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Islamic Law vs. Patriarchal Systems: A Woman's Perspective

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Islamic Law vs. Patriarchal Systems: A Woman’s Perspective

By Azizah Y. al-Hibri

It is best to understand Islam through its core concept, adalih (justice). This is a complex concept that thoroughly permeates the Islamic worldview. It is not reducible to retributive justice, because it is a higher-order concept whose backbone is the Mizaan (balance and harmony).

The Qur’an, the Word of God as revealed to Muhammad, relates that God created the whole universe in due measure, so the sun would not overtake the moon, nor the night overtake the day; and that God produced therein all kinds of things in due balance. This cosmological balance is an important dimension of God’s adalih, which ranges from the sublime to the most ordinary. For example, Muslims are ordered not to “transgress the Mizaan” even in their daily business lives because, like everything else God created, this daily life is also part of the broad scheme of divine adalih. Thus, a Muslim may not upset the Mizaan, even to serve her own interest. The Qur’an is very clear about this: “Be just, that is closer to piety.” (5:8)

Adalih rests on a system of basic equality of all humans regardless of gender, ethnicity, or skin color. According to the Qur’an, God gave dignity to the children of Adam and created his people into different nations, tribes, colors, tongues, and ethnicities so that they may “get to know each other.” (17:70, 49:13, 30:22) A Qur’anic passage and related ancient interpretations state that it is Satanic logic which is hierarchical and arrogant. No one is better than another, except due to piety. That is the ultimate standard in Islam, and piety requires adalih.

The Qur’an asserts that God created the male and the female from a single nafs (soul or spirit). This establishes the spiritual and ontological equality of the two genders. For this reason, a Muslim woman can be a spiritual or religious scholar. Indeed, Islamic history is replete with female scholars who had a male following. Some major Muslim male jurists studied under learned Muslim women, and some Muslim female scholars wrote treatises on Islamic law.

This historical fact reveals another aspect of Islamic law. The Qur’an repeated emphasizes the importance of education. For example, it states: “... say ‘O my God increase my knowledge,’” (20:114) and “God elevates by several degrees the ranks of those of you who believe and those who have knowledge.” (58:11) The Prophet has many statements on this matter, including one that puts forth seeking knowledge as the duty of every Muslim, male or female. For this reason, Muslims educated their daughters even in the days of the Prophet. In fact, it is reported that, although the Prophet himself was illiterate, his wife Hafsa took writing lessons.

The Islamic requirements regarding education always have been very well known and highly honored, as is reflected in many countries today. For example, Saudi Arabia has paid special attention to the education of girls and women, and in Abu Dhabi, the rate of women in graduate programs exceeds that of men. Yet, only recently, the Taliban denied women educational rights in clear violation of Islamic law. The roots of such a position lie not in religion but in culture and patriarchy.

For this reason, it is incorrect to call the Taliban “fundamentalists.” Those who return to the “fundamentals” of Islam will come out in favor of women’s rights, democracy (see below), and adalih. The use of the “fundamentalist” description in the United States (which has been copied abroad, even in Muslim countries) is not only erroneous but also detrimental to Islam itself and those reformers who rely on Islamic law to fight patriarchy.

The notion that extremist groups such as the Taliban follow the fundamentals of Islam has ultimately allowed those who have never studied Islam to damn the religion, its Prophet, and its followers as enemies of progress and peace. And those who are willing to make such judgments, based upon ignorance, are indirectly damning the Constitution of the United States, which guarantees freedom of conscience.

It should be noted that on the matter of religious tolerance, the Qur’an uses language quite similar to that used by Thomas Jefferson. The Qur’an states succinctly that “there is no compulsion in religion.” (2:256) Based on this verse and the Prophetic
example, many Muslim states in medieval times protected the rights of religious minorities within their borders when religious persecution was the norm elsewhere. This state of affairs began to deteriorate in the modern era, when colonial powers used missionaries to form beachheads into Muslim countries.

The Qur'an does recognize a difference in circumstances between male and female. In particular, the Qur'an acknowledges the travails of motherhood and provides women with affirmative protections not available to men, while at the same time availing them of all the opportunities available to men. For example, a Muslim woman is entitled to work, as stated in this passage: “Never will I suffer to be lost the work of any of you, whether male or female” (3:195) She has an independent financial thimmah (standing and/or conscience), and thus is entitled to keep her finances separate and independent from those of her husband. Yet even if wealthy, a Muslim woman can still expect full support by her husband. This requirement works to her advantage; she can save her money or use it to start her own business. Ideally, this state of affairs renders the Muslim woman less vulnerable to problems later in life. In real life, many Muslim women have turned over their financial independence to their husbands, and at least one American court regarded the financial independence of a Muslim woman from her husband under Islamic law as an indication in favor of concluding that no marriage existed. Incidentally, a Muslim woman traditionally does not change her name when she marries. Until recently, this was a source of puzzlement to people in other societies.

Despite all noises to the contrary made in some Muslim countries, the right of the Muslim woman to vote and generally participate in the political process was established in the Qur’an. (60:12) When pressed, men base their denial of such rights on cultural considerations. For example, when I was in Kuwait and asked some men about their opposition to giving women the right to vote, they justified that opposition by referring to their tribal custom. Yet, while the Qur’an welcomes cultural customs as part of its overall approach of celebrating diversity, it is a well-known tenet of Islamic jurisprudence that where the two conflict, the Qur’an supersedes culture. Given this fact, it is clear that such denial of the established political rights of Muslim women is based on the strength of the patriarchal systems in those countries, even in the face of clear instructions by the Qur’an.

These authoritarian systems, however, do not only infect women’s rights, but they infect men’s rights as well. In particular, the Qur’an requires two features in any Islamically acceptable state: shura (consultation) and bay‘ah (consent or election). In many countries, both requirements are ignored, and Muslim countries continue to lag behind others on issues of democracy. Unfortunately, U.S. foreign policy has supported and protected such regimes even in the face of bitter opposition by their own people.

In the arena of private life, the consent of a Muslim woman to her marriage is essential for the validity of the contract. Still, some young women are forced into early marriages by their parents. Classical jurisprudence permits a young woman to annul her marriage when she reaches maturity, even if she had agreed freely to it previously. Many Muslim women, however, either are not aware of this fact or are unable to face up to patriarchal pressure within the family.

According to major classical jurists, the Muslim wife is not required to do housework. Their rationale rests on the fact that marriage is a contract for companionship and not a service contract. This view rests on the Qur’anic explanation of spousal relations as based on mercy, affection, and tranquility: “And among His signs is this, that he created for you mates from among yourselves, that ye may dwell in tranquility with them. And He has put love and mercy between you. Verily in that are signs for those who reflect.” (30:21) Thus, the essence of the spousal relationship is emotional and spiritual comfort, not exchange of services. Yet, personal status codes (Islamic family law, which regulates matters of marriage, divorce, custody and other related matters) in many Muslim countries specify that one of a wife’s duties is to “manage” the household. For most women, this means a legal duty to do housework. Further inquiry reveals that the root of this requirement is again custom and not religion.

The Qur’an further enjoins the husband to live with his wife on

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many law firms have written part-
time policies, but less than 20 percent
of these policies are being used.
Ramseyer contends lawyers still fear
they will jeopardize their careers if
they work part time.

The Mom Factor
The fact that women have chil-
dren has an impact on how they are
treated in firms, Ramseyer says.
"Taking time out of one's career path
seems to have a detrimental effect on
the kind of assignments associates get,
how they fit into the firm, their
power, and the committee work," she
says. Having children affects "the
amount of time they have to be
around and bond with others, form
relationships, and do those sorts of
informal activities that help them get
to know and trust people.
"There is no question that [having
children] is going to affect women
more than men," Ramseyer adds.

Firms need to form committees to
evaluate whether the workload for
associates and the type of assignments
are equitable and provide them with
opportunities for growth, the former
task force chair says.

Nashra Rahman, facilitator for the
Glass Ceiling Task Force, says the
Washington state results reflect what
is happening nationally. For example,
of the equity partners in the law
firms surveyed, 18 percent were
women and 3 percent were minori-
ties. These figures are similar to
total associations, and they
will be equipped to
have to be addressed:' she notes.
"When you see numbers like that,
not staying to achieve partnership.
Associates are joining law firms but are
indicate once again that female asso-
ciation totals, Rahman says, and they
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ciates are joining law firms but are
not staying to achieve partnership.
"When you see numbers like that,
you have to wonder about some seri-
ous workplace structural issues that
have to be addressed," she notes.

Topics for the task force's resource
manual, scheduled for completion by
November, include
• alternative work schedules,
• family leave,
• sexual harassment,
• mentoring,
• business development,
• retention and advancement of
minority attorneys, and
• recruitment and retention.
Next year, the Women's Bar
Association of Massachusetts will
begin a study titled "Shattering the
Glass, Sealing the Leaks: Strategy for
Advancing Women in the Profession."
"Women have been in the
pipeline long enough to succeed,"
says Andrea Kramer, co-chair of the
Employment Issues Committee of the
Women's Bar Association of
Massachusetts. "But women are not
coming out the other end."
When the association did a study
concerning part-time work several
years ago, it learned anecdotally that
women were coming into the prac-
tice but leaving law firms when they
reached higher levels. The association
hopes the new study will educate
women about the glass ceiling prob-
lem, which many do not realize still
exists.
"Many young women in particu-
lar aren't really aware of what is going
on," Kramer says. "They succeeded in
college and law school, and they
haven't hit any overt discrimination.
They believe if they work hard, they
will succeed as the men do."
And when they don't, Kramer
says, "they can't explain it."
Study organizers hope to develop
strategies for women to effect
changes. Kramer notes the bar will
present women with small win solu-
tions—minor changes that can be
made by law firms to effect big
changes.
In addition, the association plans
to offer support for women seeking
changes. The goal is to provide
women with the tools to discuss
changes with decision makers. Thus
armed with information, Kramer says,
women will be able to identify what
needs to happen in their organiza-
tions, and they will be equipped to
work with decision makers to see that
it does happen.

Hope Viner Samborn is a lawyer and Chicago
area writer.

Islamic Law
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equitable terms or leave her in kind-
ness. Based on this Qur'anic verse,
Muslim countries such as Jordan and
Kuwait state in their personal status
laws that even verbal abuse is grounds
for divorce. Yet, domestic violence is
present among some Muslims, even
in the United States where U.S. law
also prohibits it. Again, the roots of
this problem lie in an existing patriar-
chal culture that runs contrary to the
law. The persistence of problems with
enforcement of domestic violence
laws in the United States and else-
where is also rooted in culture.
Islamic jurisprudence provides the
Muslim woman with the right to
divorce her husband at will, even
though divorce is frowned upon as a
very serious action. Yet, until recently,
personal status codes have not reflect-
ed this fact and now do so only in a
handful of countries, including Egypt
and Jordan. Elsewhere, patriarchal
interpretations give men an unfer-
tered right to divorce but deny
women the analogous right.
In light of these facts, it is im-
portant to educate not only non-
Muslims about Islam, but Muslims as
well, especially Muslim women. The
work necessary for such education is
taking place in various places today,
including the United States.
Support by women lawyers in
cases involving Islamic law in
American courts, such as in divorce
cases, is invaluable in helping establish
progressive precedents in the United
States that could be adopted else-
where. "KARAMAH: Muslim
Women Lawyers for Human Rights" is
attempting to compile a list of these
lawyers in each state. If you would
like to be part of this effort or to find
out more about the organization, go
to the website at www.karamah.org.

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