediz), Birey ve Toplum Publications, Ankara, 1985, p.24.

⁴² Ameneh Baseri, mentioned article, p.124.

⁴³ Ameneh Baseri, mentioned article, p.124.

⁴⁴ Qur'an, Diyanet Publications, Ankara, 1988, p.83.

difference not only created inequality between men and women, but also traditionally, the education that the woman received from her family at a young age continued to be received from her husband after marriage, which meant a kind of superiority of the husband.

However, there are verses in the Qur'an that protect the rights of women and treat them as equal to men: The Qur'an uses retribution, atonement and punishment (Hadd) as punishment. Similar and standardized sentences are adopted between men and women; for example, the man who commits adultery and the woman who commits adultery shall each be given one hundred strokes of the rod by the command of Allah (SWT: Subhanahu wa-ta'ala - placed after the name of God), only on the skin and no more below. This punishment should be given in front of everyone (equality in punishment) (An - Noor Sura: 2).

"Indeed, the men who are Muslims and the women who are Muslims, and the believing men and the believing women, and the faithful men and the faithful women, and the patient men and the patient women, and the men who are in awe (of their Lord) and the women who are in awe (of their Lord), and the men who give alms and the women who give alms, and the men who fast and the women who fast, and the men who guard their chastity and the women who guard their chastity, and the men who remember Allah much and the women who remember Allah much! Allah has prepared for them forgiveness and a great reward" (Equality in reward) (Al - Ahzab Sura: 35).

Islam points to a woman's duty, and the most important position of women in society and in the family is that of motherhood: "We have advised man to be kind to his parents, for his mother carried him in her womb with difficulty and gave birth to him with difficulty. It takes thirty months for him to be carried and weaned. When he reached the age of puberty and was forty years old, he said: "My Lord! Help me to be grateful for what You have bestowed on me and my parents and help me to do a good deed that pleases You and give good to my progeny as You have given to me; verily, I have turned to You, and I am of those who have given themselves to You (Al-Ahqaf sura: 15)." And the right of the mother is very comprehensive and important, even more so than the best of the right of the father, because the Prophet Muhammad said: "If your father calls you while you are worshipping, do not interrupt your worship. But if your mother calls you, interrupt your worship and go to her". 45

The value given to women in Islam was best demonstrated by the Prophet Muhammad through his words and deeds. The fact that he married Khadija even though she was 15 years older than him, that he did not interfere with Khadija's free trade, the respect and love he showed her, and that he did not marry another woman until her death should be seen as a respectable behavior even according to today's modern-day family order.

4. The Place and Rights of Women in Society in The Ottoman Empire:

Although women had a valuable place in the Ottoman family, they participated very little in social production. Her place in the family also depended on the number of children she gave birth to, especially boys. According to her age, she was respected and held a position. Seeing this as a reason for pride and boasting, women tended to increase the number of male children.⁴⁶

The provisions of Islamic law that denied the woman the same right to divorce as the man continued to be applied in the Ottoman Empire. The fact that the will to divorce belongs only to

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⁴⁵ Ameneh Baseri, mentioned article, p.124.

⁴⁶ İlber Ortaylı, Osmanlı Toplumunda Aile, Pan Yayıncılık, İstanbul, 2001, p.74.

the man and is realized with his sole word (talaq), Afet İnan states that "Turkish men do not abuse this situation and that it is up to the conscience of the man, yet the woman has no legal guarantee." This inequality in marriage and divorce was also applied in inheritance and testimony. Even a woman's testimony in court was excused on the grounds that she was easily excitable and forgetful, and in Ottoman law, the testimony of two women was considered equivalent to the testimony of one man.

The Tanzimat period, being the period when the Ottoman State began to be accepted as the beginning of reforms in the understanding of administration, and the rapid spread and adoption of modern changes and movements in the Western world among intellectuals led to positive changes in women's rights, and publications and works on this subject began to be published.

Afet İnan comments on the Tanzimat Period as follows: "In Ottoman history, 1839 is the beginning of the political, intellectual and social reform movements as the Tanzimat period. Although the reforms within the state did not change the monarchical form of the state for the Muslim and other religious Ottoman subjects, they did bring about intellectual developments. In the meantime, with the opening of new schools and the education given to girls, an enlightened society was formed."⁴⁸ Thus, there was an increase in the number of enlightened women in society, and some of the rights that had been taken away from women began to be restored.

İlber Ortaylı, on the other hand, says: "The socio-cultural change brought about by the Tanzimat period was at least a golden period that prepared the entry of upper- and middle-class women into social life". 49

The first and most important development was in the field of education. Women, who had been deprived of the right to education for hundreds of years, started to attend primary schools, neighborhood schools and then public and private educational institutions.⁵⁰ After 1840, they were given the right to enter rüştiye (secondary schools), which were the continuation of these schools. The first secondary school (rüştiye) was Cevri Kalfa Inas Rüştiye in 1859.⁵¹ In 1842, midwives started to receive training at the Mekteb-i Tıbbiye (Medical School) and a medical school was established exclusively for women. In 1869, sewing training was started to be given in the girls' industrial schools opened in Yedikule, Istanbul.⁵²

Namık Kemal, one of the writers of the Tanzimat period, was the most ardent advocate of women's rights in his columns in the newspapers Ibret and Tasvir-i Efkar. Dramatizing the status of women, he argued that if women were not educated, ignorance would first destroy the family and then the nation.⁵³ Namık Kemal criticized not only education but also the way of marriage, mentioning the oppression, slavery and humiliating situation of women in the family,

⁴⁷ Afet İnan, Atatürk ve Türk Kadın Haklarının Kazanılması / Tarih Boyunca Türk Kadınının Hak ve Görevleri, MEB Publications, İstanbul, 1982, p.60.

⁴⁸ Afet İnan, mentioned book, p.87-88.

⁴⁹ İlber Ortaylı, İmparatorluğun En Uzun Yüzyılı, Hil Publications, İstanbul, 1983, p.182.

⁵⁰ Afet İnan, mentioned book, p.88.

⁵¹ Niyazi Berkes, Türkiye'de Çağdaşlaşma, Doğu-Batı Yayınları, İstanbul, 1978, p.226.

⁵² İlber Ortaylı, Osmanlı Toplumunda Aile, p.136.

⁵³ Bernard Caporal, Kemalizmde ve Kemalizm Sonrasında Türk Kadını (1919-1970), (Trans Ercan Eyüboğlu), Türkiye İş Bankası Kültür Publications, Ankara, 1982, p.59.

emphasizing that women should be rescued from the bad situation in forced marriages,⁵⁴ the inequality between men and women, and that society should gain a healthier structure.⁵⁵

Şinasi drew attention to the harms of arranged marriages in his work "Şair Evlenmesi" published in 1959, and writers such as Ahmet Mithat and Şemsettin Sami advocated the separation between men and women and the elimination of inequality in society.⁵⁶

During the Second Constitutional Monarchy period, the Ottoman political structure entered a process of differentiation, emancipation and secularization. As a result of this change, women, who had until then tried to be content with their roles as mothers and wives at home, began to make demands to gain a different status in social life. The press played the most effective role in this regard. Newspapers and magazines began to express women's problems, conferences were held on the subject and activities were organized by women's associations.⁵⁷ In this period, pro-Western intellectuals started to discuss women's issues under the name of Alem-i Nisvan (Women's Alem), which later continued for a long time among Westernist, Islamist and Turkist intellectuals, with each group expressing their opinions in line with their own views. However, due to the structure of the State and internal and external conditions, the desired progress in women's rights could not be achieved during the Second Constitutional Monarchy period. Nevertheless, the last period of the Ottoman Empire was an important period in which social and political transformations took place, especially for women, and the first intellectual cadre was raised in this regard.⁵⁸

Sensitivity to the declining rights and position of women over time increased among intellectuals and administrators in the late Ottoman Empire and this was reflected in their thoughts. Gazi Mustafa Kemal, while he was the Commander of the 16th Corps in Diyarbakır during World War I, in the diaries he kept in 1916 and 1918 during his treatment in Karlsbad, wrote about "the importance of the institution of marriage and relations between men and women, the serious education of women in science, the importance of women having honor and dignity for the development and change of society and the vital value of women in society". She also emphasized that a society can only truly attain freedom and develop through the liberation and development of women and wrote her thoughts on this subject in her diaries. Gazi Mustafa Kemal believed that women should be included in social and political life and have equal rights to establish full and true democracy. Mustafa Kemal also thought that in a country where the women's revolution could not be realized and the equality of women and men could not be achieved, real democracy could not be established even if political parties and elections were held.

5. Women's Rights and Development in The World

With the Renaissance and Reform movements that started in Europe and influenced the world and the French Revolution (1789) that took place later, the spread of ideas in the artistic, scientific

⁵⁴ Bernard Caporal, mentioned book, p.55.

⁵⁵ Emel Doğramacı, mentioned book, p.24-28.

⁵⁶ Bernard Caporal, mentioned book, p.59-60.

⁵⁷ Serpil Çakır, Osmanlı Kadın Hareketi, Metis Yayınları, İstanbul, 2013, p.59.

⁵⁸ Serpil Bulut, "Türkçülerin Gözünden Osmanlıda Kadın Meselesi ve Orta Asya Referansı", Tarihin Peşinde- Uluslararası Tarih ve Sosyal Araştırmalar Journal, Sayı 10, Yıl 5, 2013, p.313-314.

⁵⁹ Hürol Erbay, "Tarihsel Süreçte Dünyada ve Türk Toplumunda Kadın Algısı ve Haklarının Gelişimi Üzerine Bir Değerlendirme", Ege Sosyal Bilimler Journal, 2(1), 2019, p.14.

⁶⁰ Sinan Meydan, 1923 Kuruluş Ayarlarına Dönmek, İnkılap Publishing House, İstanbul, 2017, p.409-413.

and intellectual fields that developed and settled over time, and especially with the effect of industrialization, physical muscle power began to fall into the background, and women's skills, mental power and education began to come to the fore. Although women also wanted to benefit from the rights such as freedom, equality and fraternity demanded during the French Revolution, these demands were not realized in a short time despite the support they gave to the revolution. In France, Olympe de Gouges (1748-1793) published the Declaration on the Rights of Women and Women Citizens in 1791, which is considered one of the fundamental works of feminism. ⁶¹ The British writer and women's rights advocate Mary Wollstonecraft (1759-1797), who was influenced by this, wrote In Defense of Women's Rights. Thus, women's interest in their civil rights began to grow rapidly throughout Europe, primarily in England and France. ⁶² Until the beginning of the XIXth century in Europe, women, who were not even considered citizens in some countries and who did not have the same inheritance and property rights as men, struggled long and hard in their efforts to get rid of all kinds of violence and in their search for rights. These struggles of women have developed in different forms and directions according to the social needs and conditions of each country. ⁶³

The main development that had the most impact on the agenda of women's rights was the development of the Industrial Revolution (XVIII. century) after the American and French revolutions and its spread all over the world, especially in Europe. With the impact of these developments in the world and the need for a new and qualified labor force arising from the Industrial Revolution, women were granted the right to vote for the first time in the context of political equality in 1868 in the State of Wyoming in the United States of America. This state was followed by New Zealand in 1893 and Australia in 1902.⁶⁴ Australia and the Americas led Europe and Asia in this regard. In Eurasia, women were first granted political rights in Finland in 1906, at the very beginning of the twentieth century. This country was followed by others over time.⁶⁵

The necessity to replace the manpower lost on the fronts of long-lasting wars such as World War I (1914-1918) and World War II (1939-1945), which were fought with a destructive, imperialist and colonialist approach between major world and regional powers, and to meet the demand arising from vital economic and security needs has been another important fundamental development that positively affected the development of women's rights. Although some states have recognized social and political rights for women as a result of this necessity or as a result of the work done by the United Nations, there are also states that have not taken sufficient steps in this regard in time and have not made the desired progress. ⁶⁶

At the Second International Socialist Women's Conference held in Denmark on August 26/27, 1910, German Clara Zetkin proposed that March 8 be commemorated as International Women's Day in memory of all women workers who had previously died due to poor and unsafe working

⁶¹ Hürol Erbay, mentioned article, p.7-8.

⁶² Grolier International Americana Encyclopedia, Medya Holding, İstanbul, 1993, p.8.

⁶³ Serpil Bulut, mentioned article, p.313-314.

⁶⁴ Sibel Duroğlu, Türkiye'de İlk Kadın Milletvekilleri, Ankara University Institute of Social Sciences, Unpublished Master's Thesis, Ankara, 2007, p.49.

⁶⁵ Hürol Erbay, mentioned article, p.8.

⁶⁶ Hürol Erbay, mentioned article, p.8.

conditions and to prevent poor working conditions, and this proposal was unanimously accepted. March 8 has been celebrated under different names in many countries since then.⁶⁷

6. Women's Rights and Development Process in The Republican Era:

In the first years of the Republic, the right to education was expanded with the Law on Unified Education (1924). With the Turkish Civil Code No. 743 dated 17.02.1926 and numbered 743, which was quoted from the Swiss Civil Code, which was considered the newest Civil Code in Europe at the time, the monogamy of men was finally ensured. Women's rights arising from marriage, divorce and custody rights were guaranteed. Article 88 of this Law stipulates that, except in exceptional circumstances, a man cannot marry until he reaches the age of eighteen and a woman reaches the age of seventeen. In the preamble of the new Turkish Civil Code, which replaced the Mecel, which had been in force for some time in the Ottoman Empire and later in the states that separated from it, and which is a fundamental law on women's rights, and in the speeches made in the Grand National Assembly of Turkey on the day of its enactment, it was stated that "The Turkish nation will have closed the doors of the thirteen centuries (...) that had shut it in and entered the modern civilization that brings life and productivity...".⁶⁸

Important amendments were made to the Constitution in 1928 to consolidate women's rights. Women were granted the right to vote and be elected in municipal elections in 1930, ahead of many advanced and developed countries of the world, particularly France, Italy and Switzerland. In 1930, maternity leave for working women was regulated. In 1933, with the new Village Law, the right to be a Mukhtar and to be elected to the Council of Elders was recognized. In 1934, the right to elect a Member of Parliament was granted to those who turned 22 and the right to be elected as a Member of Parliament to those who turned 30. In the General Election held on 08.02.1935 as an indicator of political equality and being a modern state, 17 women deputies were elected from the Republican People's Party for the first time in Turkey.⁶⁹

During the 1935 elections, the issue of women and politics and the right to vote and be elected constituted the main agenda of the elections for the first time. During this election period, a common understanding on rights was achieved in the press, a significant number of women deputies were elected as a result of social development and important gains were achieved on behalf of women. In the 1936 Midterm Elections, Hatice Özgener was elected as an MP (Member of Parliament) from Cankırı province. With this deputy, a total of 18 women deputies served for the first time in the Vth Term of the Grand National Assembly of Turkey. The 4.5% rate of women deputies in the Parliament of this period could not be reached until the XXI century.⁷⁰

The Labor Law regulated women's working life in 1936. In 1937, the International Labor Organization (ILO) Convention prohibiting women from working underground in heavy and dangerous work was adopted. In the first period of the Republic, the provision of modern rights

⁶⁷ www.un.org. Journée internationale des femmes, http://www.un.org/fr/events/womensday/history.shtml, (2022, 03 08).

⁶⁸ TBMM, Journal of Minutes, Period: 21, Volume: 76, https://www.tbmm.gov.tr/tutanak/donem21/yil4/bas/b024m.htm, (2001, 11 22). ⁶⁹ Hürol Erbay, mentioned article, p.16.

⁷⁰ Ayşegül Yaraman, Türkiye'de Kadınların Siyasal Temsili Dişiliksiz Siyaset, Bağlam Publications, İstanbul, 2015, p.231-240.

to women and the transition to a secular legal system were important steps towards full democracy.⁷¹

The Turkish Civil Code No. 743 was rewritten to make its language more comprehensible and for other reasons of social change. With some amendments, it was enacted in the Turkish Grand National Assembly on 22.11.2001 as the Turkish Civil Code No. 4721 and entered into force as of 01.01.2002. With Article 186/II of this Law, the provision that the husband is the head of the union, which is considered one of the most important articles of inequality between women and men, was abolished and the provision that the spouses manage the union together was introduced. In addition, the requirement of the husband's permission (Article 192) was abolished for women to acquire a job and profession. Women also gained some rights such as the right to use their maiden name (Art. 187). With the influence of women's movements and social change during the period when the new Turkish Civil Code was enacted, regulations based on the equality of spouses were made.⁷²

Article 202 and the following articles of the Fourth Chapter of the Turkish Civil Code on Family Law state that while under the previous Code, the legal regime of separation of property between spouses was the legal regime, under the new Code, the regime of participation in acquired property between spouses has been accepted as the main regime. With this Law, the spouses are also given the opportunity to choose the property regime. An attempt has also been made to prevent the victimization of women who do most of the housework or provide professional assistance to their husbands when the marriage union is dissolved for any reason.⁷³ In the new Turkish Penal Code No. 2357, which entered into force in June 2005, some regulations concerning women were introduced. The most important of these regulations is the abolition of the distinction between women and girls. While in the old Penal Code, many crimes in which women were victimized were regulated as crimes against society, this understanding was abandoned with the new Turkish Penal Code and these crimes were included in the scope of crimes against the individual. The article of the previous Turkish Penal Code, which allowed for a reduction in "honor" killings, was removed from the scope of the law in 2000. In the new Turkish Penal Code, killing "for the motive of honor" is regulated among the qualified forms of the crime of intentional killing, and its perpetrators are sentenced to aggravated life imprisonment, which is the most severe penalty stipulated in the law. Crimes such as marital rape and sexual harassment at the workplace, which were not regulated under the former Turkish Penal Code, have also been regulated for the first time under the Turkish Penal Code No. 5237. The crime of deflowering with the promise of marriage was abolished in the Turkish Penal Code.⁷⁴

Despite all efforts and regulations, gender discrimination and violence against women, which closely and deeply affect the perception of women and women's rights, have not been stopped. Women have been subjected to violence in various forms, regardless of country, age, education level, income level, whether single, married, childless or a mother. Regardless of civilization and

72 Murat Doğan, "Türk Medeni Kanunu'nun Evliliğin Genel Hükümleri Bakımında Getirdiği Yenilikler", Ankara University Law Faculty Journal, 52(4), 2003.

⁷¹ Hürol Erbay, mentioned article, p.17.

⁷³ Erkan, Vehbi Umut, & Merhacı, Selin Özden, Türk Medeni Kanunu ve İlgili Kanunlar, Savaş Publishing House, Ankara, 2015, p.111-156.

⁷⁴ Hüseyin Günay, "6284 Sayılı Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanun ve Yargı Uygulamaları", Aile ve Sosyal Politikalar Bakanlığı Kadına Yönelik Şiddetle Mücadelede Kolluğun Rolü ve Önemi Konferansı, 21.11.2021, Jandarma Okullar Komutanlığı, Ankara, 2012, p.70-83.

society, many women in all societies have been subjected to violence by their husbands, fathers, brothers or other intimate partners.⁷⁵ According to the Global Gender Gap report (January 2022) conducted by the Word Economic Forum, Turkey ranks 124 out of 146 countries, which is far behind.⁷⁶

When some national and international reports and statistics on women's rights, discrimination and violence are examined,⁷⁷ it is seen that some men, who have learned masculinity as a symbol of authority and power due to gender perception, frequently use one or more of many types of violence such as physical, emotional, psychological, economic, stalking, prostitution without hesitation. Violence in general, and violence against women in particular, first and foremost causes suffering, loss of will to live, disappointments, insecurities and many physical and mental illnesses. As a result, women's rights as human beings, especially the fundamental right to life, are violated, and they are unable to carry out their private affairs and participate in social activities. Men who perpetrate violence against women have several negative characteristics, and the crimes they commit and the violence they perpetrate directly jeopardize women's health and right to life in many ways, as well as family and social health.⁷⁸

In 2023, 315 women were killed by men and 248 women were found dead in suspicious circumstances. Of the murdered women, 55 percent were shot with a firearm. Forty-one percent of women were murdered by their married men. In addition, it was stated that 30 women who were murdered by their husbands were in the process of divorce with the perpetrator. According to the available data, 155 of the 315 women killed this year were married and 72 were single. The marital status of 88 women could not be determined. 31% of the murdered women were stabbed to death with a cutting instrument, while 55% were shot with a firearm. 35% of the murdered women were young women between the ages of 19-35. Young women face death when they want to leave, when they want to work, when they want to make decisions about their lives. 39% of the young women killed were killed because they were making decisions about their lives.

With the Law No. 6284 on the Protection of the Family and Prevention of Violence against Women, which was unanimously adopted by the General Assembly of the Turkish Grand National Assembly and enacted on March 20, 2012, "Domestic violence, which constitutes a major obstacle to the achievement of equality between women and men, is prevented by punishing the perpetrator and protecting the victim, The introduction of legal safeguards to put an end to "many aspects of violence that seriously violate the human rights of women and girls", including sexual harassment, rape, forced marriage, murders committed in the name of so-called "honor", and many other forms of violence that seriously violate the human rights of women and girls, was welcomed by the Turkish public opinion.

Evaluation and Conclusion:

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⁷⁵ WEF, 2017, The Global Gender Gap Report, New York: World Economic Form, https://www3.weforum.org/docs/WEF_GGGR_2017.pdf

⁷⁶ WEF, 2022, Global Gender Gap Report, New York: World Economic Form, https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

⁷⁷ İrem Akduman, "Aile İçi Şiddet Bağlamında Takipçi Taciz", Suçun Önlenmesi Sempozyumu, 7-8.10.2011, Bursa Emniyet Müdürlüğü, Bursa, 2011, p.162-167.

⁷⁸ Hürol Erbay, mentioned article, p.10.

⁷⁹ kadincinayetlerinidurduracagiz.net, 2023 Yıllık Veri Raporu, Kadın Cinayetlerini Durduracağız Platformu, https://kadincinayetlerinidurduracagiz.net/veriler/3088/2023-yillik-veri-raporu, (2024, 01 08).

Since ancient times, there has been a division of labor between men and women for the continuation of life, as in all other living things. The man represented power and protection, while the woman represented fertility and the continuation of the generation. Over time, when the man began to dominate nature and all living things with the effect of power, he usurped the acquired rights of women and took control and made himself superior. However, life is not a model designed to be sustained by the existence of only one sex. Women and men are a whole that complement each other, without one the other is incomplete and loses its function.

Over time, the understanding that sees women as weak and in need of protection has taken advantage of this situation and found a place for itself in various tribes and beliefs, women have been enslaved by taking away their freedom, used as a means of pleasure and entertainment, and their existence and value have been ignored. Although women tried to find a place for themselves under the rule of men, they could not reach their freedom and rights that were taken away from them by force. She has lived her life squeezed between the dilemma of giving birth to and caring for "children" with the understanding of "not taking the burden off her belly and the stick off her back" and "beatings" for those who disobey and rebel against the man.

Throughout history, women, who have been deprived of education and kept away from it, have taken their own fathers or husbands as role models for the boys they gave birth to, and have educated their children and tried to make them look like them. In this spiral, boys inherited the behavioral legacy of their fathers and girls inherited the behavioral legacy of their mothers, and turned it into a great injustice and lawlessness that has continued for centuries.

First, with the Renaissance movement initiated in Europe, women started to come out of their homes, to mix with the society, to break the chains that had bound them for hundreds of years, and they began to realize that "the rights they should have in the world they live in are actually much more". As she took part in education, art and science, she realized that the "power and protection" that had been imposed on her since primitive times, which she thought men provided for her, was of no value next to "reason and science" and that she did not need to be protected by any man.

Woman was now also an economic asset like man. The woman was the other half of the society and the most valuable one, who proved herself to be a worker, a teacher, a nurse, a doctor, a lawyer, an engineer, in short, who ended her dependence on men and fought for her independence. Because she was also a mother.

It would not be easy for men to change their understanding of domination over women as an earned right granted to them by centuries and beliefs, and to take away the power to rule women.

The only solution for both sexes is education. The first step of the solution will be for girls and boys to realize that life is a common value, that one cannot exist without the other and that none of them has superiority over the other, starting at an early age, first by mothers and fathers and then by educators. That is when the women who have been murdered so far, the girls who are forced to marry at a young age and the potential murderers who will murder our women in the future will slowly begin to disappear from the face of the earth.

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