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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, *'adalah* (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 *Mizaaan* (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 *'adalah*, which ranges from the sublime to the most ordinary. For example, Muslims are ordered not to "transgress the *Mizaaan*" even in their daily business lives because, like everything else God created, this daily life is also part of the broad scheme of divine *'adalah*. Thus, a Muslim may not upset the *Mizaaan*, even to serve her own interest. The Qur'an is very clear about this: "Be just, that is closer to piety." (5:8)

'Adalah 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 *'adalah*.

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 repeatedly 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 *'adalah*. 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 for 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 children 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 minorities. These figures are similar to nation totals, Rahman says, and they indicate once again that female associates are joining law firms but are not staying to achieve partnership. "When you see numbers like that, you have to wonder about some serious 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 practice but leaving law firms when they reached higher levels. The association hopes the new study will educate women about the glass ceiling problem, which many do not realize still exists.

"Many young women in particular 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 solutions—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 organizations, and they will be equipped to work with decision makers to see that it does happen. ●

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equitable terms or leave her in kindness. 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 patriarchal culture that runs contrary to the law. The persistence of problems with enforcement of domestic violence laws in the United States and elsewhere 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 reflected this fact and now do so only in a handful of countries, including Egypt and Jordan. Elsewhere, patriarchal interpretations give men an unfettered right to divorce but deny women the analogous right.

In light of these facts, it is important 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 elsewhere. "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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