


**WOMEN'S RIGHTS IN ISLAM:  
GLOBAL CONVERSATIONS ON  
PRACTICE AND THEOLOGY**

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Halaman Francis



**WOMEN'S RIGHTS IN ISLAM:**  
GLOBAL CONVERSATIONS ON PRACTICE AND THEOLOGY

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## Foreword


Faith to Action Network is delighted to welcome and share this resource on Women's Rights in Islam. This resource is the result of collaboration between Faith to Action Network and two of its founding members, namely, Al-Azhar University in Egypt and Muhammadiyah in Indonesia. We are extremely grateful to these two distinguished institutions for their passionate commitment to the advancement of women's rights in Islam. We extend special gratitude to the authors for taking their time and expertise to share their theological and practical perspectives on the various topics which make up the chapters of this resource. We are grateful to them for their commitment to scholarship by revising their chapters in the quest for quality assurance. The publication covers topics on Gender Equality, Women's Participation in Private and Public Life, Sexual and Gender-Based Violence, Property Rights, Child Custody and

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Bodily Integrity. The six topics address some of the most critical aspects of rights as interpreted from within Islamic perspectives.


As Faith to Action Network, we publish this resource for all champions of women's rights - believers, scholars, religious leaders, activists and advocates, faith-inspired policy makers and politicians - who draw on their Muslim faith to promote and protect the rights of women. It responds to the growing global interest in the rights of women, with focus shifting to reflecting on the impact of faith communities to violations of women and child rights. This publication clearly brings out how Islam promotes the rights of women. Through an examination of lived practices and in-depth study of Islamic theology, this publication highlights the rights enjoyed by women in Islam. It goes a long way in shattering the perception that religions, including Islam, deny women their rights. Bringing together the views of Muslims from four continents, this volume shows Islam's commitment to women's rights across disparate cultural contexts.

It is important to note that cultural practices and societal norms can sometimes conflict with the true principles of Islam, leading to the mistreatment or denial of women's

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rights in certain contexts. These include in household settings, communities and in decision-making. The practical cases show how advocates and activists draw on their Muslim faith to address rights violations. However, it is crucial to distinguish between Islamic teachings and the cultural practices that may be prevalent in different regions. Therefore, it is vital to ensure that the true teachings of Islam are always upheld in order to ensure that women's rights are protected.

This volume is yet another milestone in meeting the objectives of Faith to Action Network as the only global interfaith network mobilizing faith actors to advance: family health and well-being; women's rights and gender justice; and, peaceful, just and inclusive communities. The chapters in this volume show that promoting and protecting women's rights and gender equality is a pre-requisite to achieve broader family health and well-being, and outlines how positive peace only exists holistically, when all human beings can flourish and fulfil their potential, free of violence at structural level, community level, in the household and intimate spheres. As the volume is the product of coming together through networking and collaboration, it highlights the value of

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working jointly to share knowledge and experience in the quest of common goals.


On behalf of Faith to Action Network, I warmly commend this state-of-the-art resource to all readers who take a keen interest in the role of religious traditions in promoting women's rights.

**Faith to Action Network**



## Executive Summary

This publication provides reflections on women's rights in Islam from diverse geographical locations and thematic concerns. The authors are drawn from different parts of the world and they seek to provide updated accounts of the contribution of Islam towards promoting women's rights. The publication is driven by the commitment towards challenging the misleading perception, mostly driven by the lack of appreciating the right teachings of Islam that the religion looks down upon women and encourages discrimination against them. Individuals and representatives of distinguished theological institutions from various parts of the world have come together to provide reflections on the situation on the ground in relation to the role of Islam and the status of women. In turn, theologians have offered enlightening interpretations of Islam's teachings on the rights of women. On the other hand, practitioners have shared their lived experiences as they implement various programmatic interventions to respond to various violations of

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women rights within communities. This synthesis between practice and theology has ensured that the book achieves a high level of internal coherence and clarity. The reader benefits from the conversation and critique between practice and theology in relation to women's rights in Islam. Contributors to the volume have reflected on some of the most contentious issues regarding women's issues in Islam. Those covered in this book are: Advancing Gender Equality; Promoting Women's Participation in Private, Public and Political Life; Preventing Violence against Women (Sexual and Gender-based Violence and Domestic Violence); Advancing Women's Property Rights; Promoting the Right to Custody of Children and Promoting Women's Right to Bodily Integrity. Through a careful analysis of these themes, the contributors have shown how Islam is well-equipped to promote women's rights. They highlight how some of the problematic interpretations of the sacred text have been used to justify aberrations, while also showcasing some highly successful interventions. Overall, this book is a valuable resource for use by practitioners in the field, theological institutions, believers, scholars, religious leaders, activists and advocates, faith-inspired policy-makers and politicians who draw on their Muslim faith to promote and protect the rights of women.



## Table of Content

Acknowledgements	
Foreword	
Executive Summary	
Table of Content	
Section A-1 <b>Advancing Gender Equality: Practice</b>	<b>1</b>
1. Social Engaging #ImamsForShe Champions to Catalyze Sustainable Social and Cultural Change towards Fully Achieving Women's and Girls' Rights in Muslim Communities <i>Ani Zonneveld</i>	3
2. Countering the Backlash: Advancing Gender Equality through Faith Values: Reflections from a practitioner's front	11

<i>Sandra Iman Pertek</i>	
Section A-2 <b>Advancing Gender Equality: Theology</b>	19
3. Equality between Men and Women <i>Ibrahim el Hod Hod and Gamal Serour</i>	21
4. The Concept of Gender in Islam <i>Alimatul Qibtiyah</i>	27
Section B-1 <b>Promoting Women's Participation in Private, Public, and Political Life: Practice</b>	37
5. Promoting Women's Participation in Public, Private, and Political Life in Nigeria <i>Azizat O. Amoloye-Adebayo</i>	39
6. Promoting Women's Participation in Private, Public and Political Life: The Case of Fatima Zahra Women's Organisation in Zimbabwe <i>Lawrence Kudakwashe Tsuro</i>	47
Section B-2 <b>Promoting Women's Participation in Private, Public, and Political Life: Theology</b>	55
7. Women and Leadership in Domestic, Public and Political Domains: Equals Before God and	57

Humankind <i>Siti Syamsiyatun</i>	
8. Participation of Women in Public and Political Life <i>Abdallah el Nagar and Gamal Serour</i>	65
Section C-1 <b>Preventing Violence Against Women: Sexual, Gender-Based, and Domestic Violence: Practice</b>	71
9. Ending sexual and Gender-Based Violence in Ghana: Muslim Family Counseling Services' Lessons <i>Mohammed Bun Bida</i>	73
10. Sexual and Gender-Based Violence in the Context of Women's Rights in Islam: The Faith-based experiences of the Organisation Cadre des Religieux pour la Santé et le Développement (CRSD), Sénégal <i>Rukiya Muhammad Bakari and Saliou Mbacke</i>	85
11. The Impact of Violence Against Women (VAW) on Maternal and Child Health <i>Andari Wuri Astuti</i>	95
Section C-2 <b>Preventing Violence Against Women: Sexual,</b>	109

<b>Gender-Based, and Domestic Violence: Theology</b>	
12. Islam's Position on Violence against Women <i>Hamid Abou Talib &amp; Gamal Serour</i>	111
13. Violence against Women in Islam <i>Tuti Alawiyah</i>	119
Section D-1 <b>Advancing Women's Property Rights: Practice</b>	127
14. A Case for Realization of the Property Rights of Muslim Widows at Succession in Uganda <i>Umar Nyanzi</i>	129
15. Women's Property Ownership from Islamic Perspectives: The Case of North Eastern Kenya <i>Mohamed Hassanow Ali and Ibrahim Mohamed Elmi</i>	137
Section D-2 <b>Advancing Women's Property Rights: Theology</b>	147
16. Islamic View of Property Rights for Women <i>Ai Fatimah Nur Fuad</i>	149
17. Women's Property Rights in Islam <i>Abdallah el Nagar &amp; Gamal Serour</i>	157
Section E-1	165

<b>Promoting the Right to Custody of Children: Practice</b>	
18. Custody rights in the Palestinian Sharia Courts between legal pluralism and the best interest of children <i>Somoud al-Damiri</i>	167
19. Child Custody in an Islamic Perspective: The Case of South Sudan <i>Refat Juma</i>	179
Section E-2 <b>Promoting the Right to Custody of Children: Theology</b>	187
20. The Right to Custody <i>Hamid Abou Taleb &amp; Gamal Serour</i>	189
21. Islamic Perspective on Parenting Justice <i>Lailatis Syarifah</i>	197
Section F-1 <b>Promoting Women's Rights to Bodily Integrity: Practice</b>	205
22. Promoting Women's Right to Bodily Integrity <i>Rosaline Gollo Galgalu Guyo</i>	207
23. Feminist Theology in Bosnia and	213

Herzegovina: Trauma healing of Wartime Rape Women <i>Zilka Spahić Šiljak</i>	
Section F-2 <b>Promoting Women's Rights to Bodily Integrity: Theology</b>	221
24. Respect for the Female Body: Covering the Awrah (intimate parts) in Islam <i>Sukendar</i>	223
25. A Woman's Right to Her Physical Integrity <i>Ibrahim El Hod Hod &amp; Gamal Serour</i>	231
<b>Conclusion</b>	237
The Contributors	241



Section A-1

**ADVANCING GENDER EQUALITY**  
**PRACTICE**





# 1

Social Engaging  
**#ImamsForShe Champions**  
to Catalyze Sustainable Social and Cultural  
Change towards Fully Achieving Women's  
and Girls' Rights in Muslim Communities

*Ani Zonneveld*



In Burundi, 48.5% of women and young girls experience gender-based violence despite the codification of anti GBV laws in 2016, and more broadly violations to their economic, social, and individual rights, including education, formal employment, and bodily and reproductive autonomy.<sup>1</sup> Within the Muslim Swahili societies, the school dropout rate was at 92.5% largely due to early child marriage, and Islam is weaponized for the oppression and violence against women, to falsely justify rights abuses. These include the denial of economic rights, forced marriages, domestic

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<sup>1</sup> UN Women Global Database - Burundi:

<https://evaw-global-database.unwomen.org/en/countries/africa/burundi#1>

violence, and marital rape, which are promoted by some religious leaders as a man's right over his wife.<sup>2</sup>

Founded in 2007, Muslims for Progressive Values' (MPV) mission is to embody and be an effective voice of the traditional Qur'anic ideals of human dignity, egalitarianism, compassion, and social justice. Muslims for Progressive Values promotes these values through its network of chapters and affiliates at the grassroots level, and by advocacy at the United Nations where it holds consultative status with the Economic and Social Council (ECOSOC).<sup>3</sup> Our #ImamsForShe programme focuses on building the capacity of its implementing partners to subvert right-violating narratives and manifestations of religion and culture. By engaging our partners in educational exercises, sensitization training, and cultural/arts-based programming, we have successfully cultivated partnerships with 541 imams and two Grand Muftis across networks in Burundi, DRC, Rwanda, and Uganda in the six years of implementation.<sup>4</sup>

Muslims for Progressive Values' implementing partner in Burundi is the Alliance des Imams du Corridor Nord pour le Développement Humanitaire (AICNDH), where they address these rights violations through teachings of the Qur'an that mandate equality between genders, and that are rights affirming of women and girls. These teachings are in stark contrast to the dominant narratives of Islam in Burundi.

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<sup>2</sup> Comparative Evaluation Results of Muslim Boys and Girls Schooling Rate: <https://bit.ly/3Q6iasx>

<sup>3</sup> MPV #ImamsForShe: <https://www.mpvusa.org/imamsforshe-overview>

<sup>4</sup> #ImamsForShe 5 Year Report: <https://bit.ly/3v0agBb>



Our #ImamsForShe programme engages a network of inclusive, women's rights-affirming Muslim faith leaders, community leaders, and organizers (both men and women), collectively called #ImamsForShe Champions, helping them achieve transformational social, cultural, and religious change in discourse and practice. To create an ecosystem that is conducive to a sustainable change, the programme employs both top-down and bottom-up approaches. The top-down approach relies on weekly sermons on women and girls' rights, critical analysis training sessions with religious leaders, imams, youth, and with young women who learn about human rights in Qur'anic scripture and as international standards. Through #ImamsForShe weekly radio shows, the programme has reached 5.9 million listeners since it began airing in 2017. The implementation of the programme is limited to the small towns and villages where the stakeholders operate from, and have concentrated in the Northern provinces where there is a Muslim majority and where imams have strong personal relationships with their congregants.

The bottom-up approach includes building women's entrepreneurial and business skills with seed funding provided in a co-op form.<sup>5</sup> An inclusive-Islam curriculum for children developed in partnership with our imams has also been adopted by the Champions in 68 madrassas, reaching 9,880 children and giving imams the tools and insights they need to teach human rights values to children in a child-centered methodology.<sup>6</sup> The curriculum is grounded in critical thinking exercises in lieu of corporal punishment and conditioning associated with madrassas. Our #ImamsForShe network in Burundi

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<sup>5</sup> #ImamsForShe: Economic Independence - Burundi: <https://youtu.be/5IwhyIPdido>

<sup>6</sup> Burundi Curriculum Report: <https://bit.ly/3dmuxHD>

has grown to 340 and has inspired community activists to lead movements in the effort to mobilize against misogynistic and oppressive religious teachings. In fact, Burundians prefer to travel further distances to attend mosques led by #ImamsForShe imams, rather than neighborhood mosques led by radical imams.

When #ImamsForShe imams lead human rights training and capacity building sessions with Qur'anic scripture, it reinforces their advocacy efforts and undermines attempts at delegitimization. For example, our imams teach the alternative meaning of "*daraba*" which means "to walk away, or to separate", coupled with the rights of women in marriage, employment, and economic rights and independence.<sup>7</sup> Rights-affirming interpretations and advocacy are then supplemented with many verses from the Qur'an and examples of Prophet Muhammad's treatment of women, including nonviolence and respect for the rights of women and girls. The fulfillment of these rights is necessary for all women to exercise self-determination and live happy, genuine, and purposeful lives. This philosophy is not only at the core of the Maqasid al-Sharia, but also to the wellbeing of society and to sustainable development. Once women and girls understand that Islam gives them this right, they are empowered to take ownership of their lives as we have seen with 171 women who are now politically active and holding positions in various provinces we operate in, and hundreds of young women applying for scholarships from AICNDH in pursuit of higher education. Through our programming of weekly sermons, workshops, radio shows and curriculum, we have successfully

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<sup>7</sup> <https://www.quranoloneislam.org/4-34-beat-your-wife>

created an ecosystem conducive to advancing women's' and girls' rights in local communities.

Despite rooting our work in Islamic teachings, our imams still receive death threats from extremists, including other imams. Efforts are made to reconcile and engage radical imams, but despite these efforts many continue to undermine our work and mischaracterize the program. Accusations of apostasy and blasphemy are unjustly lobbied, and one of our partner imams was the victim of an attempted assassination. However, our movement has persevered simply because the societies in which we operate are benefitting from the uplifting and human rights affirming message of Islam, a source of inspiration and hope for a better future.



**Learnings:** Based on our experiences in working in multiple countries, these insights are not just relevant to Burundi but to all Muslim societies:

1. It was most effective to work with imams as our partners with their own mosques and community base in a limited geographical area. This enabled us to measure the impact of our work effectively.
2. #ImamsForShe Champions are popular and well respected because of the work they do for the community, and in one case, our imam won a parliamentary seat in his district by 72%.
3. Imams did not have the tools to teach gender equality in their madrassas until we developed an Inclusive Islam Curriculum rooted in Human Rights for their use.
4. Imams are not trained to teach children in a child-centric methodology and parents were not aware there is a non-violent way of teaching Islam.
5. Through interfaith activities we learned that non-Muslims who feared the radicalized and intolerant messaging of Islam now see Islam in a different light.



## 2

### **Countering the Backlash:** Advancing Gender Equality through Faith Values: Reflections from a practitioner's front

*Sandra Iman Pertek*



It has been more than a decade since I started working on gender sensitivity in humanitarian and international development organisations. In my early career, as a social development practitioner with gender specialisation, working with Muslim humanitarian agencies and communities across Africa, the Middle

East, Asia and Europe, I aspired to promote gender justice drawing on faith values. I promptly realised faith values were an important concern for many women I met and a powerful protective resource in promoting gender equality, but the same values could also be misused to create a backlash against gender equality. During my journey as a gender specialist and consultant in various organisations, including inter-governmental and grassroots initiatives, I came across two major challenges across place and time: gender backlash and prejudice against feminism, which I discuss herein along the potential solutions.

Promoting gender equality has become one of the cross-cutting issues in international development to end poverty since the 1980s/1990s. One of the key strategies was *gender mainstreaming* which integrated female and male perspectives and gender socio-economic differences into international organisations. Although overall gender mainstreaming has failed on a large scale and barely reached Muslim organisations, when I entered the aid sector, I thought a faith-sensitive gender mainstreaming strategy would be a viable option for organisations guided by the Muslim faith values, if they were to support women and men fairly in their emergency and anti-poverty programmes. I was aware that the concept of social justice and excellence underpins the ethos of various Muslim groups, but I insisted it could not be achieved without a gender-sensitive perspective. For me, gender mainstreaming and faith values were integral and mutually supportive. Thus, in my role as a Senior Policy Advisor on Gender in the leading world's largest Muslim humanitarian agency, being responsible for developing its first Gender Justice Policy, my

intuition was to build on the lens of faith to promote gender justice in international aid programmes. It soon became clear to me that there was no stronger mechanism to justify why gender equality must be promoted in the way faith-inspired humanitarian and development programmes were delivered than faith values. In my experience, e.g. in the global consultative process on gender policy which I run for a Muslim international non-governmental organisation (INGO), faith values spoke to people and united various points of view around the fundamentals of Islam – i.e. to preserve the human dignity of all humans (Qur'an 17:70), whether male and female, and to stand firmly for justice. It is indeed Chapter 4, titled 'women', *al-nisa*, verse 135, that is one of the most frequently cited Qur'anic verses calling against oppression.

*"O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor" (Qur'an 4:135).*

Paradoxically, gender injustice and discrimination remain major concerns in various Muslim countries. With over half of Islamic religious sources narrated by women (most by Aisha, wife of Prophet Muhammad PBUH), women's authority and rights, e.g. to education, remain undermined and contested across patriarchal societies. Many voices of both women and men manifest backlash against gender equality. Such backlash is often driven by misunderstanding the terminology of gender and equality as a Western invention associated with feminist notions and often taken as a threat to the family. In different communities I worked, terminologies such as justice and equity appear to be better received. Yet, Muslim activists drew on Islam as a liberating

movement for all these concepts – equality, equity and justice, long before feminism started. Some claim Islam and feminism are not mutually exclusive (Carland, 2017). Yet, Muslim activists are shamed and silenced, often labelled as feminists even though their motivations are faith-driven; they pursue their faith ideals of gender justice, beyond any feminist convictions. While standing up for gender justice on behalf of women communities worldwide, Muslim activists' spiritual commitments and pathways to enact God's qualities, such as equality, justice and equity, are questioned. They confront blockages, are scapegoated and stigmatised by local communities for threatening social order and demanding a share of power, challenging the existing power holders.

Against the odds and bias, faith-inspired advocates on the grassroots, regional and international levels continue their struggles using wide-ranging resources from the Islamic traditions to progress a Muslim case for gender equality. In my work, for example, I view the concept of gender equality as part of God's perfect design, a state of the Universe essential for restoring balance and peace in social relations. Lessons from the Universe's creation – where God created everything in pairs – mean that women and men are integral and equal elements of the Universe. One could not exist without the other, indicating the equal value and importance of every human being. The Qur'an's Chapter 4 about women starts from emphasising the equality of the souls among women and men.

*“O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women.” (Qur'an 4:1)*

Equality does not imply sameness, but access to equal opportunities and rights. We are all different in our diversity. Muslim scholars rather unequivocally agree - women and men are equal in front of God; people will not be judged based on their gender roles but on piety and good deeds. Also, as a gender practitioner, I use the Qur'anic principles of Justice (Al-Adl), which are yet to be implemented by humanity. While the divine measures do not rank one gender above another, humans tend to value people's actions differently based on their gender, falling short of embodying all-encompassing justice.

*"People, We created you all from a single man and a single woman, and made you into races and tribes so that you should recognise one another. In God's eyes, the most honoured of you are the ones most mindful of Him; God is all knowing, all aware." (Qur'an 49:13)*

Sadly, biological differences in many communities remain an excuse for valuing men and women differently from each other, causing a range of inequalities. Despite the integrity of the soul and validity of our actions, it is useful to consider - would any other socially-constructed measure matter for people of faith more than what matters to the divine? God is not prescriptive. People are given the freedom to choose what roles they wish to fulfil in their impermanent human experience.

Wide-ranging faith-based resources remain available and used by activists and practitioners to advance gender equality in the Muslim world. The scriptural equality of women and men can be used in gender justice campaigns to challenge misconstrued gendered socio-religious interpretations. A range of scriptural references can

support women's rights, including their right to work and attain education (Qur'an 96:1-5), own earnings and finance, manage inheritance (Qur'an 4:7), property and land rights (Qur'an 4:29), retain the family name and protect female new-borns. Also, female role models – Muslim women leaders – who contributed to society across Islamic civilisations can serve as the reference point for faith-based gender justice advocacy. In fact, the first person to come to Islam was a woman. Also, Prophet Muhammed's (PBUH) tradition is a potent resource, including the call to honour one's mother, promote fair treatment of women and preserve God-given women's rights, as urged in his last sermon.

As a way forward, new resources, terminologies, methodologies and tools to advance gender justice are needed to counter the conservative and far-right forces. Women and men reframing gender equality debates in Muslim communities should be supported to boost their confidence during their struggles. We must also improve our understanding of what Muslim women want through participatory research to capture their voices. Faith literacy and women's rights trainings are needed to help more women, with varying literacy levels, learn about and claim their rights.

Finally, promoting gender equality and gender lens in our work means working with men to address their specific needs. For example, interventions to help men in crises are needed, such as in forced displacement settings to support them to regain their resilience and purpose, as loving fathers, husbands and contributors to their communities. Also, programmes to work with perpetrators through faith values are needed. Further debate on women's rights

in Islam between scholars and practitioners must continue to overcome backlash and create an enabling environment to build equitable communities.

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Section A-2

**ADVANCING GENDER EQUALITY**  
**THEOLOGY**





# 3

## Equality between Men and Women

*Ibrahim el Hod Hod & Gamal Serour*



Islam observes in its legislation, rulings, commands and prohibitions, equality between men and women, taking into account the differences of each. This is in order to achieve happiness in their situation and their destiny, in achieving equality and justice between them, in a way that allows each of them equal opportunities on the basis of what God Almighty has given each of them.

Islam honours the human race in its two forms without distinguishing between male or female:

*And We bestowed dignity on the children of 'Ādam and provided them with rides on the land and in the sea, and provided them with a variety of good things and made them much superior to many of those whom We have created.<sup>8</sup>*

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<sup>8</sup> Suratul Isra Verse 70

Islam emphasizes this principle in many verses and hadiths of the Prophet (SAW), where the verses of the Noble Qur'an indicated that there is no preference in humanity between men and women:

*O men, fear your Lord who created you from a single soul, and from it created its match, and spread many men and women from the two. Fear Allah in whose name you ask each other (for your rights), and fear (the violation of the rights of) the womb-relations. Surely, Allah is watchful over you.<sup>9</sup>*

The Almighty declared that the principle of comparison is on basis righteous deeds and piety; God Almighty said:

*O mankind, We have created you from a male and a female, and made you into races and tribes, so that you may identify one another. Surely the noblest of you, in Allah's sight, is the one who is most pious of you. Surely Allah is All-Knowing, All-Aware.<sup>10</sup>*

And just as the Qur'an emphasized the principle of equality, the Sunnah also emphasized it:

*(Indeed, women are sisters to men),<sup>11</sup> meaning: they are peers and they are equal in rights and duties.*

### **Equal rights and duties:**

Men and women are equal in terms of legal duties and obligations, and there is no difference between them in terms of reward and punishment for obedience and disobedience. Almighty said:

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<sup>9</sup> Suratul Nisaa Verse 1

<sup>10</sup> Suratul Hujirat Verse 13

<sup>11</sup> Musnad Ahmed, Musnad Aisha bint Siqqid 16195 No 43/265

*So, their Lord answered their prayer: "I do not allow the labour of any worker from among you, male or female, to go to waste. You are similar to one another. So, those who emigrated, and were expelled from their homes, and were tortured in My way, and fought, and were killed, I shall certainly write off their evil deeds, and shall certainly admit them into gardens beneath which rivers flow, as a reward from Allah. It is Allah with Whom lies the beauty of the reward."<sup>12</sup>*

Almighty said:

*Whoever, male or female, does good deeds and is a believer, then such people shall enter Paradise, and they shall not be wronged in the least.<sup>13</sup>*

Also, a woman is as responsible as a man for the saying of the Most High:

*The believers, male and female, are friends to each other. They bid virtue and forbid vice and establish Salāh and pay Zakāh and obey Allah and His Messenger. Those are the ones whom Allah will bless with mercy. Surely, Allah is Powerful, Wise.<sup>14</sup>*

And it came in the hadith on the authority of Abdullah bin Omar - may God be pleased with them both - that: He heard the Messenger of God (peace be upon him) say:

*"Each of you is a shepherd and is responsible for his flock. . . »<sup>15</sup>*

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<sup>12</sup> Suratul Al Imran Verse 195

<sup>13</sup> Suratul Nisaa verse 124

<sup>14</sup> Suratul Tawba verse 71

<sup>15</sup> Agreed upon, Sahih Al-Bukhari, Book on Borrowing, Paying Debts, Stone and Bankruptcy, Chapter: The servant is a shepherd in his master's money, and does not work without his permission, 3/120 No. (2409) and the wording is for him, Sahih Muslim, Book: Emirate, Chapter of the Virtue of the Just Imam, and Punishment The unjust, and the urge to be kind to the parish, and the prohibition of introducing hardship to them, 3/1459 No. (1829).



Islam also emphasized the equality between men and women to acquire property and owning it:

*And do not covet that by which Allah has made some of you excel others; for the men there is a share of what they have earned, and for the women there is a share of what they have earned; and ask Allah of His Virtue. Surely, Allah is All-Knowing<sup>16</sup>*

Islam provided for the rights of women and men in inheritance:

*For men there is a share in what the parents and the nearest of kin have left. And for women there is a share in what the parents and the nearest of kin have left, be it small or large-a determined share.<sup>17</sup>*

In addition, the right of a woman is equal to the right of a man to seek knowledge. The Qur'anic verses and hadiths that call for seeking and obtaining knowledge in general include both men and women to an equal degree, indicating that women have the same right as men. He said (peace be upon him):

*"Seeking knowledge is an obligation upon every Muslim."<sup>18</sup>*

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<sup>16</sup> Suratul Nisaa verse 32

<sup>17</sup> Suratul Nisaa verse 7

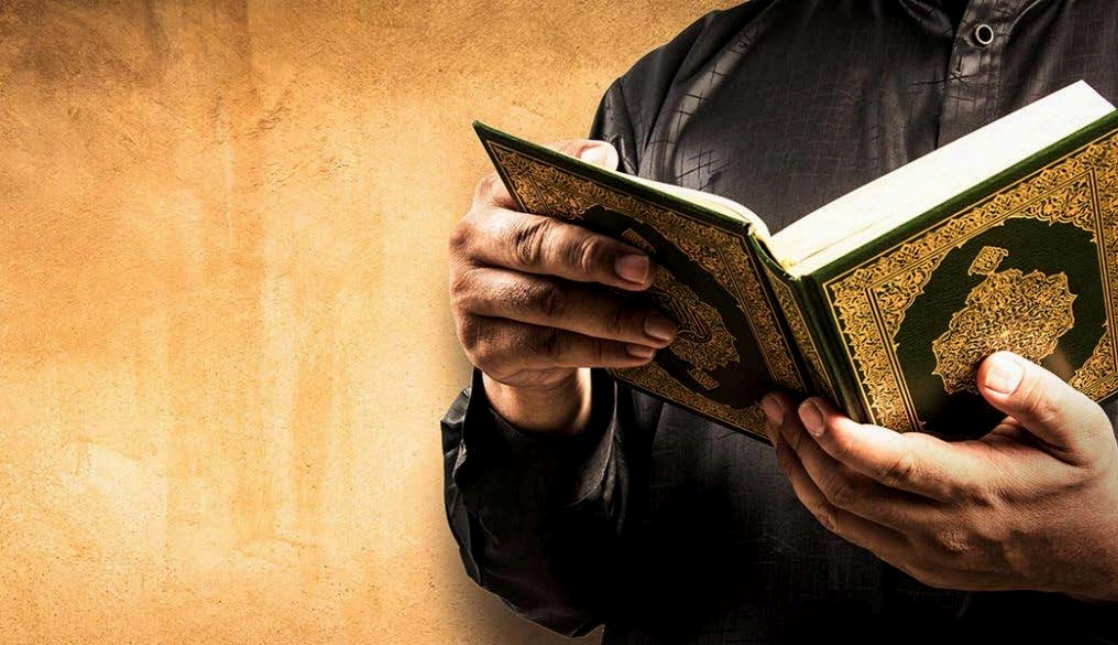
<sup>18</sup> Musnad Abi Ya'ala 4/96 No 4035



# 4

## The Concept of Gender in Islam

*Alimatul Qibtiyah*



Gender injustice experienced by women in society, whether in the form of subordination, violence, marginalization, negative labelling and excessive burdening, is still common in society. During the COVID-19 pandemic, women experienced almost four times the domestic and caregiving burden in Indonesia. Violence experienced by women occurs everywhere in the world. Many women experience potential inhibitions in almost all aspects of life. In some cases, many men also experience psychological pressure, because they are not free to express their sadness and fear. There are also many demands as the main breadwinner that make men experience a crisis of masculinity. Apart from misunderstanding the concept of sex and gender and the influence of patriarchal culture, problems of gender inequality, both experienced by women and men, also occur

because of misogynistic and non-progressive religious interpretations.

The words Sex (natural) and Gender (construction) are often interchangeably and incorrectly understood in society. Sex is the difference between men and women and their reproductive functions which is natural, non-interchangeable, and valid throughout the ages. On the other hand, gender is the difference between men and women that comes as a construction of society, is not natural, can be exchanged and carried out according to propriety, agreement and also the context that exists in the family and society. All activities carried out with reproductive organs are natural. However, if activities are not carried out with reproductive organs, then it means gender is the factor at play. For example, feeding and educating children, as well as doing housework, is not women's nature, because it is not done utilizing certain reproductive organs; both men and women are capable of doing it. Being able to give birth and being able to breastfeed is natural for women, but how many children to have, when and in what way to give birth, is a negotiation process, so it is not natural.

Misogynistic and textual interpretations of religion often do not study the causes of the revelation of the Quran and the history of how a hadith appears, and also do not pay attention to the relationship with other normative foundations, and ignore language analysis. This interpretation often has an impact on vulnerability, which positions women second after men. Following this mode of interpretation, women do not have the autonomy to do activities outside the house, and there is absolute obedience of the wife to

her husband. Research by Rifka Annisa, one of the women's crisis centers in Indonesia, in collaboration with UGM, found that 75% of *marital rapes* that occur in families are caused by men feeling entitled because he is the head of the family. Among the normative foundations that are often read as-is, without looking at the context is: 1) the Quran Surah An-Nisa' verse 34 which says *arrijalu qawwamuna 'alan nisa'* (men are the protectors and maintainers of women) , 2) QS Al-Ahzab verse 33 which says *waqorna fii buyuutikunna* (and settle in your homes), 3) the hadith which says that if it is allowed for creatures to prostrate to other creatures, then I order the wife to prostrate to her husband (HR Abu Daud no. 2140, Tirmidhi no. 1159, Ibn Majah no. 1852 and Ahmad 4: 381), 4) The wife must have permission from her husband when doing sunnah fasting (HR Bukhari no. 5195 and Muslim no. 1026).



Islam strongly encourages women to carry out the natural process of menstruation, pregnancy, childbirth, postpartum, breastfeeding, and pre-menopause well. In the Quran Surah Al-Baqarah [2]: 233, it is stated that the task of reproduction is heavy and tiring so help is needed to alleviate it, either by other family members or their partners, or by state regulations. Even though women are naturally able to carry out these tasks, the implementation of these tasks can be discussed. There are ways to reduce pain during menstruation and childbirth. Families are strongly encouraged to discuss what contraceptive method will be used, how many children will be planned based on the women's health condition, the family's financial ability, the development of women's potential, and also the activities of other family members.

The basic value in discussing gender issues is that Islam is the religion of monotheism (tawhid) which upholds justice and benefit. Tawhid in the sense that only Allah has the right to be worshipped, not a wife to serve her husband or vice versa, while justice in Islam is to act fair to all creatures, including men and women, and prioritizes the benefit of the ummah (the faithful). Islam is rahmatal lil'alamin or mercy for the whole world (surah al-Anbiya' verse 107). The hadith narrated by Imam Muslim also confirms that he was sent to be a mercy, not a curser.

*Narrated from Abu Hurairah RA. He said, to the Messenger of Allah it was said, "Pray for the evil of the polytheists!" He replied, "I was not sent to be a curser, I was sent only to be a mercy." (HR Muslim)*

The general principles in discussing male and female deeds are human dignity, equality in the relationship, and the utilization of the

potential of both men and women. Islam as a religion of mercy from the perspective of gender justice is based on several normative foundations, including:

1. Men and women are both perfect creatures (At-Tin [95]: 4), created from the same substance (An-Nisa ' [4]: 1),
2. Men and women are equally obliged to be caliphs on earth (Al-Baqarah [2]: 30),
3. Men and women alike must do good deeds in the world (al-Nahl [16]: 97),
4. Men and women alike have the potential to make an achievement (an-Nisa [4]:124), get the same measure of temptation from Satan while in Heaven (Al-A'raf [7] 20),
5. Men and women are equally responsible for all their actions (Al-Maidah [5]: 38).

A person's quality is not based on gender, national origin, descent, completeness of limbs, and appearance, but is determined by piety (Al-Hujurat [49]: 13), which is reflected by his or her morals to God, oneself, others, and other creatures. His or her character towards God is shown in perfect servitude to Him. Therefore, if there are people who serve fellow human beings, such as wives to their husbands or vice versa, the poor to the rich, the disabled to the non-disabled, then that is actually idolatry (feminist tawhid).

In history, The prophet PBUH made many fundamental changes in the lives of women. He forbade women to be buried alive, prohibited them from becoming inheritance, prohibited them from becoming sureties of debts, prohibited using them as prostitutes, and guaranteed their rights as human beings just like men. He

exemplified the monogamous life for 25 years in a polygamous society, he sewed his own clothes, and also he did not forbid Khadija from doing her business. One day Umar ibn Khattab said that:

*At first, we didn't consider women (honorable and important). When Islam came and God mentioned them, we just realized that women also have autonomous rights which we can no longer intervene.*



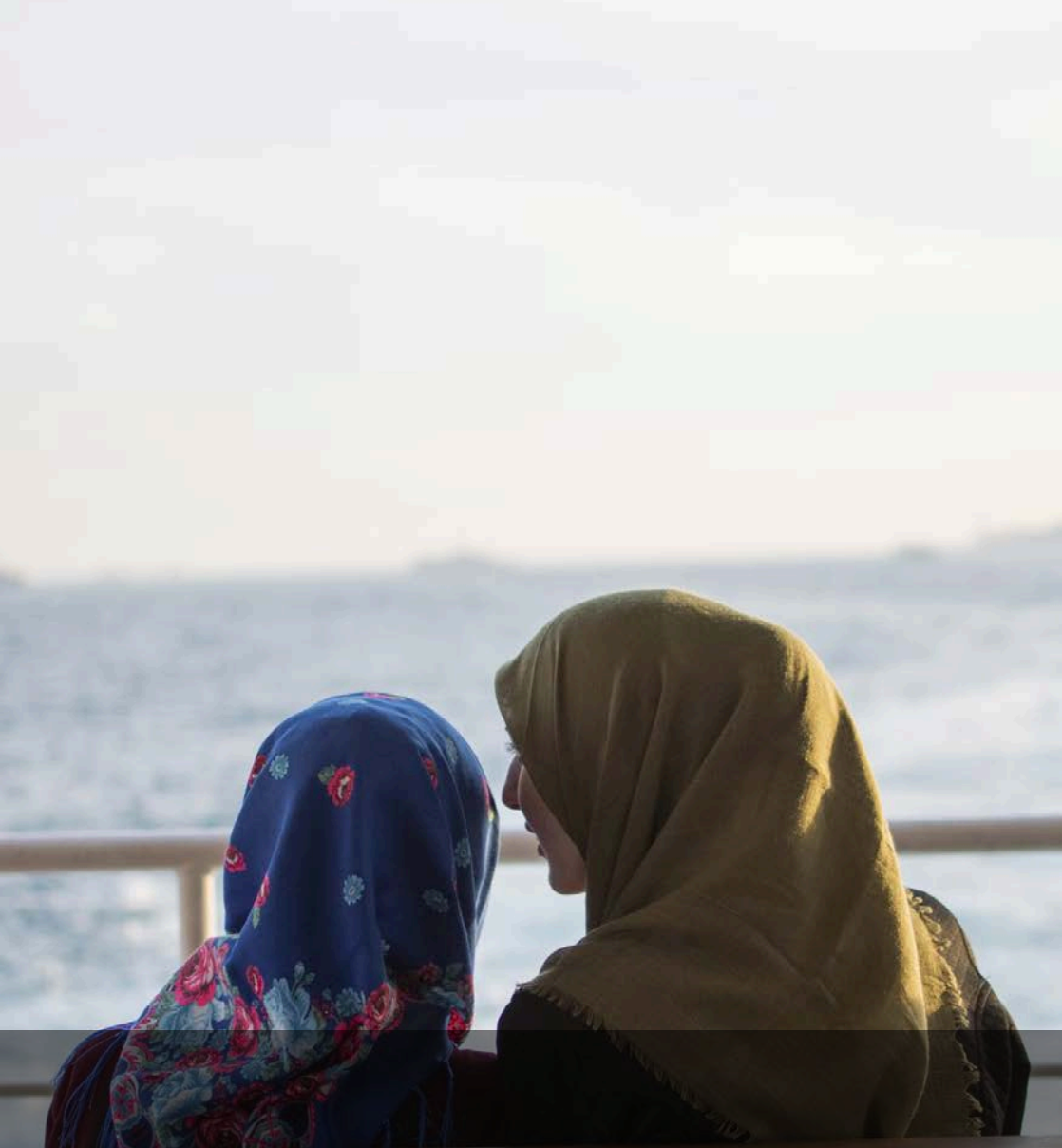
In the study of several normative foundations that are often understood textually, some commentators explain that *qawwam* in QS An-Nisa verse 34 means companion. In addition, Allah uses the word *rijal* (men) instead of *dzakar* (penis) in the verse, where *rijal* is a gender role or social formation, while *dzakar* emphasizes natural biological roles (Nasarudin Umar, 1999). Related to the hadith of the wife's obedience to her husband; "If the Prophet was given the authority to command someone to prostrate to another, the Prophet would command a wife to prostrate to her husband," hadith experts found in their study that, there are 14 hadith related to this issue, 8 are with hasan status (somewhat believed because it is only narrated by one person) and 6 with weak status (doubtful). One of the hadiths narrated by Imam Abu Dawud is *dhaif* because there are two narrators (Husayn ibn 'Abdurrahman and Shuraik ibn 'Andillah ibn Abi Shuraik) who received negative criticism (Nurun Najwah, 2004). While for the hadith related to fasting permission from a husband to a wife, hadith expert, Wawan Gunawan (2000), concluded that the hadith is authentic, but the hadith is understood in the context (*asbabul wurud*) mentioned in Imam Abu Dawud's matan that this is aimed at newly married people who still have a strong sexual life but do not know and understand each other well. This hadith is motivated by the case of the family of Shafwan ibn Al-mu'attal. This friend of the Prophet was still young, often rude to his wife, and lacked religious observance. It was proven that he was always late for the Fajr prayer. Shafwan's wife would have slept while her husband could not accompany her because of his habit of sleeping past midnight. Meanwhile, during the day the wife was "too" diligent in doing sunnah fasting. The Prophet's prohibition against Shafwan's wife was a way to cool her husband's temper,

who would always beat her whenever she was determined to fast. In other words, the Prophet's prohibition was a way to protect the wife from his violent attacks. Thus, the Prophet's prohibition was not intended to discriminate and hinder women's autonomy, but on the contrary it was to provide protection for her and to ensure the achievement of the purpose of her marriage. If this is the case, theologically there is no prohibition for a woman to engage in intensified worship, especially sunnah fasting, as long as her activities do not make her experience violence and do not hinder the achievement of the marriage goals desired by Muslim families. A husband's permission mentioned in the verse must be understood to appease the husband's "anger". In the situation where between husband and wife *mu'asyarah bil ma'ruf* (taking good care of their partner) has been fostered so they know each other's habits, permission is no longer needed.

In addition to the reality that many Muslim men tend to be misogynistic, at this time there are also progressive groups who voice gender justice based on Islamic teachings. Since the 1990s the Muslim feminist movement supported by progressive intellectuals as well as the international and national legislations, such as the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), has strengthened. More than 27% of Muslim feminists agree that women have the right to be leaders, including in prayer (Qibtiyah, 2019). They argue that the requirement for one to be an imam is the one with the best reading, without mentioning men or women. Apart from that, in political leadership or business, many women are also successful. This is in line with Allah's acknowledgment of the greatness of women's leadership in the

Quran which was given to Queen Bilqis as a queen who was able to lead the country *baladatun toyyibatun wa Rabbun ghofur* (a good land that God has forgiven). In Muhammadiyah, since 2010 there has been an automatic acknowledgment that the chairwoman of the Central Executive of Asiyiyah (women's organization of Muhammadiyah) is one of the chairs of the Muhammadiyah Central Executive.

Based on the Bayani Foundation in the Quran and hadith, as well as the testimony of Umar Ibn Khattab, accompanied by empirical data that strengthens the implementation of gender equality and justice above, it can be concluded that Islam theologically supports the values of gender equality. Theologically, men and women have the same position before God and are equally encouraged to maximize potential in all areas, but biologically men and women have different reproductive tasks. In the Quran, it is explained that the task of women's reproduction is very heavy and tiring, therefore assistance must be given to lighten it, and it is strongly encouraged to discuss carrying out these tasks so that their human rights are not neglected. If the ideas of gender equality are implemented properly, it is not only women who will be happy and their lives will be better, but all citizens of the nation, including men, will also benefit from it.



Section B-1

**PROMOTING WOMEN'S  
PARTICIPATION IN PRIVATE,  
PUBLIC, AND POLITICAL LIFE  
PRACTICE**





# 5

## Promoting Women's Participation in Public, Private, and Political Life in Nigeria

*Azizat O. Amoloye-Adebayo*



## **Introduction**

This chapter seeks to present my experience and efforts so far in advancing the participation of women and leadership in the private and public spheres in Nigeria, a country where Islam enjoys a significant presence and contributes to the status of women in society. It will argue that the societal intricacies and constructs of gender assigned/defined roles affect women's participation and leadership roles in both spheres. It will also examine how the Islamic textual position on gender relations is often in practical terms manipulated and exploited, in my view, to violate private and public rights of women. The chapter will conclude by documenting

strategies and recommendations for the actual realization of the theoretical assumptions of the law from a clear reading of the operative Islamic textual provisions.

### **Women and the Gendered Private, Public and Political Spaces in Nigeria**

As is generally known, gender refers to the socially constructed roles, attitudes, activities, and characteristics that any society perceives as being the proper representation of lived experiences for women on the one hand and men on the other hand. Evidence sourced from the most recent survey on gender relations by the Nigerian National Bureau of Statistics<sup>19</sup> on power and decision making in the private, public, and political spheres suggests that the protection of women's rights in this area is still far below the satisfactory levels. According to the report, the total projected population for 2021 was 211,493,324, with women constituting 49.99% (105,716, 452) while men constituted 50.01% (105, 776, 862). Despite this close demographic margin of both sexes, the total number of women aspirants to the highest political offices of the President and Vice President for the year 2019-2022 were 6 and 22 respectively for each office while that of men aspirants were 67 and 52 respectively for each office. For the gubernatorial offices for the 36 federation units of Nigeria as Governors and Deputy Governors, the women aspirants were 80 and 271 respectively for each office, compared to 984 and 789 male aspirants respectively for the same offices. In fact, in the recently conducted gubernatorial elections in Nigerian of 18 March 2023, initial reports were that history was

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<sup>19</sup> This is based on information contained in *Gender Statistical Quarterly Bulletin (Q1 2022)* available at [Reports | National Bureau of Statistics \(nigerianstat.gov.ng\)](https://reports1.nigerianstat.gov.ng/). Last accessed 3 April 2023.

going to be made in Nigeria with the emergence of the first female governor for the federating unit of Adamawa state in the northern region of Nigeria.<sup>20</sup> The election was, however, later declared as inconclusive<sup>21</sup> and the country awaited the pronouncement of the election tribunal.

As regards the senatorial position of the upper house of the Nigerian National Assembly as the law-making arm, there were 234 women aspirants compared to 1649 male aspirants. In fact, since the return to democratic rule in Nigeria in 1999, up to 2021, the percentage of women senators is 15.91% compared to a whopping 84.09% for men senators. All these figures and the disparate level between the sexes lead to the conclusion that there is gender imbalance against women's right to political participation and representation in the decision-making process in Nigeria. The report also contains some details on the disparity in representation of the sexes in the public professional sector. In the judicial sector, for example, statistics from the year 2020 demonstrate that there were 138 national judicial officers who are men, compared to 66 women judicial officers. The judicial officers included the Chief Justice of Nigeria, Justices of Supreme, President of Court of Appeal, Justices of Court of Appeal, President of National Industrial Court, Judges of National Industrial Court, Chief Judge of Federal High Court, Judges of Federal High Court, Chief Judges of State High Courts, Judges of High Courts, and the Chief

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<sup>20</sup> For media coverage and reports, see for example [Binani on her way to becoming Nigeria's first female governor-elect | Pulse Nigeria](#). Last accessed 3 April 2023.

<sup>21</sup> See media accounts in [Breaking: INEC declares Adamawa guber poll inconclusive - Vanguard News \(vanguardngr.com\)](#) Last accessed 3 April 2023.

Registrar of Supreme Court. To also illustrate with the representation of the sexes in the medical sector, the percentage of male doctors between 2018 and 2020 was consistently around 62-65%, compared to a percentage of 34-37% for women doctors. This fact is more disturbing if one considers the fact that the figures point to a representation of male doctors being twice the number of female doctors when it is the women that are most likely to visit health institutions on a higher frequency in relation to men. This is because of the added factor of reproductive health issues involving pre-natal, ante-natal and post-natal cares outside of the natural health challenges that both men and women face. In the public service and administration sector, again since the return to democratic rule in Nigeria in 1999 to 2021, there has never been a woman secretary for the federation. Additionally, only 13.73% of women have formed part of the federal cabinet as Ministers between 1999-2021, compared to 86.27% for men.

What is significant about the statistics cited above, as well as the level of disparity if the margin of the population projection between women and men is considered, is that there appears to be no basis for the varying levels of disparity in representation in terms of educational requirements and literacy levels for all the stated positions. The same report also noted that the literacy rate in English language as the Nigerian official language from data sourced between 2018/2019 was 78.3% for men and a very close 72.3% for women. In the same vein, the total enrolment of men for undergraduate studies in Nigerian universities was 438, 260 for men and 346, 999 for women in 2019.

## **Private, Public and Political Space: A Text-based Advocacy for Women's Rights**

During the COVID-19 pandemic, the need to contain the spread of the contagion forced government to institute lockdown and issue movement restriction orders. Thus, most works that traditionally occurred outside of the home (public) were carried out inside the home (private) regardless of the gender of the worker. This experience led me to observe that the dichotomy between the private and public professional space is false.<sup>22</sup> This is because the status of work and the modicum of respect with which it is viewed are largely determined by whether it occurred in the private space (at home, which was the case for several women) or outside of the home in the public space (typically populated mostly by men). The denigration of work in the private sphere is not only done by men, but even by some fellow women. They underestimate the value of work done by stay-at-home work; taking care of the home, with no holidays, time-offs, or weekends. Home work is often taken for granted, not remunerated, not considered valuable in terms of family income (like reducing cost for a cook, cleaner, carer, driver for school and shopping, etc.) and little or no consideration is given for the well-being of the woman concerned. Moreover, the fact that home work is usually regarded as the exclusive preserve of women alone through a one-sided interpretation of Q4:34 means that most women are unable to participate at optimal levels no matter how

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<sup>22</sup> The full details of my observations and advocacy for women's rights in relation to the false dichotomous definition of the professional space in Nigeria which partly informs my discussion in this section can be found at [COVID-19 Restrictions & \(Re\)Definition of Gender Roles in Nigeria \(africanwomeninlaw.com\)](https://africanwomeninlaw.com) last accessed 3 April 2023.

eminently qualified they might be to be in the public space, whether professional or political.

Interestingly, for varied reasons ranging from the need for additional income due to escalating costs of maintaining a family, to self-awareness, several women are required to combine work both in and outside of the home. However, while engaged in the public space for 'professional' jobs like men, considered their sole duty and not joint responsibility) to juggle the domestic chores as well. This double responsibility women bear (often alone) does not only come at great cost to their physical and mental health, but it must also necessarily reduce productivity in any public sphere resulting in poor representation of women even when they are overqualified. Again, the societally accepted denigration of the domestic chores as less important fosters a culture of passivity in most men who then consider it out of their sphere of concern because it occurs in the private space. Several Prophetic traditions exist to the contrary on this point (for instance, 'I urge you to treat women well' al-Bukhari, 331; Muslim, 1468). On the flip side, out of the need to satisfy societal expectations of self-worth, some women who already engage in a day's job worth in the private sphere feel compelled to seek vocations in the public sphere even where such is not necessarily required for survival. (Q4:34). The correct Islamic position in my view is that a woman's agency is important in the self-determination of how best to contribute her quota to societal development through her natural abilities. (Q2:226, Q2:187, Q30:21 etc.).

## **Challenges, Lessons, and Recommendations**

From the reflections so far, the disparate level of gender representation is clearly a challenge to the meaningful protection of women's rights in all spheres of human existence, be they public or private. The problem of societal role definitions in relation to gender is acknowledged as an inhibiting factor against women, particularly where roles that are culturally/customarily constructed are passed off as religious positions. This is certainly true in the Nigerian situation where Islamic law is a constitutionally recognized source of law. Thus, certain gender roles practiced by Muslims are erroneously understood and defended as 'Islamic,' even by some Muslim women. Another challenge is that several women have been socialized into the erroneous conception that religious interpretation and application should be the exclusive preserve of men. Thus, there appears to be a level of passivity in terms of religious awareness of textually sound positions on issues. For example, I am currently the only female member of my academic department. Yet, this is a highly strategic department, namely, the Department of Islamic law. I believe this erroneous perception is also a contributory factor. This reduces the opportunity of direct perception of textual positions and the second-hand level of knowledge must undoubtedly affect women's negotiating power in determining the future course of gender relations that are responsive to the clear textual assumptions. Consequently, I recommend that more women be involved in the study of Islamic law in order to promote greater consciousness of issues and facilitate more progressive interpretations.



# 6

## **Promoting Women's Participation in Private, Public and Political Life: The Case of Fatima Zahra Women's Organisation in Zimbabwe**

*Lawrence Kudakwashe Tsuro*



## Background

The ancient cultural norm associated with most women was anchored on maturing to be loyal and patronized wives, ready to bear children and provide care while offering all noble house obligations. Nonetheless, the emergence of great religions that include Christianity and Islam nourished pure divine practices portrayed by the prophets and their households. In Islam, Prophet of Islam Muhammad (SAW), his first wife Khadijah, his daughter Fatima and his granddaughter Zaynab led to the socio-economic evolution of gender roles of Muslim women while promoting their participation in private, public and political lives. These provide effective models for ensuring that women's many gifts and talents are fully utilized.

## **Setting the Context: A Historical Overview**

Issues associated with promoting Muslim women's rights through participation in private, public and political lives have been not only critical in theological studies, but also integral to socio-economic development in global circles. However, it would erroneous to assume that this concern is a contemporary one; women's active participation in the different spheres of life has been a major issue throughout the history of Islam.

However, the erosion of many cultures and religious inhuman practices has led to the suppression of Muslim women's participation in private, public and political life, as they are often victims of psychological demoralization. In many instances, faulty interpretations of the sacred texts and traditions have led to the marginalization of women in the different spheres of life. Cultural ideologies and patriarchal beliefs have been prioritized over religious teachings that promote women's full participation in social life. The prominent areas of social life that have been identified include: 1) Employment and economic activities, 2) Social activities like education and training, 3) Political participation.<sup>23</sup>

A historical reflection in the Islamic era, during the second Aqabah Allegiance "bay'at al-aqabah ath-thaniyah" provides illumination on the promotion of women's participation in the political arena through social cooperation. Two women under the names of UmmImarah and Asma were among a group of men who took an

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<sup>23</sup> M. Mahrizi, "Woman. Chapter 4. Woman's Cooperation in Social Life." <https://www.al-islam.org/woman-mahdi-mahrizi/chapter-4-womens-co-operation-social-life>

oath of allegiance to Prophet Muhammad (SAW). In support, the Holy Qur'an<sup>24</sup> also regards the act of commitment as the most salient manifestation of the political activity in every society, to be practiced by women.

The Holy Quran<sup>25</sup> has mentioned several ancient incidents in which it has acknowledged righteous practices by women in their private, public and political lives that include the righteous acts performed by the daughters of Prophet Shu'ayb (Jethro) on righteous socio-economic activities and the sovereign life of Queen Saba' (Queen Sheba) as cited in the Holy Quran.<sup>26</sup> She was recorded in

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<sup>24</sup> "O "Our" Prophet "Muhammad" when come unto thee believing women pledging that they will not aught with God, and will neither steal, nor commit adultery, nor kill their children, and they will utter not slander, nor utter any falsehood which they had forged themselves between their hands and their feet, and will not disobey them in what is fair, then accept thou their pledge, and ask forgiveness for them from God; Verily God is Oft- Forgiving, the Most Merciful." (Qur'an, 60:12).

<sup>25</sup> "O my Lord! Verily of what Thou hast sent down unto me of the good, I stand in need." Then came unto him one of the two women walking bashfully; Said she: "Verily my father calleth thee so that he may recompense thee for what thou hath watered for us. So when came he unto him and narrated unto him his story, said he "the old man": "Fear thou not, thou art "now" secure from the unjust people." Said one of the two women: "O my father! Employ him, verily the best of those who thou canst employ is the strong "man" the trusted "one". (Qur'an, 28:232).

<sup>26</sup> "Verily I found a woman ruling over them, and she hath been given plenty of everything, and she hath a throne magnificent." (Qur'an, 27:23).

"Said "the Queen of Shebah": "O ye chiefs! Verily, has been delivered unto me a letter honorable!" (Qur'an, 27:29). "Said she: "O ye chiefs! Advise me in "this" my affair; "ye know" that I decide not any affair but in your view." (Qur'an, 27:32).

"... Said "the Queen": "My Lord! Verily I have been unjust to myself, and I submit "along" with Solomon unto God, the Lord of the worlds." (Qur'an, 27:44).

the scriptures as person of great judgement and consultation and truth- seeking in regards to the response she gave to Prophet Suleiman (Solomon). It is such examples that have inspired women's organisations, such as Fatima Zahra in Zimbabwe, to working hard to promote Muslim women's participation in various sectors.



## **Fatima Zahra Women's Organisation:**

### **Promoting Women's Active Participation in Zimbabwe**

Muslim women are appropriating their heritage of actively participating in social life. One example is Fatima Zahra Women's Organization. Through the leadership of an aspiring firm woman, the founder and director Mrs. Mandireva Hajar Makwinja, the organisation has made remarkable efforts in unveiling the myths and problematic beliefs that clouded socio-economic development of Muslim women in Zimbabwe. Fatima Zahra (as) Women's Organization was formed in December 1993 and subsequently registered as social welfare and a non-governmental organization, in January 1996 by dedicated Muslim women in Zimbabwe. The organization derives its name and inspiration from Hazrat Fatima Zahra (AS), the Holy Prophet's (SAW) daughter, whose status according to Islamic traditions is the Mistress of women in paradise. The ultimate objective of the organization is to support and empower women, the youth and children, through advocacy and education.

The organization believes that faith plays a positive role in the process of human development as a constructive motivation for personal and social change, especially where the rights and status of women and girls are grossly violated. They aim to integrate a component of women's rights from a faith-sensitive perspective into their empowerment and capacity-building programmes. They gather important stakeholders such as religious leaders, since they are well-placed to increase the dissemination and provision of advocacy information and services related to women's empowerment.



### **Muslim Women's Empowerment in Zimbabwe**

In line with its mandate, Fatima Zahra Women's Organization, has been empowering women in the local communities with several sustainable income generating projects from 1996 till the time of writing. The focus of these women empowerment projects is to uplift the livelihoods of all women through their various talents and skills. Thus, the projects are of the hands on nature. These include agricultural projects (specifically horticulture and poultry), peanut butter production, education, and tailoring.

As an Islamic organization, the institute has an obligation upon its mandate of religious propagation, thus including women's religious

workshops, commemoration of auspicious days, annually in partnership with relevant stakeholders such as the Ministry of Women Affairs, Small and Medium Enterprises. The organization has received tremendous support and motivation within all Islamic forums and beyond. The organization intends to broaden the spheres of women empowerment through education as it has already begun an Education Scholarship Programme for all women and children as a sustainable plan for a great future for a better community. The organization plans to expand its work by partnering with relevant Ministries in an attempt to advocate for social, health and economic empowerment for women in the Islamic community. Drawing insights from the history of women's participation in Islam, the organization encourages adolescent girls, young women and women to step forward and taking up leadership within the faith and in the wider community. Collaborating with other stakeholders but steeped in the Muslim faith, Fatima Zahra has emerged as a key contributor to women's active participation in various sectors.

Fatima Zahra are recommending more intra-religious conventions, workshops and seminars at international level as they have found these to be excellent platforms for mutual learning and adopting new sustainable strategies for promoting Muslim women's participation in the different areas of life.



Section B-2

**PROMOTING WOMEN'S  
PARTICIPATION IN PRIVATE,  
PUBLIC, AND POLITICAL LIFE**  
**THEOLOGY**



Education  
Action  
Values



# 7

## Women and Leadership

in Domestic, Public and Political Domains:  
Equals Before God and Humankind

*Siti Syamsiyatun*



Across different historical epochs and to the present, we still find people who value women as substantially inferior to men, so the leadership roles, either in the households or in the public sphere, should not be given to women. The absence of women in decision-making and leadership in various fields often tend to make the resulting policies to be unfair (Amini 2018; Syamsiyatun 2007a). For instance, women cannot have rights and voice over their reproductive organs, are hindered from excelling in fields that are considered masculine, such as politics and sport. Why are there views that demean women? The results of the study found the reasons to include the dominance and hegemony of men in the process of interpretation, and the institutionalization of religious teachings in society (Ilyas et al. 2005; Barlas 2002). Progressive Muslims carry out *ijtihad* (earnest effort) and reinterpretation of literal expressions of the verses of the Quran and hadith to get the

message of moral values that Prophet Muhammad (SAW) aspired to realize (Qibtiyah 2019; Syamsiyatun 2007b). The result is a view and a value system that recognizes women's abilities and gives them significant space for participation in leadership in the household, public and political spheres, and is more in line with the morals prescribed by Islam.

### **Rights and Leadership in the Family**

A family built through marriage following religious values becomes a vehicle for the realization of life with husband and wife who adore and love each other, so that peace can be realized, as in QS ar-Rum [30]: 21, *"And among the signs (of His greatness) is that He created mates for you from yourselves, so that you may find tranquility in them, and He made between you love and affection. Verily, in that are indeed signs (of His greatness) for a people who think."* Equal family relations which based on inter-dependence are the basis for fostering quality future generations and a community of believers as stated in QS al-A'raf [7]: 172, QS ar-Rum [30]: 30, QS al-Furqan [25]: 74, QS al-Ahqaf [46]: 15.

The family of the Prophet Muhammad became an example in managing the household. They showed mutual respect, love, and help. In one hadith, the Prophet said: *"The most perfect believer in faith is the one with the best character, and the person with the best character among you is the one with the most virtuous character towards his wife"* (Narrated by Imam Tirmidhi). The Prophet Muhammad often involved his wife in decision-making, for example, the involvement of Khadija and Aisha in various important matters (Lailatul Fithriyah 2021; Abbott 2000). On a very important occasion, when the Prophet received the first revelation, he

consulted with his wife, Khadija, who strengthened the Prophet. He did not burden his wife by repairing his damaged robes or sandals himself and tried to keep her calm by choosing to fast when there was no food available at home rather than demanding.

In the contemporary era, the relationship between husband and wife can be manifested in the behaviour of 1) being faithful and firmly holding on to the purpose of marriage; 2) mutual honesty and trust; 3) supporting each other in fulfilling mutual needs; 4) consulting together in managing things between woman and man, including in decision-making (Pimpinan Pusat 'Aisyiyah 2016). Social research shows that families that are managed in the spirit of equality provide more happiness and resilience (Qibtiyah and Syamsiyatun 2018; Pimpinan Pusat 'Aisyiyah 2016). In situations where the husband cannot work for one reason or another, the wife who has had the opportunity to work can play a role as the breadwinner of the family. A husband who cares about child care and housework brings great happiness to his wife. Husbands and wives who help each other set a good example for their children to be helpful and respectful to one another.

### **Public Rights and Leadership**

The Muslim community believes that the creation of humans with the best forms of biological and spiritual structures contains a message about the potential possessed by humans, both men and women, QS al-Tin (95): 4 *"Indeed, We have created man in the best form/structure"*, see also QS al-Isra [17]: 70. These diverse human potential need to be recognized wisely (surah al-Hujurat [49]: 13) and actualized in order to carry out the mandate given by God as

*caliph* to do justice, *amar ma'ruf nahi munkar* (enforce what is right and forbid what is wrong), seek prosperity and sustainability of the earth. The mandate of this caliphate is for all humans, male and female, based on QS al-Baqarah [2]: 30, 143, QS Ali Imran [3]: 104, 110.

The task of prospering the earth can be achieved if the community, men and women educate citizens with skills and knowledge, QS al-Mujadilah [58]: 11, such as managing natural resources, eradicating crime, improving living standards, and helping those who are less empowered in society, QS al-Baqarah [2]: 177. QS al-Ma'un [107]: 1-7 describes some of the public problems such as the existence of people who are weak in society. In Islam, personal piety is always related to social or public piety which is shown by improving the quality of life together.

Islamic history narrates women's participation in creating social institutions and public education (Mernissi and Lakeland 2012; Lailatul Fithriyah 2021; 'Uwaidah, 1996). Currently, the leadership of advanced Islamic women in organizations can improve the quality of life of citizens, and support for orphans, the sick, and those who need help can be more effectively implemented (Siti Syamsiyatun 2010; Ro'fah 2003). See also (<https://www.aisyiyah.or.id/>). Public virtues based on ethical values that are based on *karomah insaniyah* (the nobility of human dignity) have an impact on physical and spiritual well-being. The fulfilment of the needs of human life, men and women, cannot only be aimed at the physical aspect but must also meet the spiritual needs.



## Political Rights and Leadership

Politics here is defined as an attempt to have the authority to influence and regulate people's lives. The Quran tells the story of the involvement of women in the political field, such as the mother and sister of Prophet Moses in QS Thaha [20]: 37-40, QS al-Qashash [28]: 7-13, daughter of the Prophet Shu'aib in QS al-Qashash [28]: 23-24, even those who reached the pinnacle of the country's political leadership as stated in the story of Queen Bilqis, in QS al-Naml [27]: 20-44. The Prophet's hadith states that the best of humans are those who benefit others the most (HR Ahmad), and another hadith narrated by Imam Muslim, from Abu Hurairah. From Abu Hurairah: *"Whoever frees a believer from a worldly difficulty, Allah will free him from a hardship on the day of judgment. Whoever makes it easy for people who are in trouble, then Allah will provide ease in this world and the hereafter."* Based on the verses and hadith above, it is clear that women's involvement in politics is to promote policies that improve society with high value in the eyes of religion.

In terms of the implementation of good social order, the upholding of justice is the main pillar. The Quran views justice as one of the peaks of virtue as in QS al-Maidah [5]: 8 *"Be fair! Because justice is closer to piety. And fear Allah! Verily Allah is Knowing of what you do."*

The enforcement of justice in Islam is comprehensive, including being fair to women. In an effort to enforce justice, human beings are asked to take *ihsan* (good) ways, by spreading kindness to family, relatives, and the ummah (faithful), without discriminating between men and women, and avoiding heinous acts, evil, and

hostility, as hinted at in QS al-Nahl [16]: 90 "*Verily Allah commands (you) to do justice and do good, to give to relatives, and Allah forbids from evil deeds, evil, and enmity. He teaches you so that you can learn.*"

Muslim women during the time of the Prophet and the Companions had played significant political roles. For example, the Prophet's wives and grandchildren became leaders and protectors of the community, and there were shahabiyah (female companions) who carried out their duties as market guards, also as recorders and custodians of the Quranic manuscripts, the most important document for Muslims. In the contemporary era, data shows that women are capable of carrying out political roles, including being regional heads, cabinet members, and even heads of state. Several countries with significant Muslim populations have had female ministers and heads of state, such as Indonesia, Bangladesh, Pakistan, and India. Research in several countries shows that the balance of men and women in political leadership has a positive impact on decision-making for the welfare of its citizens(Beckwith and Franceschet n.d.).



# 8

## Participation of Women in Public and Political Life

*Abdallah El Nagar & Gamal Serour*



Islamic Sharia has provided for the eligibility of women to participate in public and political life based on the principle of equality between men and women in rights and duties. The Holy Quran has affirmed this objective which enunciates the equality between men and women in working both public and private offices in light with Allah's word:

*The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakāh and obey Allah and His Messenger. Those - Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise<sup>27</sup>*

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<sup>27</sup> Suratul Tawba Verse 71

The noble verse indicates that men and women are equal in the performance of public and private work, and that each of them has the authority to enjoin good and forbid evil equally and to perform prayer, zakat and obedience to God and His Messenger.

The Islamic Sharia has also set standards for women's participation in public and political life, and whoever contemplates the legal evidence in the Qur'an and Sunnah will clearly realize that it does not differentiate between men and women in these rights; rather, it defines the criteria for assuming these jobs in an objective manner that is applied only to those who fulfill their conditions without specializing in gender, whether male or female, according to the types of knowledge and experience required by the work. This meaning can be understood from the words of God Almighty:

*One of the two women said, "Dear father, hire him; the best man you can hire is someone who is strong, trustworthy." <sup>28</sup>*

because this noble words refer to trust and experience, that is, knowledge and trust that requires not to neglect one of the duties of public and political office.

Allah said through the tongue of Yusuf:

*(Yusuf) said, 'Appoint me over the treasures (- granaries and stores) of the land, for I am a careful keeper and possessed of knowledge (of the Job). <sup>29</sup>*

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<sup>28</sup> Suratul Qasas Verse 26

<sup>29</sup> Suratul yusuf Verse 55

The meaning the faithful and perfect, the indication is general in all human beings without specification of gender. As indicated by the verse:

*Then their Lord responded to them, "I do not waste the deed of any doer among you, any male or female. The one of you is as the other (Literally: some of you from some others"<sup>30</sup>*

and says:"

*To whoever, male or female, does good deeds and has faith, We shall give a good life and reward them according to the best of their actions"<sup>31</sup>*

This is same meaning also of the hadith of the Prophet - may God's peace and blessings be upon him: (Women are the sisters of men)<sup>32</sup> The term brother or sister is the equal and equivalent in origin and the right that is decided for each person according to his conditions and the extent to which they are available to those who deserve him.

The Holy Qur'an and the Prophet's Sunnah have cited many successful women's experiences in the field of governance and politics, including the story of (Bilqis), the Queen of Sheba, whose experience in governance and leadership was mentioned in the Holy Qur'an, and that she laid the principles of politics and the system of governance that is a model to be emulated in the practice of contemporary democracy and the principles of The rational policy in

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<sup>30</sup> Suratul Al Imran Verse 195

<sup>31</sup> Suratul Nahl Verse 97

<sup>32</sup> Narrated by Abu Dawd in his Sunan hadith no 236, and Tirmisdhi in his Sunan hadith no. 113

the country's leadership, including what the Holy Qur'an narrated about it in establishing democracy and considering the opinion of the people in the Almighty's saying: authorities in the verse:

*She said: "O chiefs! Advise me in (this) case of mine. I decide no case till you are present with me."<sup>33</sup>*

The Holy Quran in her story alluded to the doctrine of separation of powers:

*(We Dulu force said the Ulu very fine and up to you so look at what Thamrin) (), and by told her what she said in response to a prophet of God - Solomon - in the verse: (said, O chiefs, I was to book Karim (29) It is from Solomon, and it is in the name of God, the Most Gracious, the Most Merciful (30) Do not be above me and come to me with Muslims) (31), and that*

She is the subject of a response to a situation that threatens her kingdom and calls on her to surrender to him without resistance, which is a clear example of the literature of political discourse, as her story indicates the wisdom of women's mind in balancing peace and wars, and the scourge of the latter on individuals and society, so she preferred peace over war, and decided to respond to The threat of gifting, as the Noble Qur'an said:

*(And indeed, I am sending them a gift, looking forward to what the messengers return) (), and the story in its entirety he found that women's leadership is a successful human political experience.*

This is so that society is not deprived of a constructive effort that it can provide for its country, and a good deed that can push its

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<sup>33</sup> Suratul Naml Verse 32

society towards progress, prosperity and happiness in this world and the hereafter.

And what came about the role of Umm Salamah (may God be pleased with her) in the Treaty of Hdaybiyah, where she referred to the Messenger, peace and blessings be upon him, of what ended the dispute between the Companions, as they followed him and then returned with him all to the heart of one man because of the correctness of her opinion and the correctness of her advice. It was narrated that Umm al-Shifa was involved in health care battles.

The woman also has the right to engage in trade, as was reported on the authority of the Mother of the Believers Khadija (may God be pleased with her), and she also has the right to participate in the scientific and defence fields and various aspects of human activity, such as practicing medicine, treating the sick, teaching, judging and other works that men do.



**Section C-1**

**PREVENTING VIOLENCE AGAINST WOMEN  
SEXUAL, GENDER-BASED, AND DOMESTIC VIOLENCE  
PRACTICE**





# 9

## **Ending sexual and Gender-Based Violence in Ghana: Muslim Family Counselling Services' Lessons**

*Mohammed Bun Bida*



## **Background**

This chapter looks at the work of the Muslim Family Counselling Services (MFCS) as per the findings of MFCS in ending sexual and gender-based violence in the context of Islam in Ghana.

Gender-based Violence (GBV) is defined as any harmful act done to a person because they are female or male. The acts of violence include, but are not limited to, sexual harassment, Female Genital Mutilation and Cutting (FGM/C), acid attacks and Forced Marriages. The types of violence may vary across cultures and regions and are often seen as taboo topics or culture sensitive matters that should not be discussed in public.

## Introduction

In 2007, the Ghanaian Parliament passed the long-awaited Domestic Violence Bill. The passing of the bill was an important step, but additional steps are needed to ensure both awareness and compliance. According to the statistics available at the Accra Regional Office of the Domestic Violence and Victims Support Unit (DOVVSU), as of August 2020, 31.9% of Ghanaian women have faced at least one form of domestic violence - physical, economic, psychological, social or sexual.

According to UN Women in Ghana Lifetime Physical and/or Sexual Intimate Partner Violence stood at 24 %, Physical and/or Sexual Intimate Partner Violence in the last 12 months is 19 %, Lifetime Non-Partner Sexual Violence is 4%, Child Marriage is 21% and Female Genital Mutilation/Cutting is 4%.<sup>34</sup>

There has been an alarming rise in violence against women and girls in Ghana since the COVID-19 pandemic started, as a result of lockdowns, social isolation measures and school closures. Muslim Family Counselling Services has been handling cases involving multiple forms of violence, including child abuse and exploitation, intimate partner violence, sexual abuse, intimate partner violence, emotional and economic abuse, femicide and assault by law enforcement agents. The MFCS offices in Kumasi and Zebilla recorded 7 intimate partner violence, 13 child abuses, 9 sexual abuses, 17 assaults by law enforcement agencies on street

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<sup>34</sup> See also,

<https://ghana.un.org/en/253847-unite-invest-prevent-violence-against-women-girls-ghana>

connected children and 19 partner assaults during the phase of the pandemic.

According to Ghana's National Population and Housing Census 2021 in terms of religions among the population of Ghana, 71% of Ghanians are Christian and 17% are Muslim, but the country is accepting of any and all faiths. Islam has been present in Ghana at least since the 14th century and today, there are more than three million Muslims living in the country... Zongos (Muslim Dominated areas) are wards of Muslim immigrants found across West Africa's tropical belt where Muslims from the Sahel have settled down in Ghana over the last generations. These immigrants are not only strangers to their surrounding Christian majorities but also to each other as they hail from different backgrounds and origins. Their shared religion provides them with a common ground on which to relate to one another, to intermarry, and to integrate into a Muslim community.

According to a 2012 report by Pew Research, 51% of Muslims in Ghana are followers of Sunni Islam, while approximately 16% belong to the Ahmadiyya movement and approximately 8% identify with Shia Islam.<sup>[4]</sup> The Maliki school of jurisprudence was the most common until Afa Ajura's reformist activities in the 1960s saw an overwhelming shift toward Hanbali doctrine. Sufism, once widespread, has waned considerably over the years; the Tijaniyah and the Qadiriyyah brotherhoods, however, are still represented among Ghana's traditionalist Muslims.



### Geographical distribution

According to the 2017 Census, Muslims constitute about 18 percent of the population of Ghana.

Region	Population (2017 census)	Percentage Muslims
Northern	2,479,461	80.0%
Upper West	702,110	40.1%
Upper East	1,046,545	45.1%
Brong-Ahafo	2,310,983	17.0%
Ashanti	4,780,380	20.2%
Greater Accra	4,010,054	15.9%
Western	2,376,021	9.4%
Central	2,201,863	8.7%
Eastern	2,633,154	6.7%
Volta	2,118,252	5.7%
Ghana	24,658,823	18%

## Women's Rights in Islam

The following are some verses supporting women's rights in Islam:

- The right to equal judgement (Worship with equal accountability to Men): Qur'an (V. 33:35)
- The right to education (or seek knowledge) The Prophet (peace be upon him) said, "Education is compulsory for every Muslim."
- The right to financial independence: Qur'an (V. 4:32)
- The right to freedom of belief: A woman is free to choose her own religion. The Qur'an states: "There is no compulsion in religion. Right has been made distinct from error." (2:256) and Qur'an 9:72
- The right to honour and kind treatment. As a mother: The Prophet (peace be upon him) was once asked, "*O Messenger of Allah, who among people is most deserving of my good treatment?*" He said, "Your mother." The man asked twice more, "*Then who?*" and was given the same response. Only until the fourth time did the Prophet respond, "Then your father." As a wife: The Prophet (peace be upon him) also encouraged men to treat their spouses in the best way, "The best of you are those who are best (in treatment) to their wives." As a daughter: The Prophet Muhammad (peace be upon him) said, "Whoever Allah has given two daughters and is kind towards them, they will be a reason for him entering Paradise."
- The right to choose a spouse: At the time of Prophet Muhammad (peace be upon him), a woman came to him and said, "*My father has married me to my cousin to raise his social standing and I was forced into it.*" The Prophet sent for the girl's father and then in his presence gave the girl the option of remaining married or nullifying the marriage. She responded, "*O Messenger*

*of Allah, I have accepted what my father did, but I wanted to show other women (that they could not be forced into a marriage).*

Despite all these verses of the Holy Quran promoting the women's rights, many Muslims in Ghana, especially in the northern part, continue to abuse women regardless of the Islamic teachings. Women continue to suffer abuses domestically due to limited knowledge of some Muslims on the teachings of Islam regarding the protection of women's rights and are confusing culture with religion.

Muslim Family Counselling Services is a not-for-profit organization established in 1990 under the office of the National Chief Imam of Ghana to provide information and services women/youth empowerment, health (Sexual and Reproductive Health), human rights, education, income generating activities and prevention within deprived communities in Ghana. MFCS is actively working in Great Accra, Ashanti, Upper East, Northern, Eastern, Oti and Bono East Regions of Ghana.

### **Objectives of MFCS on SGBV**

- To improve the capacity of local Faith and traditional leaders and community to prevent and respond to incidences of SGBV
- To improve the safety and care of vulnerable women and girls through SGBV risk mitigation and coordination with other actors including smaller organizations and government institutions
- To enhance the knowledge of women and girls of their rights as stated in the Qur'an/Other Scriptures and in Ghanaian Laws to change attitudes towards SGBV amongst men and boys

- To boost the understanding of women and girls towards their rights in order to make a change in attitudes towards SGBV through testimonies and advocacy by survivors of SGBV
- To improve prevention and responses to SGBV amongst community members and faith leaders.
- To enhance community systems to effectively respond to SGBV

### **Strategies of Muslim Family Counselling Services**

When dealing with the Islamic perspective on Sexual and Gender Based Violence or any topic, there should be a clear distinction between the normative teachings of Islam and the diverse cultural practices among Muslims, which may or may not be consistent with them. Ghana is a secular state with majority population being Christians, followed by Muslims and other faiths. Muslim Family Counselling Services knowing this uses a faith based approach having in mind the cultural believes of our target. We use largely scriptures from the Holy Qur'an and sometime compare the Qur'anic verses with Biblical verses to ensure community ownership and life enhancement. The majority of our activities are driven by community needs for services, so we do a lot of environmental scanning to know how to approach community challenges. We build on community opportunities to enhance lives through teachings of holy Qur'an and Hadith, for example, according to the Holy Qur'an, men and women have the same spiritual human nature:

*O mankind; Reverence your Guardian Lord Who created you from a single person created of like nature his mate and from them twain scattered (like seeds) countless men and women; reverence Allah through whom you demand your mutual (rights) and (reverence) the wombs (that bore you); for Allah ever watches over you. (Qur'an 4:1)*

We use this verse a lot to ensure no one is left behind in implementing our initiatives.

### **The Achievements of Muslim Family Counselling Services**

Specifically, on SGBV MFCS has achieved the following milestones: Muslim Family Counselling Services in 1992 in partnership with UNFPA when it was almost a taboo to discuss sexual and reproductive health including sexual and gender-based issues with Muslim community in Ghana trained 100 imams to talk about sexual and reproductive health in Mosques and communities. Muslim Family Counselling Services trained 75 faith-based community-based distributors for Family Planning commodities and to promote sexual and reproductive health and end sexual and gender-based violence.

Muslim Family Counselling Services has been advocating and promoting sexual and reproductive health since its establishment in 1990. MFCS has participated in key sexual and reproductive health and population related national and international conventions and programmes, including 1994 ICPD in Cairo and in 2019 at ICPD+25 in Nairobi. Muslim Family Counselling Services in 2011 took part in the famous Nairobi declaration which saw the formation of Faith to Action Network a global network of Multi-faith actors promoting Family Health and Well-being including promoting Sexual and Reproductive Health, Promoting Women's health and ending Sexual and Gender Based Violence.

In 2020:

- 150 faith and traditional leaders trained in advocacy and communications on promoting adolescent sexual and reproductive health rights (ASRHR) and ending SGBV 85% of faith leaders are actively provide education on ending violence against women in worship centres and other community events
- 50 men and boys trained as community supporters for ASRHR and ending SGBV these trained men continue their education with their peers and had formed community child/women protection communities to address SGBV
- 50 Survivors of SGBV trained and empowered as advocates to end sexual and gender based violence and domestic violence. Survivors of SGBV in Zebilla engage in advocacy to promote girls education to reduce child marriage through education
- 20 people with disabilities trained and empowered as community advocates to end SGBV among people with disabilities. People with disability (PWDs) educate their peers to report SGBV among people with disabilities
- 10 community child protection committees established to address SGBV at grassroots levels specifically to end FGM/C and forced marriages these committees are helping in prosecuting offenders of SGBV and ensuring justice for victims of SGBV in the upper east region of Ghana

### **Key lessons**

Using faith and traditional leaders at the frontline of addressing SGBV/DV has really worked well in achieving our set goals and interventions of promoting women's rights it has also ensured community ownership, participation and sustainability.

In some communities avoiding and lack of involving key community actors at all relevant levels of a project or a programme to end SGBV/DV has hinder the progress of some of MFCS initiatives and prevented achievement of MFCS set goals and objectives



## **Recommendations**

We recommend full engagement of faith and traditional leaders and community in addressing and promoting sexual and reproductive health. Faith and Traditional leaders are well placed to advocate and prevent sexual and gender-based violence at all levels.

We recommend multi stakeholder engagements to address SGBV through budget advocacy. State actors and institutions are under resourced so we recommend a strong advocacy to resource these institutions.

## **Funding is a major challenge.**

- We recommend that Faith to Action Network should initiate a rapid response grants for faith-based organization to address SGBV issues as they happen
- We recommend a Faith+SGBV grant scheme
- We recommend a scheme and fund for psychosocial counselling for victims of SGBV

## **Key References**

Ghana Statistical Service Population and Housing Census, Domestic and Victim Support Unit of Ghana Police Services Reports, UN Women report on Ghana, Pew Research and the Holy Quran



# 10

**Sexual and Gender-Based Violence in the  
Context of Women's Rights in Islam:  
The Faith-based experiences of the Organisation  
Cadre des Religieux pour la Santé et le  
Développement (CRSD), Sénégal**

*Rukiya Muhammad Bakari and Saliou Mbacke*



### General Introduction

According to scholarly work by Oseni et al; (2012)<sup>35</sup>, with its multi-dimensional character, violence against women is not only considered as a human rights violation but also an increasingly prominent public health issue. The available statistics are alarming, as the rate of violence against women is increasing by the day. According to a World Health Organization study, about 71% and 15% of women in Ethiopia and Japan respectively were physically and/or sexually assaulted by their intimate partner. It is more disturbing to note that in rural Bangladesh, 30% of the women reported their first sexual experience to be forced, i.e. rape. This universal phenomenon requires multidimensional responses from cultural, religious, political and legal sides. Mia (2015), further points out that

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<sup>35</sup> Zaleha Kamaruddin, Abdul Haseeb Ansari & Umar A. Oseni, "Equality Clause of Modern Constitutions, Women and Islamic Law", *Journal of Islamic Law Review*, vol. 8 No. 1 (2012), pp. 33-63.

while the prevalence of gender-based violence has increased exponentially in Muslim countries, such outward attitude does not necessarily represent the ideals of Islam on the treatment of women. Sieving through the Islamic ideals on the treatment of women and juxtaposing such values with modern practices will give a good understanding of the problem and provide a good basis for declaring a war against violence.<sup>36</sup>

This practice chapter sets out to shed light on the position of Islam on violence against women pertaining to domestic and sexual violations, i.e., reproductive and sexual health rights so as to alter the general misleading perceptions that Islam is supportive of any form of violence against women based on some patriarchal and literal interpretation of texts, but rather protects the dignity and life of women. Khan (2008) observes that, most Western and Muslim secular writings indicate that Quranic or Islamic laws are the main culprits behind all kinds of violence against women in the Muslim world. In reality, there cannot be found in any codified comprehensive normative legal system in Islam that could be held responsible for endemic violence against women in the Muslim world. Islam pays great attention to women and looks at them with honor and pride. The woman in Islam is the mother, sister, daughter, aunt, grandmother, wife, and partner with the man in bearing the responsibilities of life.

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<sup>36</sup> MIA, Mohammed JAVED, (2015). Islam: Women Rights and Violence against Women – Islamic Issues and Economic Factors, *Conflict Studies Quarterly Issue* 13, pp. 68-79.

## Senegal in the context of GBV and SRH rights

In the context of Senegal the situation of gender-based violence is also raising concern among advocates for ending violence against women. According to the statistics from the UN office the numbers are unbearable; even before COVID-19, some 243 million women had been abused by a partner during 2019. Figures from the Agence Nationale de la Statistique et de la Démographie (ANSD), show for the same year that variations by area of residence, the percentage of women aged 15-49 who have experienced physical violence since the age of 15 is slightly higher in rural areas (27.8%) than in urban areas (25.1%). The same is true for physical violence in the last 12 months, with 10% in rural areas and 8.2% in urban areas. Statistics for 2020 are still being compiled, but initial data indicate a clear increase due to the COVID-19 crisis.

The prominent verse of the Quran that has become infamous as a justification for meting violence against women and most of the socio-legal discussion on wife beating in Islamic communities revolves around the *34th Qur'anic verse (Ayah) of the Al Nisa (Women) chapter (Surah)* which states, *"As to those women on whose part ye fear disloyalty and ill conduct (nushuz), admonish them, refuse to share their beds, and beat them"*. This verse has been interpreted by various schools of jurisprudence and the consensus among the scholars is that its literal interpretations is misleading and should not be used as a justification for violence against women. Therefore, for anyone to hide behind a theological explanation to justify domestic violence is unacceptable. However, despite the efforts made, many cases are reported daily by the Senegalese press, including pedophilia, rape, domestic violence,

denial of paternity, and assault and battery. The stigma attached to domestic violence in Senegal does not give room for an open and honest discussion and most of the time the topic is treated as taboo or is denied as a matter of concern for women. This has contributed to slowing down efforts geared towards tackling this social vice. On a religious standpoint it is very clear that no form of violence against women is acceptable.

### ***The Meaning of Our Existence***

Islam is a religion of progress that cares for humankind in all aspects of life, places humans above all, and puts all the universe at their disposition. God says in the Holy Qur'an: "Do you not see that Allah has made subject to you whatever is in the heavens and whatever is in the earth?" Luqman/verse 20. The presence of humans on Earth has two fundamental objectives: 1. Love the Lord: "And I created not the jinn and mankind except that they should worship Me (Alone)," Sura 51/verse 56 2. Populate the Earth and make use of it judiciously. The Holy Qur'an tells us: "He brought you forth from the earth and settled you therein." Hud/verse 61.

### ***The Family and Children's Rights***

Islam is a global and dynamic system that views the family, the base of society, as an emanation of the legal union (according to sharia) of man and woman. Both have rights and responsibilities toward themselves and toward their offspring. Children have the right to good living conditions that allow them to thrive, as well as the right to have a quality education. Islam is a religion of ease and not of constraint. This is what emerges from the words of the Prophet (PBUH) when he says: "Render things easy and render them not difficult. Attract and reject not."

Role of Cadre des Religieux pour la Santé et le Développement (CRSD) in addressing Sexual and Gender Based Violence and women's rights.

As an organization CRSD is involved in advocacy on reproductive health coordination and promotion and directly cooperates with communities on the ground to promote safe reproductive health access. The objectives of the organization include sensitization activities which involve local religious leaders partnering with the health workers to reach out to the communities. CRSD's focus on the promotion of SRHR is justified by the fact that mother and child mortality rate in Senegal is very high and that birth spacing is a way of bringing down this high rate. It is scientifically proven that too close pregnancies greatly contribute to mother and child mortality. Moreover, the high mortality rate is highest among young married girls (child or early marriage). CRSD's sensitization strategy particularly targets this category.

### **CRSD faith based strategies and achievements**

Reproductive health rights in Senegal are not necessarily enjoyed as stipulated for the advancement of the Sustainable Development Goals (SDGs) by a majority of women due to patriarchal socio-cultural norms and practices that render women subordinate and dependent on men. Access to reproductive health services such as consultation for family spacing may seem to be a simple procedure elsewhere but not so in most low income sub-Saharan households. Child spacing was initially rejected based on prior misunderstandings of the importance of the practice, advancing religious arguments in many instances. However, due to close

collaboration with different stakeholders, CRSD has been able to a certain extent successfully reach various communities in Senegal through its activities by integrating religious leaders in its community outreach programmes.

### **Key lessons learned**

The experiences gathered from the activities at the community level reveal that involving religious leaders in decision making and seeking their participation is an excellent way of realizing positive outcomes that are tangible. This is because in the context of Senegal religious leaders play an important role due to their ability to influence the population. Having realized this entry point created an accessible way for activities to be conducted by directly involving them. However, there were also some notable challenges such as reluctance by men to allow their wives to use modern contraceptive methods to space pregnancies. From testimonies collected at some of CRSD's sensitization workshops, women have recognized that they hide to use contraceptives for fear their husbands would repudiate or divorce them if they discover this.

It is CRSD's conviction that stopping women from accessing contraceptive methods to space births for their own health and that of their babies is a major form of violence and a violation of women's rights.

Some quotes from different participants in past workshops:

*Woman: 'I think men need to be vigilant about their wives' health because now women are getting married at a very young age, which means that they may not be physically mature enough to put themselves*

*in certain situations. Thus the husband must be involved in making decisions about the family's health, and consensus must be reached on the direction to take. Many women who marry early usually have frequent leg pain, or have complications after a few years. These complications and pains are often caused by close pregnancies, according to doctors'.*

*Woman: 'Where I live, I saw a woman who was ill following a pregnancy. Three months after giving birth, she started to feel pain in her legs and to have seizures. She even died eventually because of this disease'.*

*Imam/Religious leader: 'Let us remember that Islam accepts birth spacing only if the person has health complications certified by a credible doctor. On the other hand, birth limitation is forbidden by Islam, it can even be accepted but in a condition where the woman is in a situation of risk; Islam always positions itself as a social regulator in case of problem but if the health of the woman is stable, children must be born because the prophet (PBUH) said to marry and have children because it will be for him a pride in front of the other prophets on the day of the last judgment. However, the quantity is not important, it is the quality of the children that is important in order to have a community that knows its duties, that does not plunge into aggression, which does not end up in banditry, which does not prostitute itself, that does not turn into homosexuals either. In addition, the elderly used to make amulets for women who had close pregnancies. Islam accompanies family planning on one of its concerns, which is the approximation of births, in order to supervise people; If it is done for the health of the mother and the child, Islam accepts it but sometimes it is difficult to live in the country because we see people who are in alarming situations marrying four wives whereas God recommends us to limit ourselves to one wife if we do not have the means to maintain four even if we know that it is not that we have four wives that we have more children than the other one who has one. This means that we must trust God more because he is the one responsible for the births, he is the one responsible for all the deaths, we must play a role of controller and protector which are roles that must start from the marriage to the birth of the children'.*



## Recommendations

- *Involve sufficient stakeholders in monitoring and evaluation of activities to promote the legal status of women.*

This recommendation proposes that all stakeholders such as the state through gender sensitive legislation, religious leadership (the Kadhi's court could fall under this category), when dealing with family matters, CSO's addressing issues of GBV, community outreach activists and feminist organisations can collaborate where necessary to address the issues of violence against women and engage in advocacy and sensitization to demystify existing myths that justify violence against women.

Implementation of legislation is usually a major challenge but this should not be an excuse not to try to raise awareness on women's rights as human rights and the right to live free of the fear of violence.

- *Awareness campaigns on radio and television and other community activities on GBV.*

Community radio is a powerful advocacy tool that can be used to transfer messaging at the grassroots level. With the help of organizations working with youth and women it is possible to organise radio theatre and talk shows with the theme on ending all forms of violence against women. This method can be effective because listening to the radio is an activity that cuts across the entire population, young and old, men and women.

- *Ensure that dialogues with community leaders (especially religious leaders) are conducted on a regular basis.*

Collaboration between community members can only be impactful if religious leaders are consulted and implicated in planning and implementation of activities at the community level. As we know, the role of religious leaders, especially in the context of the African continent is very interconnected with the communities. Religious leaders accompany us in all stages of our lives. They conduct the naming /baptism ceremonies; they legalize marriages; they pray for us when we are ill and they are involved in burial rituals when we die. This profound presence of religious leaders gives them an important role to play as advocates of stopping GBV as they live within the communities and are very aware of social problems of their followers. Using the opportunity to involve them in activities of advocacy and sensitization can definitely have a positive impact on changing the mentality of perpetrators of GBV.



# 11

## The Impact of Violence Against Women (VAW) on Maternal and Child Health

*Andari Wuri Astuti*



Violence against women is a pervasive human rights violation that manifests in various forms, including physical, sexual, psychological, and economic abuse (WHO, 2022). The consequences of VAW extend far beyond the immediate harm inflicted on women, affecting their reproductive health and the well-being of their children (Garcia-Moreno, Guedes, & Knerr, 2019). Maternal and child health outcomes are intricately linked to the prevalence of VAW, with empirical evidence highlighting the detrimental impact of violence on pregnancy outcomes, maternal mental health, and child development (Da Thi Tran, Murray, & Van Vo, 2022).

Violence against women is a global public health issue, affecting women of all ages, socioeconomic backgrounds, and geographical

regions. According to the World Health Organization (WHO), approximately 1 in 3 women worldwide has experienced physical or sexual violence in their lifetime, with intimate partner violence being the most common form of abuse (WHO, 2016). The consequences of VAW on maternal and child health are profound, contributing to adverse pregnancy outcomes, increased risk of maternal mortality, and impaired child development (Arulmohi, Vinayagamoorthy, & R., 2017; Bui, Hoang, & Le, 2018).

### **Impact of VAW on maternal health**

Statistical data from the WHO reveals that women who experience intimate partner violence are more likely to have unintended pregnancies, inadequate prenatal care, and complications during childbirth (Acus, Aciené, & Puidokiené, 2021). Furthermore, exposure to violence during pregnancy is associated with higher rates of preterm birth, low birth weight, and neonatal mortality (Spencer et al., 2023). These adverse outcomes not only jeopardize the health of women and their infants but also perpetuate intergenerational cycles of poor health and socioeconomic disadvantage.

Violence against women poses significant challenges to maternal health, compromising women's access to essential healthcare services and exacerbating existing health disparities (OECD, 2022). Studies have consistently demonstrated the adverse effects of VAW on pregnancy outcomes, including increased rates of miscarriage, stillbirth, and maternal mortality (Alhusen, Ray, Sharps, & Bullock, 2015). Moreover, women who experience intimate partner violence are less likely to seek prenatal care and adhere to recommended antenatal guidelines, placing them at greater risk of complications

during childbirth (Lockington, Sherrell, Crawford, Rae, & Kumar, 2023).

Studies have consistently shown that women who experience IPV are more likely to have unintended pregnancies compared to those who do not. For example, a study conducted in Australia found that among women who experienced IPV, the rate of unintended pregnancies was significantly higher than among women who did not experience IPV (Goemans et al., 2021). This heightened risk can be attributed to factors such as limited contraceptive use, coercion or sabotage of contraceptive methods by the perpetrator, and barriers to accessing reproductive healthcare services due to fear or control tactics employed by the abusive partner (Moulton, Corona, Vaughan, & Bohren, 2021).

Research indicates that women who are victims of IPV often face barriers to accessing prenatal care or may receive suboptimal care due to the presence of abuse in their lives. A study conducted in the US revealed that pregnant women experiencing IPV were less likely to attend prenatal appointments regularly or to receive adequate prenatal care compared to non-abused women (Testa et al., 2023). This lack of access to essential healthcare services can have detrimental effects on both maternal and fetal health, as it may result in missed opportunities for early detection and management of pregnancy complications (Grace & Miller, 2023).

Exposure to IPV during pregnancy has been linked to an increased risk of complications during childbirth, including prolonged labor, obstetric trauma, and emergency cesarean deliveries. A study

published previously found that women who experienced IPV during pregnancy were significantly more likely to have adverse birth outcomes, such as preterm birth, low birth weight, and perinatal mortality, compared to those who did not experience IPV (Laelago, Belachew, & Tamrat, 2017). These findings underscore the critical need for healthcare providers to screen pregnant women for IPV and provide appropriate support and interventions to mitigate the risk of adverse birth outcomes.

### **Impact on Children Health**

The impact of IPV on maternal and child health extends beyond the immediate perinatal period, perpetuating inter-generational cycles of poor health and socioeconomic disadvantage. Children born to mothers who have experienced IPV are more likely to experience adverse health and developmental outcomes throughout childhood and adolescence (Kh, Se, Le, & Sa, 2014). For example, children exposed to maternal IPV during pregnancy were at increased risk of developmental delays, behavioral problems, and mental health disorders compared to unexposed children (Mueller & Tronick, 2019; Shidhaye et al., 2014). These long-term consequences highlight the importance of addressing IPV not only to protect the health and well-being of women and infants but also to break the cycle of violence and disadvantage across generations. Additionally, the toxic stress resulting from exposure to VAW can disrupt children's neurodevelopment and alter the functioning of key biological systems, such as the hypothalamic-pituitary-adrenal (HPA) axis and the autonomic nervous system (Murphy et al., 2022). This can have lasting effects on children's physical and mental health, increasing

their vulnerability to chronic diseases, such as obesity, diabetes, and cardiovascular disorders, later in life (Nelson et al., 2020).

### **VAW in Indonesian context**

In Indonesia, where VAW remains a pervasive issue, the impact on maternal health is particularly concerning. According to data from the Indonesian Demographic and Health Survey (IDHS), nearly 1 in 4 women aged 15-49 has experienced physical or sexual violence from an intimate partner (Ministry of Health Indonesia, 2018). This alarming prevalence of VAW contributes to poor maternal health outcomes, with Indonesian women facing higher rates of maternal mortality and morbidity compared to their counterparts in other Southeast Asian countries.

Research from Indonesia and other countries has consistently demonstrated the detrimental impact of VAW on maternal health. A comprehensive review study found that women who experienced intimate partner violence during pregnancy were at increased risk of maternal mortality and morbidity, including complications such as hemorrhage, eclampsia, and sepsis (Agarwal et al., 2023). This association between VAW and adverse maternal health outcomes highlights the urgent need to address the root causes of violence and provide support and resources to affected women (Acus et al., 2021).

Additionally, cultural norms and societal attitudes towards gender roles play a significant role in perpetuating the cycle of violence and limiting women's autonomy in seeking healthcare services. In many communities in Indonesia, traditional gender norms dictate that

women should be subservient to men and endure violence within the confines of marriage (Rusyidi & Humaedi, 2020). As a result, women may face stigma and social isolation if they disclose their experiences of VAW, further deterring them from seeking help and support. Structural factors, including inadequate legal frameworks and healthcare infrastructure, contribute to the perpetuation of VAW and hinder women's access to essential healthcare services (Dewantary & Endut, 2022). In Indonesia, gaps in the legal system and limited resources for survivors of violence often impede efforts to hold perpetrators accountable and provide comprehensive support to survivors (Adiputra, Awanisa, & Purba, 2022). Additionally, disparities in access to healthcare services, particularly in rural and remote areas, further exacerbate the health consequences of abuse for women and their children (Laksono, Wulandari, Rohmah, Rukmini, & Tumaji, 2023).

Addressing VAW in Indonesia requires a comprehensive approach that addresses both structural factors and sociocultural norms perpetuating gender-based violence (Hamdy & Hudri, 2022). This includes strengthening legal frameworks to protect women from violence, enhancing healthcare infrastructure to provide comprehensive support services to survivors, and challenging harmful gender norms through education and advocacy initiatives (Hardiani, Hadi, & Iskandar, 2021). Evidence-based interventions, such as community-based awareness campaigns and empowerment programs for women, can also play a crucial role in shifting societal attitudes and reducing the prevalence of VAW (Ahinkorah, Perry, Brooks, & Kang, 2022).

Traditional gender norms in Indonesia often prioritize the needs of men and boys, resulting in girls being disproportionately affected by the intergenerational cycle of violence (Mahendra, Pinandari, Choiriyah, & Wilopo, 2021). Research from various countries, including Indonesia, has shown that daughters of mothers who experience intimate partner violence are more likely to experience abuse themselves (Dwyer, 2013; Wathen & MacMillan, 2013). This pattern highlights how exposure to violence during childhood can perpetuate a cycle of gender-based violence across generations, particularly impacting girls who may internalize harmful gender norms and behaviors.

The intergenerational transmission of violence is rooted in various factors, including social, economic, and cultural determinants. Research indicates that exposure to violence in childhood, particularly within the family environment, can normalize abusive behaviors and perpetuate cycles of trauma and dysfunction (Quinn, Pacella, Dickson-Gomez, & Nydegger, 2017). Additionally, structural factors such as poverty, lack of access to education, and limited opportunities for women's empowerment contribute to the perpetuation of gender-based violence across generations (Sundararajan et al., 2019). For example, a comprehensive review study published previously found that socioeconomic disadvantage was associated with an increased risk of IPV perpetration and victimization among women in low-income settings (Agarwal et al., 2023).

Addressing the root causes of violence against women requires targeted interventions that promote gender equity from early

childhood (Kh et al., 2014). Research has shown that interventions aimed at challenging traditional gender norms and promoting positive parenting practices can help break the cycle of violence and empower future generations (Williams & Anthony, 2015). For instance, a study found that a parenting intervention focused on promoting gender-equitable attitudes and reducing violence in the home led to significant reductions in child abuse and IPV perpetration among participating families (Ashari, 2018). Similarly, school-based programs that promote gender equality and teach healthy relationship skills have been shown to reduce rates of violence among adolescents (Singla, Kumbakumba, & Aboud, 2015). In addition to individual-level interventions, addressing the intergenerational cycle of violence requires comprehensive strategies at the community and policy levels (Meinck et al., 2023). Community-based initiatives that engage men and boys as allies in the prevention of violence against women can help challenge harmful gender norms and promote positive masculinity (WHO, 2016). Furthermore, policy measures such as legal reforms, improved access to support services for survivors, and investments in education and economic opportunities for women are essential for creating enabling environments for gender equity and violence prevention (Agarwal et al., 2023). For example, the implementation of laws and policies that criminalize IPV and provide legal protections for survivors can help create a deterrent effect and hold perpetrators accountable for their actions (Dewantary & Endut, 2022).

Violence against women poses a significant threat to maternal and child health, with far-reaching consequences for individuals, families,

and communities. The statistical data and academic literature presented in this study underscore the urgent need for comprehensive interventions to address VAW and mitigate its adverse effects on maternal and child health outcomes. In both global and Indonesian contexts, VAW perpetuates a cycle of intergenerational trauma and perpetuates gender disparities in health and well-being. By prioritizing prevention, advocacy, and support services, policymakers and healthcare providers can work towards ending the epidemic of violence against women and promoting the health and rights of women and children worldwide.



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Section C-2

**PREVENTING VIOLENCE AGAINST WOMEN  
SEXUAL, GENDER-BASED, AND DOMESTIC VIOLENCE  
THEOLOGY**





# 12

## Islam's Position on Violence against Women

*Hamid Abou Talib & Gamal Serour*



Women are subjected to many and various forms of violence, which affect their dignity, insulting and harming them, and many of these forms of violence occur because of misconceptions in religion or ambiguous for many people.

Among these unjust forms and wrong behaviour:

**First:** Distinguishing between men and women

Many societies still distinguish men from women and prefer them over them, for social reasons, or inherited behaviour. Some societies are concerned with raising and educating the boy rather than the girl, depriving girls of education, and limiting the role of girls to

performing domestic service, and you find these societies rejoice in the arrival of the boy and celebrate him. She is distressed by the arrival of the girl and grieves for her, and calls out the reprehensible image that Islam has fought in the words of God Almighty: When one of them is brought the news of a female [newborn], his face becomes darkened, and he chokes with suppressed agony.

*He hides himself from his people because of the evil of that whereof he has been informed. Shall he keep her with disgrace or bury her in the earth? Surely evil is what they judge, is it not?*<sup>37</sup>

This indicates a clear indication that discrimination between males and females in all its forms is forbidden in Islam. Rather, they must be compromised.

Islam promotes equality between men and women in the civil affairs and the granting of full civil rights for women, whereby the act of all financial transactions can be taken by a woman by herself completely. God Almighty said:

*And the believing men and the believing women, they are friends of each other. They enjoin Al-Ma'rûf and forbid from Al-Munkar and keep up the prayer and give alms (the Zakât) and obey Allah and His Messenger. These, Allah will show mercy to them. Surely Allah is All-Mighty, All-Wise.*<sup>38</sup>

Islam also equalized between male and female in rights and duties and in the right to education and property.

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<sup>37</sup> Suratul Nahl Verses 58-59

<sup>38</sup> Suratul Tawba Verse 71

It should be noted that the difference between the share of men and women in the inheritance is due to the duties that the man bears many times more than the woman.

**Second:** One of the forms of violence that befalls women is "female circumcision," as this hurtful practice is still carried out in some societies, and the problem with that is that it is carried out in the name of religion.

This is a wrong thinking, as some people cling to weak hadiths, and they are confused about the matter, and they carry out this practice. This is unfair to girls based on these hadiths, which were weakened by trustworthy hadith scholars and judged as weak, and therefore they cannot be relied upon to attack these girls in this way, and to desecrate their bodies in violation of the sanctity of assaulting these bodies.

It has been narrated from the Prophet (e), he said: "May God curse the changers of God's creation," agreed Ibn Masood, said the Almighty:

*(4:117) Rather than call upon Him, they call upon goddesses, and call upon a rebellious Satan<sup>145</sup> (4:118) upon whom Allah has laid His curse. He said (to Allah): 'I will take to myself an appointed portion of Your servants'<sup>146</sup> (4:119) and shall lead them astray, and shall engross them in vain desires, and I shall command them and they will cut off the ears of the cattle;<sup>147</sup> and I shall command them and they will disfigure Allah's creation.<sup>148</sup> He who took Satan rather than Allah for his guardian has indeed suffered a manifest loss.<sup>39</sup>*

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<sup>39</sup> Suratul Nisaa Verses 117-119

**Third:** Among the violence that befalls women is "sexual harassment" of women in all its forms, whether by the poisoned looks that some men direct towards women, contemplating their virtues in what hurts women and embarrasses their feelings, or harassing them by using offensive and indecent words, which causes shame and pain to women.

Or a man dares to molest a woman by deliberately touching her body or sticking to her. All of these images are prohibited in Islam and punishable in Islam, read the words of God Almighty:

*O Prophet! Tell the believing men to lower their gaze and guard their chastity. That is purer for them. Surely Allah is All-Aware of what they do. And tell the believing women to lower their gaze and guard their chastity, and not to reveal their adornments<sup>40</sup> except what normally appears.<sup>40</sup>*

And the Almighty said: '

*And do not go after that of which you have not the knowledge (do not try to get in or explain)! Surely the hearing and the sight and the comprehension, all of these are responsible from that (Takfu)<sup>41</sup>*

He says:

(41:20) and when all have arrived, their ears, their eyes, and their skins shall bear witness against them, stating all that they had done in the life of the world. (41:21) They will ask their skins: "Why did you bear witness against us?" The skins will reply: "Allah gave us speech, as He gave speech to all others. He it is Who created you for the first time and it is to Him that you will be sent back.

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<sup>40</sup> Suratul Nur Verse 30 and part of verse 31

<sup>41</sup> Suratul Isra Verse 36

*You did not 'bother to 'hide yourselves from your ears, eyes, and skin to prevent them from testifying against you. Rather, you assumed that Allah did not know much of what you used to do. And that assumption of yours about your Lord has tumbled you down into perdition, so you became of those who have fallen into Loss.<sup>42</sup>*

Accordingly, it is forbidden in Islam to harm women by harassing them, whether by looking, speaking, or by touching and holding them.

**Fourth:** Forcing girls to marry:

In some societies, there is a clear injustice committed against some girls by forcing them to marry someone she does not want, or preventing her from marrying permanently, or preventing her from returning to her husband who divorced her and wants to return to him.

Forcing a girl to marry someone she does not agree to invalidates the contract, as the validity of the marriage contract requires the consent of both parties, and if one of them is forced upon him or her, the contract is void.

Injustices also occur in some societies against girls by preventing them from marrying out of hope for her salary, or by preventing her from returning to her husband who divorced her if he wants to return to her. Allah says:

*When you have divorced women and they have reached the end of their waiting period, do not prevent them from re-marrying their ex-husbands if they come to an honourable agreement. This is enjoined on whoever*

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<sup>42</sup> Suratul Fussilat Verses 20-23

*has faith in Allah and the Last Day. This is purer and more dignifying for you. Allah knows and you do not know.*<sup>43</sup>

**Fifth:** Child marriage:

One of the forms of violence that occurs to women is the marriage of girls who are below the age that qualifies them for marriage, which puts the girl in a severe psychological crisis, as the girl finds herself unable to carry out the duties of married life. She is unable to establish a happy married life because her reproductive system is not equal to that of her older husband. The husband is often very old, and then this poor girl is exposed to physical abuse and psychological pain, and her life is at risk, especially during pregnancy and childbirth, because she is not qualified to do so. Undoubtedly, this marriage does not fulfill the requirement of the wise legislator of marriage in order to establish a happy life between the spouses in which affection and mercy prevail, due to the lack of compatibility and equality between the spouses. The Prophet, may peace be upon him, said:

*“Oh youth, whoever is able to afford marriage let him marry because marriage is a guard for his sexual organs and his sight, and whoever cannot afford should fast, verily it is a shield for him”*<sup>44</sup>

This girl is unable and cannot bear marriage or its requirements, yet she gets married and bears all the pains and diseases that befall her as a result of this unequal marriage.

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<sup>43</sup> Suratul Baqara verse 232

<sup>44</sup> Narrated by Bukhari 3/7

**Sixth:** Deprivation of Inheritance:

Some societies still oppress women and deprive them of their right to inherit, under the pretext of preserving family property. Although the shares in the inheritance are mentioned in the Noble Qur'an in definitive terms, the evidence is definitive and there is no room for ijtiḥad, but some oppressors deprive the woman of her right in some form, such as giving her share in cash only and not taking real estate, or buying from her at a cheap price, or depriving her of it altogether. All of these acts that deprive women of their right to inheritance are prohibited in Islam, where between God's penalty of obeying Him and disobeying Him in this matter following a statement of assessment inheritors, said the Almighty:

*(4:13) These are the bounds set by Allah. Allah will make the man who obeys Allah and His Messenger enter the Gardens beneath which rivers flow. He will abide there for ever. That is the mighty triumph. (4:14) And he who disobeys Allah and His Messenger and transgresses the bounds set by Him - him shall Allah cause to enter the Fire. There he will abide. A humiliating chastisement awaits him<sup>45</sup>*

Despite this, some societies still transgress the limits of God - Glory be to Him - and oppress women in the inheritance that God has ordained for them. And other forms of violence against women, all of which are forbidden in Islam, and whoever commits them will receive a severe punishment from God - Glory be to Him.

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<sup>45</sup> Suratul Nisaa Verses 13-14



# 13

## Violence against Women in Islam

*Tuti Alawiyah*



Violence against women occurs all over the world. According to WHO data (2021), in the world, there are 35% of women (or 736 million people) who experience physical or sexual violence committed by a partner (*intimate partner violence*) or by someone other than a partner (non-partner). Of this figure, 6% of women experienced violence, and not from their husbands or partners. One in four young women (aged 15-24) who are *in a relationship* also experience violence when they reach their mid-20s. Violence is experienced more by women living in *low and middle-income countries*, of which 37% of women experience physical and sexual violence. There are 200 million women who experience *female genital mutilation/cutting*. In Indonesia, according to the KOMNAS

Perempuan (National Commission of Women) report, there has been an increase of cases of violence against women both outside the home and in the domestic sphere (AlFitri, 2020). Currently, data on violence against women reached 348,466 cases reported in 2017, a very significant increase from 13,968 cases in 2004, including in domestic violence.

Those cases include verbal, physical, emotional, economic, and sexual violence. Verbal attacks, for example, explicitly mentioning that one's wife is the same as one's mother's back or other words that cause psychological consequences for the recipient. The root of the problem of violence lies in two main things. First, there are religious texts that are often interpreted inappropriately and become a means of justification for committing violence. Second, there are cultural views that often weaken women, such as expressions that indicate women as subordinates, making them more vulnerable to violence from the opposite sex.

The theological basis that is often mis(used) to justify violence against women stems from an understanding of the verse related to the superiority of men and the mention of *nusyuz* (disobedience) carried out by the wife and the settlement mechanism which has been interpreted as allowing men to beat women (QS An-Nisa [4]:34). This verse reads: *"Men are protectors for women, as Allah has made some of them (men) superior to others (women), and because they (men) have spent part of their wealth. Therefore, righteous women are devoutly obedient, guarding in (the husband's) absence what Allah would have them guard. The women for whom you are concerned about the disobedience, then advise them and separate them in their beds, and beat them. Then if they obey you,*

*do not look for ways to trouble them. Verily Allah is Most High, Most Great."* (QS An-Nisa/4:34).

Most scholars and commentators do not question the right of men to discipline women who are categorized as disobedient (*nusyuz*) to their husbands. But these commentators focus more on the causes, procedures, and restrictions on what is allowed in beatings, namely so that they are light, not heavy, such as causing injuries or fractures (Nafisah Ghafournia, 2017). Therefore, the views of those scholars and commentators are held by most of the people. This understanding is often referred to as being based on patriarchal or traditional ideologies (Chaudry, 2013). This ideology-based view allows men or husbands to beat wives because there are advantages and responsibilities of men/husbands to provide for and take care of them, so if the wife disobeys (*nusyuz*), then the husband has the right to discipline her physically.

In addition to the verse above, the one which is also often used to justify violence against women both in the domestic and public spheres is the verse related to the prohibition to leave the house, QS 33:33, "And abide in your houses and do not display yourselves as [was] the display of the former times of ignorance." Sources of theological justification also come from the hadith, one of which is related to the wife's disobedience (refusal) to have sexual relations with her husband which the angels can curse until morning, which reads: *"If the husband invites his wife to have sex, then the wife refuses and therefore the husband becomes angry, then she will be cursed by the angels until morning."* Similar hadith, for example, all good deeds of women are considered dead before God, just because

she is late in serving her husband's sexual needs. These traditions are often understood textually and people do not look at the cause of the revelation of the hadith and the historical context in Arab society at the time the verse or hadith was revealed.

In addition to theological justification, patriarchal cultural views also add to the perpetuation of the practice of violence against women. Expressions such as "wealth, throne, and women" as sources of slander, are based on a patriarchal view that sees women as objects and do not have equal power in relation to men. Therefore, this view is often the cause of violence against women. Likewise, the notion that places women as *complementary friends* indicates the subordinate role of women compared to men. This view sees women as second-class beings and weaker than men. This can also make women less independent and more vulnerable to experiencing violence because of their disempowerment both economically and socially, and in family relationships. This kind of cultural view and its impact on women's vulnerability to violence does not only occur within the domestic (household) context and scope, but also in general outside the household (public) context. Other factors such as being economically weak so that they are more dependent on men (husbands) or experiencing physical limitations such as disabilities can increase women's vulnerability to violence.

### **The Role of Islam in Preventing Violence Against Women**

Although some verses and hadiths are often used as the theological justification for violence against women as mentioned above, in principle, Islam is a religion that is friendly to women. There are other verses and hadiths and practices at the time of the Prophet

that show that Islam can be a means to preventing violence against women.

First, the interpretation of QS 4:34, especially on the meaning of *fadhribuhunna* (advise). In terms of language, there are several meanings of *dharaba* used in the Quran, namely travelling (QS 2:273); make parables (QS 2:26); cover (QS 18:11); and overwritten or overwhelmed (QS 2:61). In all the verses that mention the word *dharaba* (49 times), nothing (except in QS 4:34 above) is interpreted as beating (Muhammad, W. 2011, p. 22). Therefore, the meaning of this verse as the basis for the permissibility of beatings needs to be interpreted by looking thoroughly at the universal message of the Quran. Other verses related to resolving conflicts in the household, for example, refer to the verse that calls for the household to be fostered based on the principles of love, compassion and justice, and in a good way (QS 4:19). In the Quran, QS 2:231 is compared with QS 4:34 that supports the prohibition to commit violence or harm women/wives. According to Bakhtiar (2007, p. 437), QS 4:34 and QS 2:231 can be seen as contradictory if the word *dharaba* is interpreted as beating which can be a justification for violence against women. So, if QS 4:34 allows beating to keep them in marriage, this is not in line with the prohibition against violence in QS 2:231 if they want to end the marriage.

In addition, if one looks at the continuation of verse 34 above, namely QS 4:35, has further explained the solution that must be taken with the recommendation to find a mediator if there is a dispute between husband and wife: *And if you fear dissension between the two, send an arbitrator from his people and an*

*arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted.* The Quran also mentions *nusyuz* (disobedience) that is done by the husband, and the solution must be done by seeking a peaceful way as in QS: 4:128 - *"And if a woman fears from her husband nusyuz or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best although humans are swayed by greed."* Therefore, a peaceful settlement is the best way if there is *nusyuz* from the wife's side which is a view agreed upon by the scholars with an egalitarian view (Ghafournia, 2017).

Second, if one looks at other verses and hadiths and practices at the time of the Prophet, Islam is actually very egalitarian and provides safeguards against violence toward women. 1) Islam teaches the importance of treating mothers well, prohibits beatings, and prohibits degrading the degree and dignity of women, including female slaves.<sup>46</sup> 2) Prohibition of beatings according to the practice of the Prophet (PBUH) and the hadith: *"Do not beat women and do not act harshly towards them"; "The best among you is the one who is best to his family, and I am the best to my family. Do not respect women, except those who are honorable, and do not abuse women except those who are immoral"*. 3) Islam forbids sexual harassment and acts that approach adultery (Al-Isra: 32). 4) Islam also commands to keep the view (An-Nur: 30)<sup>47</sup>. 5) Islam forbids sexual

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<sup>46</sup> The Prophet said: Verily Allah forbids you from disobeying your mothers, preventing and asking and burying daughters alive. (HR Bukhari).

<sup>47</sup> "Say to the believing men: let them hold their gaze and guard their private parts: that is purer for them (QS An-Nur: 30). The Prophet also said to Sayiddina 'Ali, *"O Ali, don't follow your gaze. For it is permissible for you to see the first sight and not the next sight."* (HR Imam Turmudzi).

harassment as in the following hadith: *"If the head of one of you is pierced by an iron needle, it is better than groping a woman who is not his wife"* (HR. At-Tabrani, *Rijaluluhi tsiqatun*)<sup>48</sup>. 6) Islam prohibits the sexual exploitation of female slaves (An-Nur: 3). This verse perpetuates the resistance of two female slaves at the time of the Prophet against the sexual exploitation of their master<sup>49</sup>.

Muhammadiyah and Aisiyiyah have developed a *Harmonious Family Guidebook*. This book contains the principles, values that must be embraced by a family, the obligations and rights of husband and wife, as well as the resolution of conflicts in the household that must be carried out by way of deliberation (QS al-Syuraa: 38) and a good way (QS 4:19) and with due regard to the purpose of marriage, namely to create peace or tranquility based on *mutual love and affection* (QS 30: 21). In the *Women's Fiqh Book* compiled by the Tarjih Muhammadiyah Team regarding relationships in the family and efforts to avoid violence and conflict, it is necessary to prioritize a husband and wife's relation that contains the values of togetherness, mutuality, and closeness that are built together in good ways which are following the traditions and situations of society that do not conflict with religious norms and human common sense.

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<sup>48</sup> In another hadith the Prophet said: *"If you wallow with pigs covered with mud and dirt, it is better than leaning your shoulder on the shoulder of a woman who is not your wife"* (HR At-Tabrani).

<sup>49</sup> *"Don't force your female slaves to prostitute themselves when they themselves want their chastity, just because you want the wealth of the world. Whoever used to force it, then Allah is most forgiving and forgiving"* (QS an-Nur: 3).



**Section D-1**  
**ADVANCING WOMEN'S PROPERTY RIGHTS**  
**PRACTICE**





# 14

## A Case for Realization of the Property Rights of Muslim Widows at Succession in Uganda

*Umar Nyanzi*



The right of all Ugandans to own property regardless of gender, is duly recognised by the Ugandan Constitution<sup>50</sup>. Property can be acquired through purchase, donation, and operation of law or inheritance. The Ugandan Succession Act<sup>51</sup> is to the effect that a person can either die testate or Intestate. A person dies testate where he or she leaves a valid Will<sup>52</sup> or intestate where he or she does not leave a will or the will left is invalid.

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<sup>50</sup> Article 26 (1) of the 1995 Constitution of the Republic of Uganda.

<sup>51</sup> Chapter 162, Laws of Uganda.

<sup>52</sup> Section 50 of the Succession Act Cap.162 sets the requirements of a valid Will which include being witnessed by 2 persons, being in writing and distributing property to the beneficiaries.

In Uganda, Muslims consider succession matters as act of worship [Ibaadah]<sup>53</sup>. The Ugandan constitution recognises a right to culture<sup>54</sup> and religion<sup>55</sup>. The Marriage and Divorce of Muhammedans Act<sup>56</sup> permits Muslims to marry and divorce in accordance with Sharia. However, there is no law which mandates Muslims to automatically apply Sharia at Succession<sup>57</sup>. Whether a person dies intestate or not, the executor has to get letters of administration<sup>58</sup> in case of intestacy and letters of probate in case of testacy. These Letters of administration and probate which are issued by courts of law empower the administrator to confer legal interest in the property to the intended beneficiaries.

In case of death of a Muslim man, widows face a challenge in realising their property rights manifesting in failure to obtain property or legal interest in the property. Widows are first put to test of proving their marriage so as to qualify as widows within the law<sup>59</sup>. Though some courts have taken up the presumption of Muslim marriage<sup>60</sup>, this theory has not gained general acceptability in the legal spheres. Even though the law provides for registration

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<sup>53</sup> Access to Justice Baseline Report, MCJL,201

<sup>54</sup> Article 37 of the 1995 Constitution of the Republic of Uganda, *supra*

<sup>55</sup> Article 29 of the 1995 Constitution of the Republic of Uganda, *supra*

<sup>56</sup> Cap.259, Laws of Uganda

<sup>57</sup> *Abasi Magunda & Anor Vs Sulaiman Senoga & Ors*, cited in Position Paper on Islam and Inheritance; a case for study of Muslim Traditions versus Ugandan Legal regime, MCJL,2017

<sup>58</sup> Section 192 of the Succession Act, Act.162.

<sup>59</sup> Under Section 101 of Uganda's Evidence Act, burden of proof lies on that person who alleges existence of a certain fact.

<sup>60</sup> Presumption of marriage according to Sunni Sect was approved by Uganda's courts in HCCS 466 of 2013; *Hajjat Nuliyat Nuliyat Memetebikulirwa versus Micro Finance Support Centre Ltd* and Anor citing with approval the case of *Ali s/o Pazi vs. Hamisi Mohamed* [1968] EA 111 at P.1

of marriages<sup>61</sup>, most Muslim marriages are not registered since Islam does not prescribe registration of a marriage as a pre-condition for its validity<sup>62</sup>. Many fail to get their share of the deceased's estate because they cannot prove that they are wives. Further still, property is distributed without regard to the joint contribution of the woman<sup>63</sup> and in some cases, women have been evicted from matrimonial homes by the heirs<sup>64</sup>. Where women have got property, they cannot transfer titled properties in their names because of and the absence of letters of administration by the religious leaders conducting the distribution. When a Muslim widow remarries<sup>65</sup> and dies, sometimes her children from the new marriage have in most cases been precluded from inheriting what the deceased widow inherited from her deceased husband.

Be it as it may, Islam in principle recognises a woman's right to inherit property from her deceased husband and relatives<sup>66</sup> in the prescribed proportion<sup>67</sup>. Contrary to pre-Islamic and customary practices, Islam forbids widow inheritance<sup>68</sup>, which is an assurance

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<sup>61</sup> Section 5 of the Marriage and Divorce of Mohamedans Act, Cap.252

<sup>62</sup> Section 16 (a) of the Marriage and Divorce of Mohamedans Act Cap.252

<sup>63</sup> At common law which is applicable to Uganda by virtue of section 16 of the Judicature Act, a woman's contribution is quantifiable considering domestic chores even in absence of direct contribution. This was approved by the Supreme court in *Rwabinumi Versus Hope Bahimbisomwe, SC Civil Appeal No.10 of 2009*

<sup>64</sup> The new Succession Amendment Act, 2021 protects a right to residential holding and prohibits eviction of surviving spouses, however, the practice differs in many regions.

<sup>65</sup> Quran 2:234

<sup>66</sup> Quran 4:7

<sup>67</sup> Quran 4:11, 33

<sup>68</sup> Quran 4:19; Widow Inheritance is a practice of marrying women without their consent upon death of their husbands. The practice was practiced by the relatives of the deceased husband who regarded the woman as property to inherit.

for respect of women's dignity. The procedural aspects of how a widow legally gets what she is entitled to depends on the succession laws of a given country. It is, therefore, important to integrate procedural aspects in teachings on how widows can get legal interest in the properties. Other humane aspects like leaving the residential holding for the widow and children should be integrated in Islamic jurisprudence if widows are to realise property rights.

As part of the campaign to promote access to justice for Muslim widows in Uganda, Muslim Centre for Justice and Law (MCJL), a faith-based non-governmental organisation has undertaken programs aiming at tackling discriminative approaches manifesting in Muslim communities that hinder realisation of property rights of widows. The organisation was formed in 2010, to voice out and advocate for the Muslims in the access to justice and human rights spheres. Muslim Centre for Justice and Law has successfully employed legal aid provision, strategic advocacy on matters of operationalisation of Muslim personal law, research and strategic networking. Muslim Centre for Justice and Law trained has trained 50 Qadhis courts adjudicators in 5 districts with a diploma in law, published researches on human rights and gender in Muslim communities, represented over 7000 women with property related disputes and conducted legal and human rights awareness on radio, Television, and community barazas. These interventions have been done in collaboration with religious actors.



Through legal aid, MCJL has represented about 1700 women including widows whose property rights were violated through Mediation and litigation in courts of law. The Centre has also conducted legal advice which has empowered women to know and later demand their property rights whenever trampled upon. Muslim Centre for Justice and Law has conducted a number of researches<sup>69</sup> which have informed policy both locally and nationally<sup>70</sup>. In advocacy, MCJL has held talk shows on radio, TV, and conducted community sensitizations on issues uniquely affecting widows in

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<sup>69</sup> These researches can be accessed on [www.mcjl.ug](http://www.mcjl.ug)

<sup>70</sup> In the Hansard of 3<sup>rd</sup> May, 2021, the Attorney General informed Parliament having consulted MCJL on the Qadhis courts Bill. MCJL has offered her reached to Parliament and utilised in legislative process.

Muslim communities. Through strategic networks, MCJL signed a memorandum of understanding with Uganda registration Services Bureau (URSB) to enhance registration of Muslim marriages and joint awareness campaigns of religious leaders and the general public are being undertaken. These interventions will inevitably enhance access to property rights of Muslim widows.



In an effort to realise property rights of widows in Muslim communities, the involvement of religious leaders in all processes has been of great significance. Building the capacity of religious leaders fosters sustainability of the interventions done by MCJL, even after conclusion of the projects. As a recommendation, there is need for continued development of jurisprudence by the scholars to find acceptable minimums for some of the access to justice challenges. This can be done through theological discussions contextualised to Uganda's concept to draw a balance between the secular law and Islamic practices. It is also important for Parliament to draft and pass a comprehensive Muslim personal law as envisaged under article 129 (1) (d) of the 1995 constitution of the Republic of Uganda.

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# 15

## Women's Property Ownership from Islamic Perspectives: The Case of North Eastern Kenya

*Mohamed Hassanow Ali & Ibrahim Mohamed Elmi*



North eastern Kenya is predominantly occupied by the Somalis who are mainly Muslims. The Somalis are patriarchal community who also practice polygamy. In north eastern Kenya there are many women's rights violations that occur with most of them not being reported.

In the region the main problem that is encouraging the violation of women rights are the long standing cultural practices that are wrongfully misinterpreted to mean a religious obligation.

In Islam, a woman is held at high standard and a whole chapter of the Holy Quran is dedicated to the rights of women. Although women and men were created differently in terms of physical

capabilities this does not in any way deprive them of rights if not advantage them for equity as regards Islam.

In Islam, women have the right to own property, inherit, buy, sell, transfer and bequeath. However, due to the long standing cultural practices this right is usually violated. For instance in the Somali set up, there is a common practice that inheritance is not actualized on time to tactfully deny women their rights. They say that there is no reason to share the property and that the property can just be kept as a whole and in most cases it remains under the custody of the men since the women are usually married away and are not in the homestead. During this period the men use the inheritable property the way they want and thus end up using even the share of the women. Sometimes the women get old and die and end up not even inheriting a single share of the property.

There is also a common cultural practice where the father shares his property among the boys so that nothing remains for inheritance thus denying the girl child her right to inherit and own property. This is usually called "*wahat*". It refers to an allocation of property given to the boy child immediately he is born. This is a discriminative practice among the Somali community and denies the girl child her right to own and inherit property. The girl child is also denied education because there is a belief among the Somalis that the ultimate goal of education is to get wealth and that the wealth of the woman belongs to her husband and will never be of any benefit to the family.

There is also a common religious misinterpretation that a woman cannot own and transfer her property at will and that whatever she owns, including herself, belongs to the man. It wrongfully deprives them of their rights to own property, buy, sell and transfer at will. Due to the current modernization and as a result of the advocacy for women rights by various organizations there has been an attempt to fight women right violations head on. The strategy has been more of enforcement than perception change. This usually results in short term solutions that do not result in a long term achievement. The target groups for women right advocacy has mainly been women themselves, thus ignoring the perpetrators of the violations. Men still argue that western organizations are trying to empower “their” women so that they become disobedient and start asking for things that they are not entitled to. This has further led to a war between the women and men, thus resulting in further women right violations such as gender-based violence, early marriages, forced marriages and domestic violence, among others.



### **What Islam has to do with the stated women's rights violations?**

The main cause of the stated women's right violations are long standing cultural practices that are now interpreted to mean an Islamic obligation. There are beliefs among the Somali that a woman cannot own and transfer a property at will and that anything she owns belongs to her husband. This wrong concept has encouraged the discrimination of the girl child in regards to inheritance. Men see no need of allocating property to a girl child which will ultimately belong to another man. In this spirit there are embedded mechanisms in the community to tactfully deny the girl child inheritance. For this reason Islam is wrongly used by men to deny women their right to inherit, own, sell, buy and bequeath property. There is also a widely held belief that women plus what they own belong to their husbands and that they cannot at will transfer their property without the consent of their husbands. This belief has caused more women's right violations because men stick to it while the women are attempting to free themselves from the hook. Men usually wrongly use Islam as a base to cause this women's right violation. In Islam a woman has all the right to transfer her property at will. But in the spirit of harmonious relationship and in the spirit of building a strong foundation for the marriage it encourages that she consults her husband, just as the husband is also encouraged to consult his wife. However, there is no obligation on her part to consult her husband in transferring her property and using it the way she wants so long as it is halal (allowed). In terms of inheritance the Quran has clearly stated how the inheritance should be shared once the person whose property is being inherited dies.

### **Our organization**

We are working with the Supreme Council of Kenya Muslims (SUPKEM) which is an umbrella body of all Muslim organizations in Kenya. Muslims in Kenya, as in any part of the world, have diverse problems and needs. To solve these problems, Groups, Committees, Societies and Organizations are formed. Each of these Organizations aims at improving the life of its members; and by life it means the short life on the surface of the earth (Umri) and the eternal life hereafter.

These Organizations may be approaching the same issues and problems in uncoordinated ways and may be duplicating them. Efforts to bring about the coordination of these activities and common approach to issues and problems led to the idea of the formation of the Supreme Council of Kenya Muslims. The Council was formed with a clear vision of a united and therefore strong peace loving and law abiding Muslim Community in the country. The council endeavours to establish a community with clear, strong and established links with the Government and also with national and international organizations. The Council has offices in all the 47 counties in Kenya and is currently engaged in various activities with a focus on six thematic areas; advocacy, peace building and conflict resolution, education, livelihood programme, disaster response and humanitarian works and health.

### **Objectives of our organization in ending women right**

The goal of SUPKEM is to carry out and discharge the obligations, duties and responsibilities Muslims owe as a Community to Islam and bring about the spirit of brotherhood and unity among Muslims

in Kenya. In an attempt to achieve its goal of promoting brotherhood and unity among the Muslims, we are obligated to demystify some of the misconceptions that threaten this unity. We focus on addressing the root cause and endeavour to propose strategies that promote long term solutions to issues. One of the key focuses of our organization is addressing women right violations such as SGBV, early marriages, FGM, domestic violence, gender discrimination, among other violations. The organization has come to the realization that there is knowledge gap on Islam and women's rights, especially on the right of the woman to own property, buy, sell and transfer. This is a critical realization as regards the objectives of our organization in ending women's right violations.

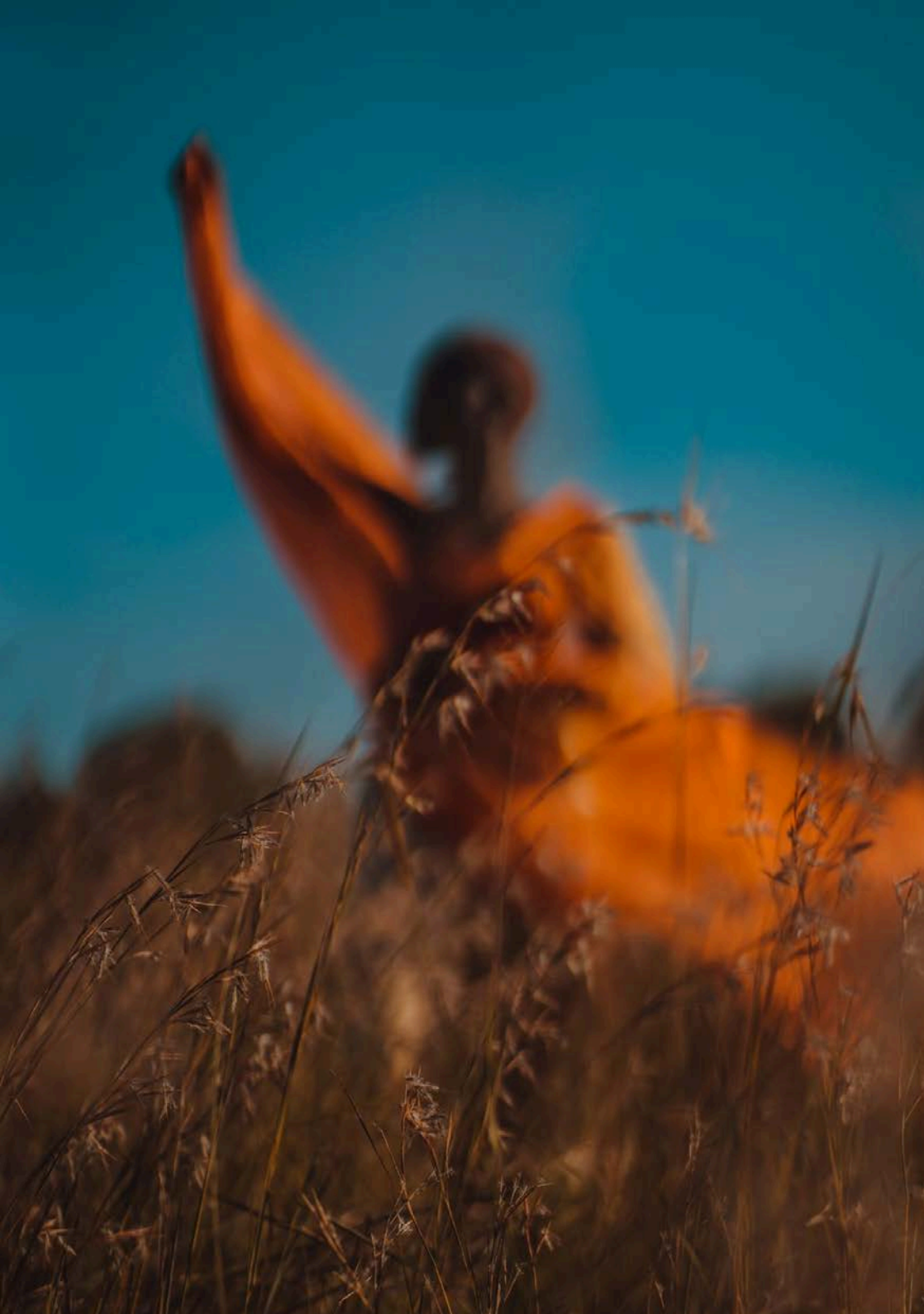
### **Our faith-based strategies in addressing women's right violations**

Having been engaged in advocacy work for quite some time, the organization has come to the realization that matters of women rights have deep rooted misinterpretations and that it requires elaborate and careful strategies to address it. With this realization, the organization usually uses the following strategies in addressing it;

- Use of men as a target group in women right advocacy- The organization has realized that often most attempts to address women's right violations has focused on empowering women. This has partially solved the matter of women's rights, but not to the scale required. This one-sided focus has sometimes cause more women's right violations because when the woman is empowered without changing

the perception of the man then it often results in men being resistant. This further results in family breakage, profiling of educated women and GBV, among other problems. In order to address this matter conclusively, the organization has embraced on perception changing by demystifying religious misconceptions that result in women's right violations as we also empower women by educating them on their right as granted by the religion of Islam.

- Use of Islamic religion as an advocate for women's rights- Islam has elaborately discussed the right of women and is regarded as the best promoter of women's rights in many parts the world. However, due to little knowledge of the religion, some people wrongly translated retarded culture as Islamic religion. The organization, therefore, is keen on educating the public on women's rights in Islam and tries to separate culture from religion, especially in north eastern region where there is a lot of mix up between culture and Islamic religion.
- Develop a contextual body of knowledge on women's rights and Islam- The organization has realized that there is minimal body of knowledge that demystifies some of the cultural misconceptions that are wrongly assumed to be religious, especially in the north eastern Kenya context. The organization strives to build this knowledge so as to bridge the gap knowledge that exists in the region.



## **Our achievements**

The organization has been actively engaged in advocacy work with a specific focus on women's rights issues. We have advocated against SGBV, among other women's rights violations in the region. In north eastern counties, the Council has worked closely with civil society organizations, human right organizations and the government to ensure that women right violations is eradicated at least in the long run. In Wajir County, the Council has spearheaded the formation of Wajir County civil society consortium, which is a consortium of all the organizations in the county. The main focus of the consortium is to advocate against human right violations, including women's rights violations such as GBV in the county. The formation of this body by SUPKEM has been the greatest achievement towards addressing women's rights violations in the county. The consortium works closely with a body of Islamic scholars who act as an advisory committee to ensure that any advocacy made by the body does not contravene the teachings of Islam.

## **Recommendations**

- There is a need to focus on strategies that change perceptions rather than strategies that focus on short term measures to address women's rights violations
- There is a need to develop body of knowledge to challenge the misappropriation of religion to justify women's rights violations
- It is strategic to promote collaboration amongst different actors in order to mobilise support for women's rights in Islam and the larger society.



**Section D-2**  
**ADVANCING WOMEN'S PROPERTY RIGHTS**  
**THEOLOGY**





# 16

## Islamic View of Property Rights for Women

*Ai Fatimah Nur Fuad*



Data in various countries with Muslim-majority populations show that men have more *property* than women (O Neil and Toktas, 2015). This is partly influenced by a patriarchal culture that provides more opportunities for men and less space for women to work. The patriarchal culture indirectly creates a division of labour that places men more likely to get wealth; men work outside the home while women take care of domestic issues such as taking care of children at home. In other words, in a patriarchal culture, men are placed as economic actors. On the other hand, women who are required to take care of domestic problems will have an economic dependence on their husbands. It is not surprising that property ownership in patriarchal culture is the domain of men.

Basically, in the context of developed societies, women's opportunities to work are getting more and more open. Women also get access to higher education which has an impact on the type of work that will be better and guarantee their financial independence (Bishin and Cherif, 2017). Women are able to own houses, vehicles, land, jewellery, and other forms of property with the ownership documents in their own names. Unfortunately, in certain communities, there are still women who do not have full control over the management of their assets. For instance, women in certain Muslim communities who wish to sell, rent, and manage their property must be accompanied by a male witness to testify to their identity or seek permission from their husbands or brothers. The domination of men in the ownership and management of the property is part of a patriarchal culture. This condition shows that although progress in Muslim society has provided many benefits to women such as access to education and employment, the patriarchal culture still places women in a subordinate position.

In Islamic teachings, women are given the same potential as men to work outside the home, get a salary/wages, and own property. Property (*al-maal*) which is mentioned 82 times in the Quran has an important and strategic value in achieving the welfare of the owner's life, both male and female (see *QS Al-Baqarah [2]: 177, 155, 261-262, 247, QS Al-Imran [3]: 186, QS An-Nisa [4]: 5, QS Al-Kahf [18]: 46, QS Al-Anfal [8]: 28*). Islam also regulates how men and women can properly own property (*QS An-Nur [24]: 33, QS An-Nisa [4]: 5 and 29*), as well as how to collect, manage and transfer ownership (*QS An-Nisa [4]: 95*). These verses are addressed to all human beings

(*yaa ayyuhan naas*) without gender discrimination. The hadith of the Prophet reads: "*The best among you are not those who neglect this life for the life to come or those who neglect the life to come for the sake of the present life. On the contrary, each serves as a path to the other*", advising everyone, including women, to work and take care of their worldly affairs. In Islam, managing the property (worldly affairs) is one of the elements of the five principles that must be protected by every human being (*al-dharuriyyat al-khamsah*) namely soul, mind, religion, property, and offspring. This is the goal of the implementation of sharia (*maqashid syari'ah*).

In Islamic history, having wealth and being rich is not solely male-dominated. Prophet Muhammad's wife, Siti Khadija, was a wealthy businesswoman who supported his preaching. Muslim women have enjoyed property rights for centuries. Islam's respect for women's property rights was well known during the Ottoman period that Christian and Jewish women at that time pursued inheritance rights through Islamic courts because their religious law did not provide equal rights (Kuran, 2004).

Islam guarantees equal rights to women and men in the ownership and management of property, whether obtained from work or from marriage and inheritance. In marriage, women have the right to get property both as a dowry and *nafaqah* (subsistence). Women have the right to get a dowry when they get married (QS An-Nisa [4]:4). The dowry can be in the form of money, goods, or jewellery; the amount is mutually agreed upon between husband and wife before the marriage contract. Dowry is a woman's property in Islam and she is entitled to its management according to her wishes. In

addition to the dowry, women are also entitled to subsistence from their husbands which she can spend according to the needs of the family (QS An-Nisa [4]:34, QS At-Talaq [65]:7). Subsistence is a basic need that a husband must provide to his wife and children, namely in the form of food, clothing, and a house. However, in a hadith of the Prophet from Sahih Bukhari, it is narrated that Zaynab and a woman from the Ansar tribe actually became the breadwinner for her husband and her family. When they told this to the Messenger of Allah, the Messenger of Allah replied that they got two rewards, namely the reward of relatives (*ajru al-qaroobah*) and the reward of alms (*ajru ash-shodaqoh*).

In contemporary society, we see a similar phenomenon in which some women become the breadwinners and providers for their husbands and children. Research by the KOMNAS Perempuan (National Commission of Women) shows that there is an increasing trend of husbands earning less than their wives. Some women also do not get the dowry from their husbands. Some local cultures place women as applicants and require them to bring a certain amount of property that is given to the prospective groom, as in matrilineal customs. In this local culture, descent and kinship are arranged according to the maternal line which places women superior to men, and it is the women (wives) who take the husbands home after marriage.

The two verses regarding dowry and subsistence came down in the context when most women in pre-Islamic times only took care of domestic affairs and did not have economic access so that men were given the responsibility to provide dowry and subsistence to

women (Hitti, 1984; Hodgson, 1974). Therefore, the obligation of men to give a dowry and subsistence cannot be separated from the patriarchal culture in Arabia at that time which required women to take care of domestic affairs only. In the spirit of gender equality, when women are allowed to work outside the home, obviously this has implications for subsistence matters, where the living can be both a shared obligation and responsibility between husband and wife, and it can even become the wife's responsibility in certain conditions such as when the husband gets sick or gets laid off.

Another implication is related to women's inheritance. The provision of inheritance 2:1, namely that women inherit half a portion of men (QS An-Nisa [4]:11) is considered fair because the husband is obliged to give dowry and subsistence to his wife. In the interpretation of Al-Qurtubi and At-Tabari, the half portion for women is fair because husbands have greater economic responsibilities than women. Therefore, the principle of justice in the distribution of inheritance certainly needs to be re-read. A religious text cannot be separated from the context at the time of its revelation. In the context of Arab society when the inheritance verse was revealed, the concept of men inheriting twice as much as women were already very progressive and revolutionary because women in pre-Islamic times were deprived of an inheritance. Inheritance to women at that time was abolished because according to Abid Al-Jabiri (2001) it often led to conflicts among tribes. The Arab marriage tradition at that time was a marriage between two different tribes, which caused the woman and property from the origin of the woman's tribe to turn into the property of the man's tribe. The tribe of the woman (wife) feels deprived of their rights because the ownership of their tribal

assets such as camels, horses, and others have shifted to the tribe of the man (husband). QS An-Nisa [4] verse 7 and verse 11 came down with the spirit of giving inheritance rights and property protection to women and their tribes. So, the principle of justice is not about half numbers, but in the spirit of giving inheritance and in protecting women's rights.



Early Islamic traditions also show that religious practice is not only built through understanding the text but through understanding the dynamic changing context while maintaining the spirit of Islamic justice as well. For example, Caliph Umar ibn al-Khattab had done *ijtihad* (legal stipulation) *tsulusul baaqi* (one-third remaining) in his time. This *ijtihad* stipulates that women are not obliged to receive half the inheritance from men. Likewise, the distribution of *fai'* property (wealth obtained from non-Muslims by peaceful or voluntary means) and *ghanimah* (wealth obtained from non-Muslims through battle/war) at that time was the result of Umar's *ijtihad* whose distribution was carried out following the needs of the context at that time, and not based on the existing division of the Quran (Hitti, 1984). The consideration of Umar's *ijtihad* was the principle of justice in accordance with the context of his time.



# 17

## Women's Property Rights in Islam

*Abdallah el Nagar & Gamal Serour*



A woman in Islam enjoys full capacity just like a man pursuant to the saying of Allah the Exalted,

*“So, their Lord answered their prayer: “I do not allow the labour of any worker from among you, male or female, to go to waste. You are similar to one another. So, those who emigrated, and were expelled from their homes, and were tortured in My way, and fought, and were killed, I shall certainly write off their evil deeds, and shall certainly admit them into gardens beneath which rivers flow, as a reward from Allah. It is Allah with Whom lies the beauty of the reward.”<sup>71</sup>*

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<sup>71</sup> Suratul Al imran verse 195

*And the hadith of Prophet may peace be upon him, "Women are full sisters of women".<sup>72</sup>*

Islam provided for the independence of women in her ownership capacity, and empowered her to transact in the property that she owns and invalidated some cultural practices such as depriving women of their property rights and failure to acknowledge their legal capacity or limiting their capacity to dispose of their property, without discriminating between them and men in that regard.

Omar bin Khatab, may Allah be pleased with him, said: "During the pre-Islamic era we used not to give any regard to women until Allah revealed in their regard what He revealed and divided for them what He divided." Therefore a woman who is not a prodigal in Islam has the right to own property and transact and dispose of her entire property or part of it in all lawful manners and means such as investment, trading, expending, selling, buying, hire, mudharabah partnership, agricultural partnership, donation, gift, making a will, making charity, advancing loans, compromising, lending non-consumables, pledge or pawn; and she is able to conclude financial and business contracts by herself without any intermediary, and able to appoint any agent to act on her behalf, and able to guarantee others, and able to sue in respect of her property rights; all that without requiring authority or permission or supervision from her guardian or husband. Islam granted her this right originally and one of the established principles in Islam that a woman in Islam has full capacity and able to own property independently.

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<sup>72</sup> Narrated by Abu Dawd in his Sunan hadith no 236 and Tirmidhi in his Sunan hadith no 113



Also Allah said:

*So, their Lord answered their prayer: "I do not allow the labour of any worker from among you, male or female, to go to waste. You are similar to one another. So, those who emigrated, and were expelled from their homes, and were tortured in My way, and fought, and were killed, I shall certainly write off their evil deeds, and shall certainly admit them into gardens beneath which rivers flow, as a reward from Allah. It is Allah with Whom lies the beauty of the reward"<sup>73</sup>.*

Allah provided for women's right to inherit, dowry, freedom of disposition of the property she owns without requiring any authority from anybody.

Also Allah said:

*Put the orphans to the test until they reach the age of marriage; then if you find in them sound judgment, release them their property and do not consume it extravagantly and hastily, lest they grow up (take their property back) and if (the guardian) is rich, let him be honest (let him abstain altogether) but if he (the guardian) is poor, let him eat on reasonably based on the customs. Then when you release their property to them, take witness in their presence; and Allah is All-Sufficient as Reckoner"<sup>74</sup>*

Also Allah Said:

*To the men is an assignment of whatever the parents and the nearest kin have left, and to the women is an assignment of whatever the parents and the nearest kin have left, of whatever it be, little or much, an ordained assignment"<sup>75</sup>*

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<sup>73</sup> Suratul Nisaa Verse 32

<sup>74</sup> Suratul Nisaa Verse 6

<sup>75</sup> Suratul Nisaa verse 7

This verse emphasised the right of the wife to own half of the dowry in the event of divorce before consummation with an allowance of waiving part of it without seeking permission from anybody.

*If you divorce them before you have touched them, while you have already fixed for them an amount (of dower), then there is one half of what you have fixed, unless they (the women) forgive, or forgives the one in whose hand lies the marriage tie, and it is closer to Taqwā (righteousness) that you forgive, and do not forget to be graceful to one another. Surely, Allah is watchful of what you do.<sup>76</sup>*

*Give women their dower in good cheer. Then, if they forego some of it, of their own will, you may have it as pleasant and joyful.<sup>77</sup>*

*The divorce is twice, after that, either you retain her on reasonable terms (Ma'rūf) or release her with kindness (Ihsān). And it is not lawful for you to take from them anything you have given them, except when both fear that they cannot keep up the limits of Allah, there is no sin on either of them for what she gives up to become free thereby. These are the limits of Allah, so do not exceed them, and whoever exceeds the limits of Allah, these it is that are the wrong-doers (unjust).<sup>78</sup>*

*And for you is the half of what your wives (women) leave if they have no child. But if they (women) have a child, then for you is one fourth. This is after (payment of) any bequest they may have bequeathed or a debt. And to them (women) belongs the fourth of what you leave if you have no child; but if you leave a child, then for them is an eighth of what you leave after (payment of) a bequest you may have bequeathed or a debt. And if a man or a woman leaves property to be inherited by neither parents nor offspring, and he (or she) has a brother or a sister, then each of the two shall have the sixth, but if they are more than that, they shall*

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<sup>76</sup> Suratul Baqara Verse 237

<sup>77</sup> Suratul Nisaa verse 4

<sup>78</sup> Suratul Baqara verse 229

*be sharers in the third after (payment of) any bequest that may have been bequeathed or a debt as long as there is no detriment (to anyone). (These are) the devise (to you) from Allah; and Allah is All-Knowing, Most-Gentle.<sup>79</sup>*

*And if you wish to replace a wife by another and you have given one of them a heap of gold (as Mahr) then do not take from it anything; would you take it (what you promised) by slandering and manifest sin?<sup>80</sup>*

The verses emphasised on the right of a woman to make a will in respect of what she owns and prohibited withholding any part of her dowry.

Evidence of women's right to ownership and disposition of property from Sunnah are many including:

The Prophet, may peace be upon him said, "Ooh you women give out charity even if it is your ornaments"<sup>81</sup>

This hadith evidence of a woman's ownership rights, freedom of disposition of the property without seeking permission from anybody. She has been addressed legally in respect of the property rituals just like a man. Among those evidence, the hadith narrated by Bukhary,

*"the Prophet came out of the house and prayed and the delivered a summon ----- then women came and she admonished them and reminded them and commanded them to give charity and i saw them*

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<sup>79</sup> Suratul Nisaa Verse 12

<sup>80</sup> Suratul Nisaa Verse 20

<sup>81</sup> Narrated by Muslim 2/694

*removing their ornaments from their ears and necks and giving them to Bilal.*<sup>82</sup>

The majority of the Jurists are of the opinion that a woman who is not a prodigal, has full capacity to dispose of property in form of a donation, gift, barter trade, and upon her marriage she has the right to receive her dowry, and she has the right to dispose it in its entirety without intervention of anybody just like other her properties).<sup>83</sup>

Imam Shafi also said: (anyone who attains maturity whether a man or woman, has the capacity over his or her property, and he has deal in this property what others do to their property, and men and women are equal, and whether married or not.<sup>84</sup>

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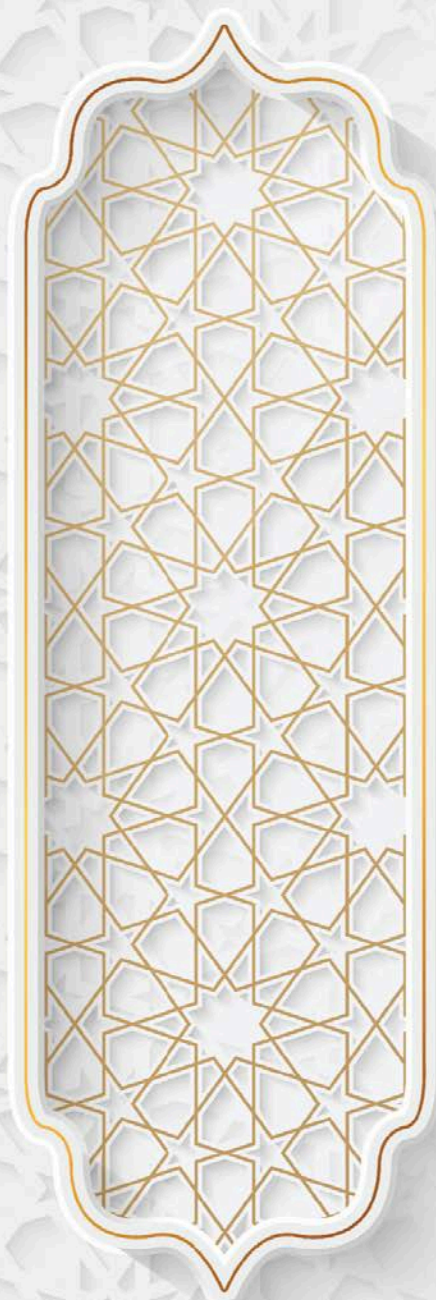
<sup>82</sup> Narrated by Bukhari in his Sahih hadith no 5249 and Muslim in his Sahih hadith no 884

<sup>83</sup> See al-Hujja ala ahlil Madina by Muhammad bin Hassan Al-Shibani 3/487-488 , Al-Umm by Shafi', Mughnul Muhtaj 3/140, Al-Mughni 3/252, Al-Muhallah by bin Hazm 8/417, Nailul Awatar by Shawkani 2/234-236 and 6/25

<sup>84</sup> Al-Umm 3/248



Section E-1  
**PROMOTING THE RIGHT  
TO CUSTODY OF CHILDREN  
PRACTICE**





# 18

## Custody rights in the Palestinian Sharia Courts between legal pluralism and the best interest of children

*Somoud al-Damiri*



Palestine is a complex model of legal pluralism and judicial references that the Palestinian resorts to. The Ottoman Family Rights Law of 1954 AD is applied in the Gaza strip, Personal Status Law No. 61 of 1976 AD is applied in the West Bank while the amended Jordanian Personal Status Law No. 15 of 1976 is applied in East Jerusalem.

According to this context, the Palestinians are using a Palestinian laws in the West Bank, the Gaza Strip, and the surroundings of the occupied city of East Jerusalem and a Jordanian judicial authority in East Jerusalem, due to the Jordanian guardianship over Islamic endowments, holy places, sanctities and the Sharia courts there as

well as Israeli authority in West Jerusalem. Thus, the residents of Jerusalem have three references to litigate the laws governing them, and resorting to these references ranges between obligation and choice due to the complex legal and political situation of the occupied city of Jerusalem.

Palestine follows Hanafi school of thought as a reference to personal status laws. According to Article 183 of the Personal Status Law No. 61 of 1976 applied in the West Bank, which stipulates: "What is not mentioned in this law, should be referred to or referenced to Abu Hanifa school of thought." We will limit the offer of those who are entitled to custody in support of the law in force and based on the Hanafi school of thought, and this falls under articles 154-166 of the above mentioned personal status law that is applied in the West Bank and does not differ in its legal applications and judicial in the Gaza strip or the vicinity of East Jerusalem. And we do not neglect when reviewing the personal status laws being practiced in the Palestinian territories despite lack of a specific definition of custody, but the law begins directly in the above texts by mentioning those who are entitled to custody, then details about custody and then some legal details surrounding custody.

We recall that the aforementioned Personal Status Law article 154, which stipulates that: "The owner of the right to custody among women, is the mother who is more entitled to custody and upbringing of her child during marriage and after separation, then after the mother, the right goes to the women who follow the mother according to the order stipulated in the Hanafi school of thought, which includes the following order:

*The mother is given priority, then the mother's mother (grandmother), then father's mother (grandmother), then the sisters, then father's sisters and mother's sisters then aunties and uncles and the closest in blood ties.*

Before going into detail, we would like to present the legal and judicial application of the age of custody for males and females based on the law of the West Bank, and which was withdrawn from the Gaza Strip and East Jerusalem as I mentioned earlier, this was formulated to discriminate between males and females, as Article 161 of the law stipulates: the custody of a woman other than the mother for the young child if he reaches nine and for the young girl if she completes eleven." And in Article 162 of the same law stipulates that: "The custody of a mother who has confined herself to the upbringing and custody of her children extends until they reach puberty," and since the principle of puberty for males is twelve years and for females nine years, based on Article 986 of the Code of Judicial Rulings in force along with the aforementioned system of laws, which stipulates that: the custody is in the right of the mother based on Article 154.



The husband or the father of the children, in the event of divorce, can claim the termination of this right and request the joining of the children, starting from this age. Hence this will bring confrontation with children, grandmothers or any person who can be a guardian. The eligibility to litigate in the lawsuit is only when they reach puberty stage and the trial procedures include asking them about puberty and the details of puberty during the trials.

These kind of procedures violate a basic principle in custody cases instead of looking at the best interest of children. The Chief Justice, Chairman of the Sharia Judicial Council, Dr. Mahmoud Al-Habbash issued a circular number (34/2018) stipulating that the legal age for adoption is at age of puberty, which is fifteen years for both boys and girls, less than that is considered immature. And this approach later became a judicial principle by the Sharia Supreme Court as of case No. 98/2018 AD dated 6/27/2018.

In addition, the decree Law No. 17 of 2016 regarding Sharia enforcement was approved, which prohibited forcing of minors before the appropriate age in cases of custody. There should be an optimal implementation of this right and the use of best practices such as working to find an intervention such as a counseling and family reform guidance that are found at various departments operating in all primary courts, as well as for social workers at the Ministry of Social Development to mitigate the impact of family conflict on children who do not accept the judicial decision.

In the same context, it is added that in the event of a ruling by annexation of the father over the child, the son enjoys the right to

choose, and if he chooses his mother, he does not lose his right to support, unlike the daughter, where she does not have the right to choose based on the text of Article 165, paragraph A, which stipulates that: "The guardian has the right to take care of a girl who is a virgin and below 40 years of age and also non-married woman if she is unsafe for herself and the annexation was not intended to harm her." And if she refuses then she is considered a rebel according to the legal description contained in Paragraph B of Article 165 and loses her right to alimony. Since the article stipulates that: (If the female/lady who is requested to join the guardian unjustly refuses to join him, there is no alimony for her). This leads to discrimination in this article that legally discredits the right to choose. In addition to the above, there is economic discrimination between males and females, which affects their economic ability to meet their basic needs, especially those related to education, in addition to addressing her as rebel against her father. This may result to social bullying or negative psychological interactions, especially since this description produces a legal effect which is the severance of alimony.

On the other hand, the Jordanian law that is used in the Kingdom of Jordan and part of East Jerusalem in its Article 173 addressed these legal gaps, as it raised the age of custody for the male and female to fifteen years, and for other eligible persons to ten years as the aforementioned article stipulated In Paragraph "A" states: "The mother's custody continues until the child completes fifteen years of age and for a non-mother until the child reaches ten years." Whereas, in the law in practiced in the West Bank, notes that custody of someone other than the mother ends for the child if he

completes nine years and eleven years old, as we mentioned, and this is considered discrimination based on the gender of the child under custody.

The above mentioned Jordanian law that is practiced in East Jerusalem took into account the interest of the sick child in extending the custody of women after fifteen years if the interest required, based on paragraph C of Article 173 of the same law. The care of the fostered child, in support of Article 170 of this law, and in this is a realistic implementation of the concept of the best interest of the fostered child, in addition to the right to choose for the male and female and extends until the age of majority, based on Article 173, paragraph "B" of the same law, which stipulates that: "The child has the right to choose if he reaches maturity as mentioned in paragraph "A" of this article where the child will remain in the hands of the custodial mother until he reaches the age of maturity.



The same aforementioned law dealt with the travel of the fostered child by the custodian in cases of necessity without prejudice to the father's right to guardianship and in order to achieve the interest and provided for sufficient guarantees for his return in the event of temporary travel without the consent of the guardian, in order to prevent the escape of children outside the country, based on Articles 175-177; The same law talks about cross-border family disputes, including those of different nationality, while the law practiced in the West Bank, as per Articles 164 and 166, did not deal with the travel of the fostered child outside Palestine territories away from the guardian's jurisdiction and thus this provides opportunity for the guardian to abuse or violate this right in the event of the of marital disputes which might affect the children. Therefore, the legislator must intervene to fill the gaps and put into consideration that Palestine lacks of control over the crossings points and borders and over some areas within the Palestinian territories.

From another angle, the Chief Qadhi issued a circular No. 59/2012 dated 8/30/2012 that addressed the legal gaps that included hosting and viewing of the child which the law was silent about it in Article 163 of the Personal Status Law No. 61 of 1976 AD. And this circular detailed what is related to the parties, from mother, father and grandparents. And he set standards related to the age of the child in custody, but he also limited this measure to physical contact and it is implemented only within the Palestinian territories with a specific number of visits for the benefit of the party requesting to view the child and the circular is considered a temporary measure for realistic necessities until the law is amended. It must be noted

here that failure to stipulate or generalize the use of modern means of communication when needed or to travel cast a negative picture on the communication of young people with their families especially during corona pandemic. In addition to that, some families exploited children during this period of the circumstances caused by the pandemic by not returning them after visiting or hosting or refraining from implementation of the custody ruling, as there was weak ability of the law enforcement authority to work during the pandemic or to interact with citizens during it especially with young children, given the health protocols.

In the same context, we note the impact of the Israeli occupation on the reality of judicial implementation in the Palestinian territories and its separation of regions geographically and politically. Hence there is lack of control over the borders and crossings points, which facilitates kidnapping of children to areas far from the control of the Palestinian authorities, especially in areas classified C and eastern Jerusalem and also illegal deportation of these children by one of their parents, thus depriving them their right.

While Article 181 of the Jordanian law in East Jerusalem stipulated that there should be organized visit and sleep inside and outside the country in addition to determining the number of visits. The legislator linked this to age criteria of the young ones and their interest. He also enabled request for viewing and communication through modern means of communication and mentioned the financial details related to the right of visitation and stay which include transportation expenses especially for foster children residing outside the country.



It should be noted here that the chapter on custody law practiced in East Jerusalem included the text of Article 180, which includes that the custodian keep the original documents or supporting documents necessary to fulfill the interests of the fostered child inside the Kingdom or certified copies of them as appropriate, such as the birth certificate and the health insurance card and this scenario, the person who is not the real guardian can implement this article as the custodial mother or the custodial grandmother. The civil status law No. 2 of 1999, which was validated in the Palestinian territories except for East Jerusalem automatically enabled the mother in its nineteenth article after the incident was recorded at the civil registry, where a birth certificate is issued in accordance with the prescribed form and delivered to one of the parents of the newborn or the person who notified in accordance with Article Seventeen of the same law, which stipulates that:

1. The persons responsible for reporting the birth are:
  - ☐ The parents of the newborn, provided that they are legally married
  - ☐ Those individuals who attended the birth from relatives who adult relatives
  - ☐ Hospitals directors, maternity supervisors, social care, prisons and midwives.
2. Reporting of the newborn is not accepted from those who are not assigned to it, (1), except in the event that there is no one from the categories mentioned in the order, and the certificate may be sent by mail. Also a decision was issued

by Law No. 22 for the year 2019 AD, which enabled the mother to obtain a passport document, and here it is clear that the concept of custody intersects with guardianship being in the same legal circle.

It can be noted that, the best interest of children is considered in the custody section in the system of personal status laws in general, as well as in the Child Law of 2004 and the Foster Families System of 2013 AD and other related laws and it is a global standard on which optimal practices in caring for a child are built and caring for the child is guaranteed in the Palestinian basic law in article 29 as a solid constitutional guarantee and require us to examine custody and align them with everything that achieves the interest of children, consistency with custody standard as well as with the rest of the legislation regulating children's affairs and international agreements to which Palestinian state is part of which includes such the convention on the rights of a Child in 2014 AD.



# 19

## Child Custody in an Islamic Perspective: The Case of South Sudan

*Refat Juma*



## Summary

As in most countries, the family is a cornerstone of South Sudan. Yet, women and children are particularly vulnerable to mistreatment, discrimination and crimes within the institution of the family. With the absence of a national family law, women and children have limited legal recourse and access to justice. Stakeholders, including religious institutions such as the South Sudan Islamic Council, are at the forefront to champion for the passage of the Family Law Act and Anti-GBV Act that are yet to be passed. With regards to child custody, the adoption of this bills will lay a solid legal foundation to protect the interests of the child. Legal matters pertaining to the family are currently governed by

customary justice which often overlooks the needs of women and children.

To address the vulnerabilities of the children, the South Sudan Islamic Council has an obligation to interpret the Qur'an in a manner that lays clear its provisions in the context of child custody.

### **Child Custody (*hadanah*) in Islam**

- ***Physical Custody***

The Qur'an, the Hadith and the Shariah recognize the rights of women to custody of their children, when they are no longer with their husbands, provided that they do not remarry. This right is known as *hadanah*. Qur'an verses provide that mothers have custody of children during nursing and up to the age of two or two and a half. The verses also provide that fathers and mothers should consult each other in raising their children. The Prophet Muhammad (SAW) has been quoted as saying that divorced mothers who remain unmarried have a greater right to raising a child.

Further, Islamic jurisprudence differentiates between custody of male and female children. Under Shi'a law, custody typically reverts to the father when boys reach the age of two, while for Sunnis the age limit is seven, at which time a boy may choose to remain with his mother or live with his father. With girls, Shi'a custody reverts to the father at the age of sexual maturity, while Sunni rules vary. They include leaving the decision to the girl, continuing custody with the mother or reverting custody to the father. Sunnis and Shi'as

also differ as to the age of termination of custody. Most traditions agree that upon sexual maturity, children should be given freedom of choice (Hadjian, 2014).

- ***Legal Custody***

Under shari'a, the father is the head of the family and in charge of the children until termination of custody. The preference for granting physical custody to mothers during a child's tender years does not change this general rule. In addition, because mothers and fathers are mandated to raise their children as Muslims, a non-Muslim (or a Muslim mother who converts to another religion) is not permitted to keep custody of a Muslim child. Fathers must approve of their children's education, including the places, types of schools attended and the type of education received (Nasir, 2002). Although custodial mothers are restricted from remarrying, in some jurisdictions, a father's petition for custody based on a mother's remarriage may be waived if the petition is not raised in a timely manner. Employment of custodial mothers may be substantially curbed if the father disapproves. The father's obligation to provide a suitable residence for his children limits the freedom of custodial mothers to change their residence or their children's residence. Only the fathers can apply for their children's passports.

In the majority of jurisdictions, children cannot leave a country without their father's permission or a court order. In some jurisdictions, un-permitted foreign travel by a custodial mother is a crime. Financial guardianship is vested in fathers and grandfathers unless transferred by agreement or assigned by the court to mothers or third parties. Fathers are the recipients of a child's earnings after divorce and are authorized to purchase, sell,

encumber, and manage a child's properties. This right is especially significant if children receive inheritances or gifts during the marriage. This rule also is relevant when children receive public assistance or private insurance benefits (Baker, 1986). For example, upon the death of a father, his children's paternal grandfather may receive the death benefits, but the children's mother has the burden of physical and legal custody.

### **Who we are?**

South Sudan Islamic Council (SSIC), is a religious association in South Sudan tasked with the mandate to manage the affairs of the Muslim community and promoting religious tolerance in the country. It was founded in 2005 in the wake of the signing of the Comprehensive Peace Agreement (CPA). After the independence of the Republic of South Sudan in 2011, the SSIC officially began its operations to ensure social cohesion among the different religious groups in the country. The 21-year-long civil that ultimately culminated in the autonomy and independence of the Southern region of the Sudan was, in part, instigated by religious intolerance between the Muslim and Christian communities, and the contestations on the religious teachings that the state ought to adopt. Therefore, it was eminent that the same vice would relapse in the independent South Sudan, and therefore, this necessitated the need to establish the South Sudan Islamic Council to champion social integration and harmony in the world's youngest state.

## **Our objectives**

- To explain how Islamic institutions should consider and respect the rights of women and children.
- To ensure great advocacy through the scripture's clarification.
- To ensure children's rights are promoted by Muslim communities within their socio- cultural context, drawing on Islam.
- To end the root causes of GBV and SGBV cases.

## **Our strategies**

- Fostering collaboration with other faith institutions across the country to drive forward the agenda to promote peaceful coexistence.
- Advocating for the amendment, ratification and adoption of the existing policy framework and seek to cushion women and children against harmful traditions.
- Challenging negative social norms and practices through proper interpretation of the scripture.
- Participating in inter-religious exchange visits among the different denominations in Islam and Christianity to instil a sense of togetherness, share knowledge and experiences.

## **Our Achievements**

- We have consistently encouraged and trained young women to take up leadership positions within the structure of the South Sudan Islamic Council. There are currently two women at the top management of the Council.
- Young women, alongside their male counterparts, are taking part in the ongoing series of the community dialogues that seek to promote positive masculinities in the society by challenging the existing traditions that alienate the women and children.

## **Lessons Learnt**

While South Sudan has always been a very patriarchal society where women and children are at the bottom and are rarely involved in decision-making, the recent series of conflicts has made the patriarchal oppression of women and children in South Sudan even more acute.

The conflicts have buttressed entrenchment of the harmful traditions, where violations against minors and women are resolved in a customary-settings that only appreciate ages-old narratives. Therefore, it has become problematic to even advocate for change amid massive violations that are propagated by the duty-bearers themselves and supported by the clash of the statutory structures and customary laws, where the latter often supersedes.

Further, the judiciary is merely an elongation of the executive arm. It is not entirely independent. The judiciary hardly functions and impunity prevails. Given the added obstacles posed by patriarchy,

violations continue to prevail, and the populace seems to accept the harmful practices against women and children as normal, and contradicting voices, institutions or individuals are seen as social pariahs.

### **Recommendations**

- There is a need for the enactment of the Family Law Act and the Anti-GBV Act, as well as ratification of the Maputo protocol, and any other as related policies, proper implementation and adherence to their stipulations.
- There must be proper harmonizing of the customary and statutory laws to chart a clear judicial process in case of violations.
- There is a need for civic education and awareness creation in the rural and semi-urban areas on the constitutional provisions on the basic human rights as well as scriptural interpretations of the rights of women and children.



Section E-2  
**PROMOTING THE RIGHT  
TO CUSTODY OF CHILDREN**  
**THEOLOGY**





# 20

## The Right to Custody

*Hamid Abou Taleb & Gamal Serour*



Custody is protecting the child from what is harmful to him or her and upholding his or her interests, such as feeding him or her, cleaning his or her body and clothes, and protecting him or her from everything that harms him or her.<sup>85</sup> It is an obligatory right for the child to have someone to take care of him or her, take care of his or her upbringing, and fulfill his or her vital and psychological needs. And there is a right for the custodian or the guardian, but the right of the child under custody is stronger and more important, and therefore the protection of the child's interest is taken into account. The mother of the child is the first person in custody of him or her as long as she fulfills the conditions of custody, whether the child is

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<sup>85</sup> Bada'i' Sanai' by Al-Kasani 4/40

male or female, and none of the jurists disagreed in that, as Abdullah bin Amr bin Al-Aas narrated that a woman said,

*"Oh, Messenger of God, this son of mine had a bowl, my breasts had waters, and my stones had Eve." And that his father divorced me, and wanted to take him away from me, so the Messenger of God - may God's prayers and peace be upon him - said: "You have more right to him as long as you do not marry"<sup>86</sup>.*

*And the Messenger (e) said: "Whoever separates a mother and her child, God will separate him and his loved ones on the Day of Resurrection"<sup>87</sup>*

It is narrated that Abu Bakr as-Siddiq judged Umar bin Al-Khattab as the capital of his mother, Umm Asim, and said: "Her scent, smell, and kindness are better for him than you."<sup>88</sup> Abu Bakr Al-Siddiq said:

*"The mother is kinder, gentler, more merciful, kinder, and more merciful. She has more right to him unless she marries." He also said: "Her wind, bed, and stone are better for him than you until he grows up and chooses for himself."*

This was well-known among the Companions, and there was consensus. Islam acknowledges the qualities of the mother in giving her the right of custody, and did not abuse the right of the father. However, the woman is more tender, loving and compassionate towards the child, and is closer to him or her than others, and only his or her father shares her in closeness, but he does not have the same kindness as a mother, and he does not take custody of

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<sup>86</sup> Narrated by Abu Dawdi in the topic of who is entitled to the custody, Divorce Chapter, Sunani Abi Dawdi 1/529

<sup>87</sup> Subul Salaam by Sana'ani, Al-Mughni by bin Qudama 11\414

<sup>88</sup> Narrated by al-Imam Malik in the Muwata, in the topic of who is entitled to the child's custody, the Book of Wills, 2/767

himself, but rather he delivers him to his wife, and his mother takes precedence over his father's wife.

**Custody rule:**

Custody of the child is legally obligatory for the custodian, because the child perishes without it, and it must be preserved from perdition, and it must be spent on him and saved from peril.

**The order of women custodians:**

The mother of the young child, as we mentioned, then his male mahrams from the closest women, then the closest, then the custody is transferred to the mother's mother, if she is high, then the grandmother, the mother of the father, and if she is high, then the sister, then the sister to the mother, then the sister to the father, then the daughter of the sister to the father, then the daughter of the sister to the mother, then the sister's aunt, then the aunt to the mother. The aunt is the father, then the sister's daughter is the father, then the daughters of the full brothers, then the mother, then the father, then the sister aunts, then the mother, then the father, then the mother's aunts and her aunts are full, then the mother, then the father.

**Order of male holders of custody rights:**

If there is no woman to take custody of the child, or if she is found and she is not worthy of her, the custody is transferred to the child's clans in order of inheritance, the father, then the grandfather to the father and the higher, then the brother, then to the father, then the son of the brother, then the son of the brother to the father, then the brother's uncle, then the uncle to the father. Then

the brother's cousin, then the paternal cousin, if the child in custody is a male, and if it is a female, the cousin does not have the right to custody of her, because he is not a mahram to her.

And if there is no one who deserves custody from the clique of the young child or if he is found and is not worthy of it, the right of custody is transferred to his male relatives who are not cliques, namely the grandfather, the mother's father, then the maternal brother, then the maternal uncle, then the maternal uncle, then the paternal maternal uncle, then the maternal uncle.

If there are more than one deserving of custody and they are equal in degree of kinship as full brothers, then the judge shall rule for custody in the best interests of them for the youngest.

**Conditions that must be met for entitlement to custody:**

It is stipulated that the person who takes care of a child should be a sane, honest adult capable of raising the child and taking care of his affairs.

The working woman is considered able to raise the child and is full-time for him despite the fact that she has been out for some time to perform her job, but if the work requires the mother's absence from the child for many continuous days, she is considered incapable of raising the child.



**Conditions that must be met by custodial women:**

The custodian is required to have a forbidden womb from the child and not be married to a foreigner on the child's behalf or to a non-mahram relative.

**Conditions that must be met by men who deserve custody:**

The male custodian is required to have a forbidden kinship with the one under the custody if he is a female.

**Custody Expiry:**

The saying differed about the age at which nursery ends, as there is no explicit text in the Book or the Sunnah that specifies a specific age, and then the jurists worked hard according to the situation at their time, and when the child would dispense with his mother, and consideration kept changing in determining the age until the situation settled on it. In Egypt - for example - the right of women ends when the young child reaches the age of fifteen, and the judge gives him the option after reaching this age to remain with the incubator without custody until he reaches the age of majority, and until the girl gets married.

**Nursery Expenses:**

The custodian is entitled to a fee for custody of the little one as long as he has not reached fifteen, male or female, after the end of the marriage contract.

There is no doubt that the provisions of custody in Islamic jurisprudence are precise provisions, and if applied honestly and honorably, the interests of the child, his mother and his father will

be achieved, and therefore they must be applied and the custody away from maliciousness between the spouses.

It is taken into account that if the nursery is obligatory for the young child so that he or she does not perish. It is also obligatory for people with special needs, the sick and all the weak ones.



# 21

## Islamic Perspective on Parenting Justice

*Lailati Syarifah*



In some Islamic countries, there are a number of different models of parenting practices, whether when the child is in marriage and after the separation of the parents (by divorce or death). In marriage, the burden of care is shared equally between the father and mother. However, a heavier burden lies more on the mother because of the burden of sustenance laying on the father. But it is different after the separation of the parents; in some countries, the care of infants is by the mother while the costs of care being borne by the father. In practice, many women have to bear the burden of child care on their own, because there are no sanctions for fathers who do not fulfil their sustenance obligations after divorce. Whereas in other countries it was found that the status of "widow" puts women in

the lowest social class in society, and even these widows are forced to remain single to avoid losing their property and child custody, both of which can be legally claimed by their late husband's extended family. Likewise, with the issue of lineage, most of the jurists believe that the lineage of the child to the mother is certain because she is the one who gave birth, while the lineage to the father, especially those related to guardianship and inheritance, is only connected to the father if it meets the requirements of a valid marriage. So, for a child born outside the marriage, his lineage is to his mother.

So, sometimes there is an excessive burden on women in parenting, lineage, and guardianship of children, but in other places, women have to struggle to still be able to take care of the children they love. Therefore, it is very important to explore how Islam regulates this upbringing, including lineage and guardianship.

### **Parenting Rights in Islam**

Men and women have the same rights and obligations in terms of child care, as shown in QS at-Tahrim [66]: 6 who commands the believers to guard themselves and their families from hell. The command to protect here is not only intended for men or women, but both, and even for the whole family. Likewise, the command not to leave offspring in a weak state in QS An-Nisa [4]: 8. The target of the command (*mukhathab*) in this verse is called people (*al-ladzina*) which means according to az-Zamakhsharī are the caretakers or guardians (az-Zamakhsharī, I, 1986: 469-470). However, based on its general meaning, this mention can indicate that the target is not just individuals, but groups of people starting from the smallest unit

to the largest unit of the society. This group can include family, ummah (good community), society, nation-state, and human-nation. It is clearly stated in the following hadith of the Prophet:

*From Abu Hurairah RA [narrated] that the Messenger of Allah said, "No man is born except in a state of fitrah (holy), then his parents make him a Jew or a Christian or a Magi" [HR al-Bukhārī].*

The keyword in the hadith above is that "both parents" are equally responsible for the education of children who are born in *a fitrah* (holy nature), it is the father and the mother who are responsible for maintaining that *nature* or vice versa.

This is in harmony with the basic values of monotheism, QS As-Shura [42]: 49-50 necessitates the belief that essentially all the contents of nature, including children, belong to Allah as described in the verse above. Parents are just executors of the mandate from Allah to care for and educate children to become servants of Allah who obey all His rules and stay away from all His prohibitions. Tawhid necessitates that only Allah is worshiped by all mankind. As a consequence, humans are equal before God, be it parents or the children, so it is not appropriate to make one member of the family the master while the other is the slave (servant to him).

So, both male and female parents have the same rights and obligations in raising children. Therefore, both in marriage and in divorce, both parents must continue to work together to raise children as stated in QS Al-Baqarah [2]: 233 which explains that in the event of a divorce, the mother can fulfil the child's milk supply or

by hiring someone else. As compensation, the father must provide for it according to his ability.

### Lineage Matters

*From Aisha RA [It is narrated] that Sa'ad ibn Abi Waqqash and Abd ibn Zam'ah disagreed about a son. Sa'ad said: O Messenger of Allah! This is the son of my brother 'Utbah ibn Abi Waqqash, he told me that he is his son. Look at the resemblance. 'Abd ibn Zam'ah said: O Messenger of Allah! This is my brother, he was born in my father's bed by his wife. Then the Messenger of Allah looked at the child and found his resemblance to 'Utbah. Then the Messenger of Allah said: The child is yours 'Abd ibn Zam'ah, the child (his lineage) is for (the owner) of the bed, and the punishment of stoning is for the prostitute, and veil from him O Sauda bint Zam'ah. So Sauda never saw him [HR al-Bukhārī].*

Based on the hadith above, most of the jurists state that the lineage of children born in marriage is to the legal husband for the baby's mother, while children born out of wedlock (zina) are to their mother. Scholars explain that this is based on the assumption that "children" are a blessing from Allah, so adulterers are not entitled to this "lineage" as punishment.

This view only sees one side, namely the adulterer, not looking at the "child". Whereas every child who is born has the right to get clarity of lineage, as well as children who have been cared for and raised by adoptive parents (adopted) are also entitled to the clarity of lineage, so Islam forbids connecting the lineage of adopted children to their adoptive parents. This is as mentioned in the word of Allah in QS al-Ahzab [33]: 4-5.

The word nasab (lineage) is mentioned in the Quran in several places including QS al-Mukminūn [23]:101 and QS al-Furqān [25]: 54.

The words *nasab* and *musaharah* (kinship) referred to in the verse are bilateral kinship or kinship as contained in the verses of *mahram* (people who are forbidden to marry) and the verses of inheritance in the QS An-Nisa [4]: 7, 11-14, 32-33, 176 and QS al-Baqarah [2]: 233. The Quran explains the inheritance rights of *aulad* (children) without any distinction between descendants from the male line and descendants from the female line, explains the inheritance rights of *abawain* (father and mother) without any explanation that distinguishes between grandparents from which party and through whom, and explain the inheritance rights of *ikhwah* (brotherhood/sisterhood) without explaining the difference between siblings, from one father and one mother.

Likewise, in the issue of *muharramat* (forbidden to marry), the Quran does not distinguish between women from the male side or line and women from the female side or line. Even the Quran explicitly views the same between *'ammat* (paternal/grandfather's aunt) and *khalat* (mother's/grandmother's aunt), and between female nephews (*banat al-ukht*) and male nephews (*banat al-akh*). So, it can be emphasized here that the Quran does not favour relatives from the male line or relatives from the female line; the two groups of relatives are treated equally. This is also corroborated in QS Thoha [20]: 94 where Moses referred to Prophet Harun with the phrase "*yabna umma*" (O son of my mother) not with the phrase "*yabna abi*" (O son of my father). This means that the Quran is more inclined to the parental or bilateral kinship system, and not to the matrilineal or patrilineal kinship system.

## Guardianship

Guardianship in fiqh terms is full control given by religion to a person to control and protect people or goods. The person who is given power over the person/goods is called the guardian. The problem in fiqh is the guardian of the marriage. A marriage guardian is someone who is given the power to marry off a woman who is under his control. In other words, the guardian is for the woman. Scholars have different opinions regarding marriage guardians; the Shafi'i school argues that a woman's marriage is invalid without a guardian, while the Hanafi school says that a woman's marriage without a guardian is legal and she can marry herself.

The basis used by the Shafi'i school is QS An-Nur [24]: 32, QS Al-Baqarah [2]: 221, QS Al-Baqarah [2]: 232 which orders the guardian to marry off people who have no husband and those who do not have a wife on the one hand, and forbids the guardian to marry off Muslim men to non-Muslim women. On the other hand, women are prohibited to marry non-Muslim men before they believe. Another basis is the hadith of the Prophet which reads:

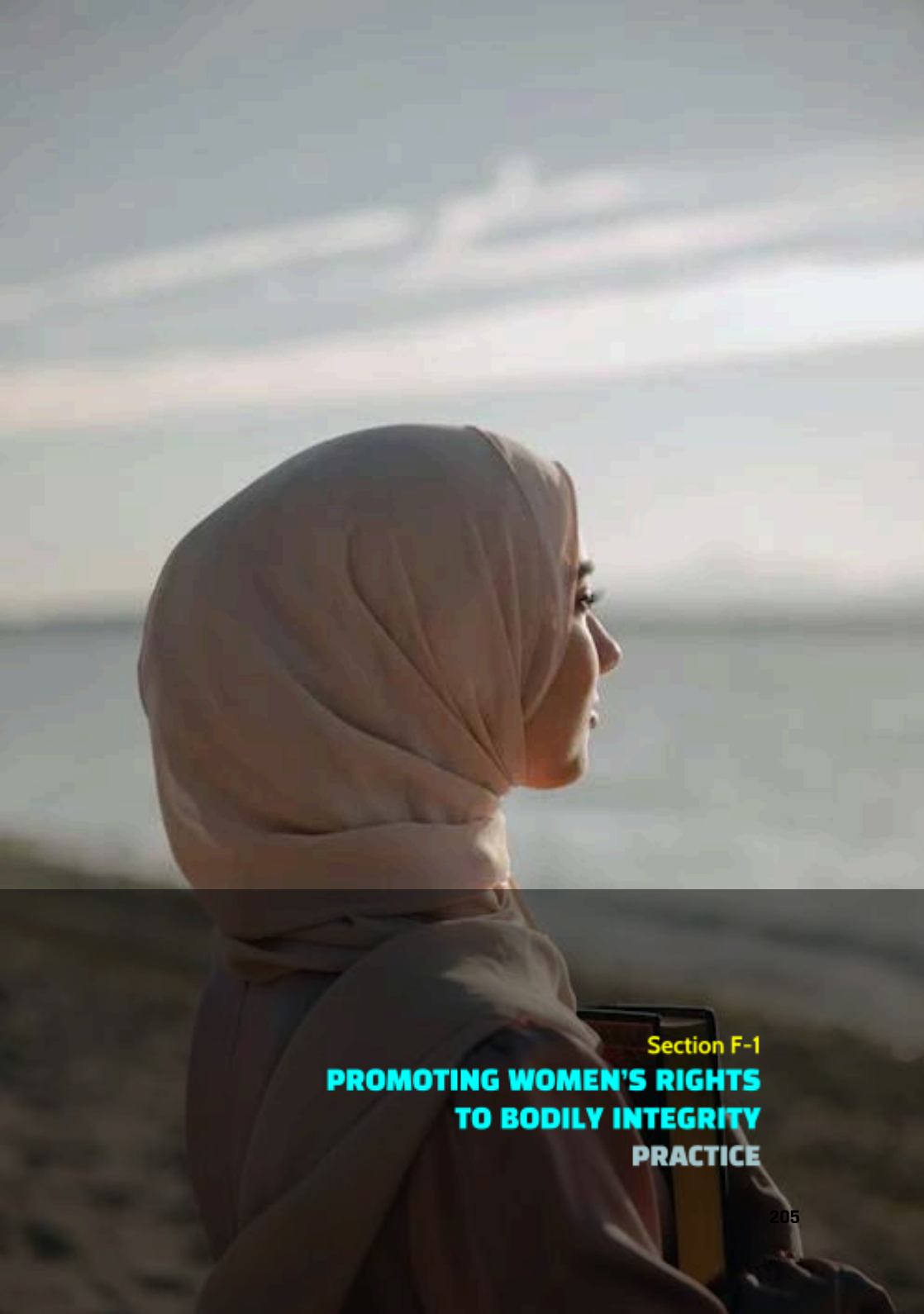
*It is narrated from Ibn Abbas that the Prophet said, "Marriage is not valid except with a guardian," and in the hadith of Aisha RA it is said that the sultan is a guardian for someone who does not have a guardian. [HR Ibn Majah]*

While the argument used by the Hanafi school is QS At-Taubah [9]: 71 that states that male and female believers are mutual guardians for some others, which is strengthened by a hadith narrated by Ibn Abbas, that the Prophet says,

*"A widow is more entitled to herself (her marriage) than her guardian, and a virgin's consent must be asked from her, and her silence implies her consent."* [HR Bukhari Muslim]

If we examine the two opinions further, we can understand that the Shafi'i school requires a guardian over marriage so that women are not treated arbitrarily by the men who marry them. And the priority is men because they are considered capable of protecting their female relatives at that time. Meanwhile, the Hanafi school said that a woman can be a guardian over herself because she is an adult who can distinguish what is good and what is bad for her. As it is also narrated that there are women who were forced to marry by their parents by force because of the wealth of the man who married her, the Prophet left the decision on the woman to continue or cancel her marriage.

So, if one look at the function of the guardian as a protector for women who are getting married, whoever is in charge of her family can become her guardian, according to QS At-Taubah [9]: 71 above which states that both men and women are guardians of each other.



Section F-1

**PROMOTING WOMEN'S RIGHTS  
TO BODILY INTEGRITY  
PRACTICE**





# 22

## Promoting Women's Right to Bodily Integrity

*Rosaline Gollo Galgalu Guyo*



### **Context**

Women rights violation are understood as a violation of human rights and a form of discrimination against women. This means all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, female genital mutilation (FGM), early marriages, rape and defilement, stalking, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

My organization, Waso Hope Community Based Organization, mainly addresses FGM issues and it is the centre piece of the organization's

activities, as the Founder, Mrs. Rosaline, is a survivor of FGM. The organization was formed in 2018, and since then it has been carrying out advocacy activities in Isiolo County. Waso Hope is non-profit Community Based Organization (CBO) in the forefront of advocating for the rights of the pastoralist women and girls in Isiolo County. It a community based non- profitable organization registered with the social services department of Kenya. The CBO's main operations are in Isiolo County only.

Isiolo County is located in the Upper Eastern Region of Kenya and its main economic activity is pastoralism. It is one of the 22 FGM hotspots in the country, with an estimated 65% of girls having undergone the practice, as per the report from Gender Watch. The practice is mostly cultural for the community and an economically viable business for the traditional circumcisers who can earn an upward of 1,000Kshs during the 'cutting season'.

### **Culture and Religion**

Proponents of FGM/C have translated the Arabic word khitaan, which appears in several religious texts, to refer to both male circumcision and FGM. In reality, however, the word only describes male circumcision; FGM/C is actually called khifaadh. However, whenever khitaan appears in a religious text it is used by the proponents to justify an Islamic basis for FGM/C.

Local Muslims, imams and sheikhs in Isiolo have expressed their voice against even Sunnah, a practice of pricking of the clitoris, and hence against female genital mutilation. The majority of Muslims in

Isiolo are in unison that the traditional act holds no value for the girl-child and have been in support in entirely uprooting the practice.

### **Faith-Based Interventions**

We are focused on organizing major steps towards eradication of outdated cultures that are hindering the progress of the girl child within the community, beginning with raising awareness on FGM. Thus we are aiming to completely eradicate FGM in Isiolo County in due course, as per the presidential directive. Ending FGM is everyone's responsibility as this was recently made a national directive by the president, hence all faith leaders are working with the community towards eradication of the act. Local Muslim leaders have been also invited as radio hosts for local radio stations in order to educate the broader public against such retrogressive acts.



## **Achievements**

The success of sharing my personal testimony as an FGM survivor and an Advocate for women rights shined more light on the issue and encouraged other survivors to rise up and present their own personal testimonies, including the formation of survivor groups, is one that I am proud of.

The CBO has travelled to the grassroots in Cherab Ward in Merti during its campaign and formed a re-education group of 25 traditional circumcisers who were educated and sensitized on the detrimental effects of FGM on the girl child and trained on health issues.

The CBO has been visiting schools in Merti subcounty, sensitizing girls on their rights and empowering them through provision of dignity kits, sanitary wear, detergents and personal effects.

## **Key Lessons**

We have not had great success in establishing a rescue centre for FGM survivors, as the financial and material resources required for the endeavour are more than the organization can currently accommodate. However, we have had success in re-educating 25 traditional circumcisers on the adverse effects of FGM to the girl child and bringing them on board. We have empowered thousands of school going girls with Dignity kits and created awareness of FGM activities through school institutions, radio stations and public events.

## **Recommendations**

- I. There is an urgent need to sensitize more cutters to persuade them to stop FGM. They need to be empowered as currently cutters earn an approximate of Kenyan Shillings 3,000 from a single cut, hence they view the practice as an economic activity. They should be equipped with knowledge and provided an alternative form of livelihood in order to shift their dependency on the practice.
- II. Proper referral pathways for all the survivors of FGM through referral centres need to be put in place in order to allow proper assessment of areas where the practice is yet to be stamped out.



# 23

## **Feminist Theology in Bosnia and Herzegovina: Trauma healing of Wartime Rape Women**

*Zilka Spahić Šiljak*



The chapter discusses how Muslim women who observe religion responded to the spiritual and psycho-social needs of wartime rape survivors during the Bosnian war (1992-1995). It highlights how immediate experience of pain and suffering triggered the development of Muslim Feminist Theology in Bosnia and Herzegovina (BiH).

BiH is a small country that gained its independence after the dissolution of the Socialist Federal Republic of Yugoslavia (SFRJ) led by Josip Broz Tito, who was one of the founders of the Non-Aligned Movement. The majority of BiH population is consisted of Bosniac Muslims (51%), Serb Orthodox Christians (30%), Croat Catholics (15%), and minorities, Jews, Albanians, Hungarians and Roma. After the Ottoman conquests in 15 century, Bosniac Muslims have been

living in this region of South East Europe together with the Christians and Jews.

During the socialist period (1945-1990), many Muslims were exposed to modernization and secularization and although mosques and religious schools flourished in the 1970s, Islam was a private matter. In that period the Islamic community's policy was to equally include women and men in religious schools and in various rituals practices such as singing *mawlid* (ritual to celebrate the Prophet Muhammad's (SAW) birthday). Gender segregation in mosques was not so strong because traditional Bosnian Islam had more room for women to equally participate in prayers and rituals. Although a very small percentage of Muslims observed Islam on daily basis, it was part of their identity and culture.

### **Feminist Theology**

Feminist theology that stands for full humanity and equality in private and public life based on gender sensitive exegesis of the sacred text of the Qur'an has not existed in BiH before 1990s. The mainstream teachings of Islam were not gender inclusive and gender sensitive. They were formulated by men and women's perspectives and experiences were missing. Women started studying theology in the 1980s and they were working as teachers of religious education in mosques and schools, but they followed the mainstream masculine interpretations of Islam. Since religion was marginalized from public life, religious perspectives were not taken into account within the secular feminist movement in SFRJ.

When the war erupted Muslim women together with women from other religious traditions and those who were not religious started working in secular civil society organizations and they brought a religious perspective to human rights activism and trauma healing. Therefore, secular feminist initiatives and NGOs established in 1990s were essential factors in providing space for discussion and shaping the educational programmes in feminist theology. The Islamic community in BiH neglected this, and even today, it does not open its doors for feminist theology and gender equality themes.

During the war thousands of Muslim women were detained in war camps and many of them were pregnant and delivered babies. With other female Muslim theologians, I was engaged in Medica Zenica helping the wartime rape women and girls through counselling, spiritual care and rituals. Feminists from medica mondiale in Germany came to BiH in 1993 and established Medica Zenica NGO with the aim of supporting wartime rape survivors. That NGO was the first to provide a room and a safe space for women and children who were coming from the war camps. It was also a platform for female and male feminist theologians to learn, write, explore, and build capacities in local organizations and academic institutions for integration of both gender and religious perspectives in their work.

Wartime rape survivors received psychosocial and material support, which was very important, but they also yearned for spiritual support. Feminists who came to BiH from medica mondiale recognized the relevance of religion in trauma healing and therefore they invited Muslim female theologians to join the psychosocial team.

My colleagues and I were trained in Islamic studies, but not as feminist theologians. Feminism, gender, feminist theology and gender equality were the new concepts for us. We did not know how to employ Islam as a source in trauma healing and other psychosocial hardships, but we were determined to help wartime rape survivors. Urgent times require urgent measures and creativity so we became self-empowered experts in trauma healing. The most important lesson we learned was to listen and to be there for women and girls and then to assure them that they were not guilty for the horrible crimes they survived and that God loves them. Muslim women asked very difficult philosophical questions: "If God loves us, why did He allowed our enemies to rape us? Why were we raped and why not some other women? Did God wanted to teach us a lesson? What we should learn from this?"

In attempts to answer these questions we practiced feminist theology without being aware of it. It was a contextualized interpretation of the main sources of Islam to answer the immediate needs and to alleviate pain. We did not have time to do additional studies, or to have discussion circles with teachers to practice *ijtihad* based on the thorough examination of all the sources and arguments. We had to work with limited sources and knowledge to answer the urgent needs in the middle of the war horror.

Messages from the Qur'an and the Prophet's tradition that those who suffer, remain patient and seek refuge in the shadow of Almighty Allah were conveyed in universalist and gender inclusive

way so women found them comforting. Instead of revenge and punishment as sometimes Muslim scholars interpret war and its harsh reality, we talked about Allah as mother who is Merciful, Caring and Forgiving and who is waiting for human beings to make one step so She/He could do two steps towards them. Contextualized interpretation of Islam empowered wartime rape survivors spiritually so they could better cope with traumas and social stigma.

Although we were not trained in feminist theology's methods of interpretation, we felt that in these situations we could apply the supreme principle of Islam - justice. Wartime rape women needed justice and mercy. As young theologians who were raised in the spirit of freedom and equality of the socialist state and in the spirit of traditional Bosnian Islam that included women in many aspects of religious life, we did not want these women to suffer more. We did not think about consequences, but did what we thought was right in those moments. I realized later that in the secular state of BiH we are free from persecution and prosecution on religious ground for offering new interpretations that some might have found blasphemous or contradictory to the mainstream teachings.

While we were providing comfort and hope, we did not know that we were creating Islamic feminist theology from the scratch. In those moments it did not matter how to name what we were doing. After the war when we started reading feminist literature, we understood that our contextualized interpretations of Islam fall in category of feminist theology.



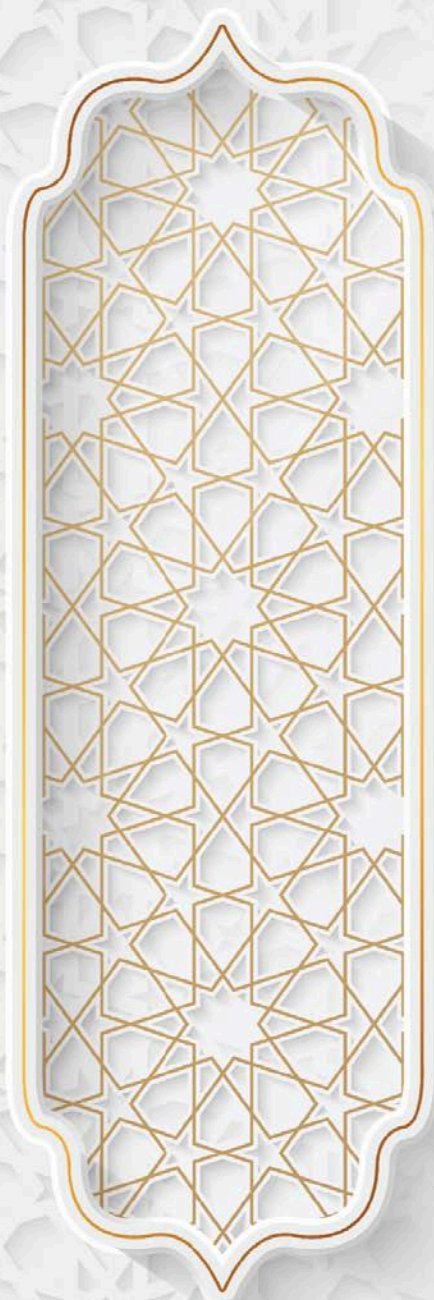
The Islamic community in BiH failed to actively participate in helping these women and to acknowledge their suffering and pain. What one of the muftis has done was to issue a decree (fatwa) "that raped women should be considered our heroines," with the recommendation that family members and society accept these women and help them heal their traumas. This fatwa was a symbolic act that comforted Muslim women but they expected to get more concrete support - imams who would listen their stories and provide spiritual counseling. Some imams disclosed uneasiness about the rape themes explaining that they also were not trained to deal with these issues. It was true, but when believers in the community suffer, the duty of imam is at least to ask and listen. In most of the cases these women wanted somebody they trust to listen and to tell them that they would not be judged as sinful women who deserved to be raped.

## **Conclusion**

In the last three decades feminist theology continued to develop within secular women's organizations where most female theologians explore alternative argumentation to the mainstreaming teachings of Islam that are still trapped in medieval interpretations. Although there is a very limited space for progressive Islamic thought in the Islamic community, female Muslim scholars demonstrated that feminist theology as method of interpretation of sacred texts can help in dealing with rape and trauma healing. Alongside with secular approaches to trauma healing, religion can be useful copying mechanism when it is conveyed with care and compassion and when it includes all voices. Women's voices with focus on care, compassion and needs, both material and spiritual, can make a difference in the world, which is disenfranchised, ethnically and religiously divided.



Section F-2  
**PROMOTING WOMEN'S RIGHTS  
TO BODILY INTEGRITY**  
THEOLOGY





# 24

## **Respect for the Female Body: Covering the Awrah (intimate parts) in Islam**

*Sukendar*



In addition to culture and state rules, religion has a big role in determining gender roles and identities, including in the regulation of women's bodies. One of the debates among scholars that has always been on-going until now is the debate regarding the aspect of having to cover the body for women or the hijab (Shihab 2018: 21). Fadwa El Guindi asked her colleague, Yvonne Haddad, "Which one should come first, discussing Islamic feminism or the hijab?" The answer is "hijab" (El Guindi, 2003: 20). The debate about the hijab is always actual because it has not only religious nuances but also political ones. In Iran, for example, the hijab (which is called a chador) has become a state identity and a symbol of resistance to Western culture. Meanwhile, in France, the hijab has become a political issue that has sparked heated debate, because it is considered to be against the principles of French secularism (*Laïcité*). The issue of the hijab is getting hotter with the existence

of a 'universalistic' way of thinking, which sees Islam as a monolithic thing, including in their view of the hijab. For some people in the West, the hijab is often seen as a mere identity and tradition of Muslims, ignoring the fact that some non-Islamic societies also have the same tradition. Likewise, regarding the meaning of the hijab, many are trapped in a 'colonial' view, seeing the hijab as a symbol of backwardness and oppression of women (Brooks 1995: 23). It ignores the fact that it not only varies in terms of shape and size in every society and country (with various names, such as hijab, chador, tarhah, sufur, khimar, sitara, abaya, burqa, and niqab) but also ignores the meaning of the hijab which varies for individual users in different contexts (El-Guindi 2003:17-18).

For Muslim women, the hijab has various meanings. Hijab can be a symbol of piety, religious observance, rejection of westernization, and women's freedom (El-Guindi 2003, Abu Odeh 1993, Hoodfar 1997). In Indonesia, for example, the hijab has become a symbol of "New Islamic Modernity" (Brenner 1996: 691), *religious and sexual agency*, as well as pop culture (Parker 2005: 3), some even view the hijab as part of the industry, for commercial purposes and commodification.<sup>89</sup> The use of the hijab does not automatically describe the personality of the wearer in full, as a religious person. Likewise, not all scholars also agree that the hijab is an obligation as is obligatory for prayer or fasting (Shihab 2018: 177).

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<sup>89</sup> Among the artists and newsreaders on Indonesian television, for example, in the month of Ramadan they will appear wearing a headscarf, and they take it off after the show is over. Likewise, at the Duo Ratu concert, in Aceh, they wore headscarves, while in their daily lives they did not wear headscarves at that time. See: Detik News, *Duo Ratu in Hijab at Concert*, available online: <https://news.detik.com/berita/d-557126/duo-ratu-berjilbab-saat-konser-> (last viewed: 10 October 2021)

The debate about the hijab among Islamic scholars is more related to the limitations of the body organs that must be covered (*awrah*) because this is the most important function of clothing in Islam (Shihab 2018: 49). Differences of opinion about the limits of this *awrah* revolve around the interpretation of verse 59 of Surah al-Ahzab (33)<sup>90</sup>, and verses 30-31 of Surah an-Nur (24).<sup>91</sup>

Based on the interpretation of these verses, there are three groups of opinions, namely: The opinion which considers the entire woman's body to be covered without exception, and the opinion which states that the entire woman's body must be covered except for the face and palms, and the last opinion which says that "what is usually seen" is very contextual, depending on where the 'usually seen' is for a community or society. Because "what is usually seen" can be different from one society to another, therefore in a certain context

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<sup>90</sup> Meaning: O Prophet say to your wives, your daughters and the wives of the believers: "Let them extend their headcovers all over their bodies. That is so that they are easier to identify, therefore they are not disturbed. And Allah is Most Forgiving, Most Merciful."

<sup>91</sup> Meaning: Say to the believing men: "Let them hold their gazes, and guard their private parts; that is purer for them, verily Allah is Knowing of what they do" (An-Nur: 30): Say to the believing women: "Let them hold their gaze, and guard their private parts, and let them not reveal their adornments, except what is (usually) visible from them. And let them cover their veils to their chests, and do not reveal their adornments, except to their husbands or fathers, or their husbands' fathers, or their sons, or their husbands' sons, or their brothers, or their brothers' sons, or their sisters' sons, or their women- Muslim women, or the slaves they have, or male servants who have no desire (towards women) or children who do not understand women's private parts. Let them not stamp their feet so that the jewels they hide may be known. And repent all of you to Allah, O you who believe, that you may be successful (An-Nur: 31).

of society or profession, showing hair and neck could be a usual thing to do.

The Shafi'i and the Hanbali scholars argue that the entire body of a woman is *awrah*, arguing that Allah says "and let them not reveal their adornment" (An-Nur [24]: 31). According to them, the verse prohibits women from displaying their jewellery, both *khalqiyyah* jewelry (jewelry that comes from Allah's creation) such as face and hair, as well as jewelry that is *muktasabah* (jewelry made by humans), such as clothes, bracelets and face powder. For them, the verse forbids women to reveal their jewelry absolutely, both *khalqiyyah* jewelry and *muktasabah* jewelry. So, it is forbidden for a woman to show parts of her body or jewelry in front of a man who is not her family. The second group is the opinion of Imam Malik and Abu Hanifa which states that the entire body of a woman is *awrah* except for the face and the two palms. They reasoned that the verse "do not reveal their adornment, except what is visible from it" (An-Nur [24]: 31), has given an exception, "what is usually seen". What is meant by "what is usually seen" is the face and the two palms. This is also reinforced by the fact that the face and the two palms must be opened when women perform prayers and *ihram*. If the face and the palms of the hands are *awrah*, then the prayer and *ihram* are invalid, because the condition for valid prayer and *ihram* is to cover the *awrah* (Fatwa of Majlis Tarjih Muhammadiyah).<sup>92</sup>

The third opinion is looser regarding the limits of the *awrah*. They argue that the interpretation of Allah's word "what is usually seen"

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<sup>92</sup> Majlis Tarjih Muhammadiyah's fatwa on hijab, available online: <http://tarjih.muhammadiyah.or.id/download-fatwa-234.html> (last viewed: 18 September 2021)

is very contextual. In a society where normal hair and face are not covered, then this hair and face is not awrah. They base their opinion on the hadith which shows that the hijab is a garment to distinguish the identity of honourable and dishonourable women, not related to religious obligations. Not wearing the hijab is not a violation of religious orders (Shihab 2018:174-177), especially if the use of the hijab is associated with *practicality*. Women who used to work in the fields for example, the slave workers in the time of the Prophet Muhammad, obviously would find it difficult to work if they wore the hijab in the style of women who did not work. In addition, they understand that the obligation to wear the hijab only applies at the time of the Prophet SAW, when there was still slavery where a different identity was needed between slaves and free women and aimed to avoid being disturbed by bad men.



From the three opinions above, most Indonesian people hold the opinion that the entire woman's body is *awrah* except for the face and the two palms. This opinion is held by Muhammadiyah and Nahdlatul Ulama, the two largest Islamic mass organizations in Indonesia. This opinion is also held by the Indonesian Ulema Council, which is a combination of religious mass organizations in Indonesia.

One of the "*best practices*" from the practice of wearing the hijab according to the opinion above is the hijab model in the style of Aisyiah, an autonomous organization for the women's wing of Muhammadiyah. Adhering to the opinion of the Majelis Tarjih Muhammadiyah which states that a woman's face and hands are not *awrah*, Aisyiah issued a dress code (National Uniform Guidelines for 'Aisyiyah) for its members, in the form of clothing that covers the entire body except the face and the palms of the hands.<sup>93</sup> Based on a progressive Islamic way of thinking, Aisyiah views that women's bodies must be covered, as the identity of Aisyiah's *dawah*. However, the practice of covering should aim to maintain modesty, not excessive, as long as it is in accordance with the sharia and has a theological basis. Therefore, Aisyiah's hijab does not cover the face, nor the veil. Aisyiah's hijab is neither wide nor long.

For Aisyiah, the hijab is a distinctive identity, so Aisyiah's choice of dress code does not negate the interpretation of other groups' dress codes. Therefore, Aisyiah does not give a negative label to women who choose to wear the veil. However, Aisyiah denies that

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<sup>93</sup> Aisyiah Central Leadership Decree No: 231/SK-PPA/A/X/2019, regarding Aisyiah's National Uniform Guidelines.

Islam requires Muslim women to wear the veil, and is actively campaigning for this. Likewise, Aisyiah does not view women who choose the third opinion, namely not wearing the hijab, as women who are not pious.

The hijab, which still shows the woman's face and hands, is considered more suitable for Muslim women. The reason is that Muslim women are not only active in private spaces, but they also need to be active in public spaces. They need clothes that can protect their safety and honor, as well as an outfit to show their identity. The clothes worn should combine harmoniously aspects of safety, health, simplicity, politeness, modesty, and applicable local wisdom.



# 25

## A Woman's Right to Her Physical Integrity

*Ibrahim El Hod Hod & Gamal Serour*



It is well-known in God's law that the right of humanity - male or female - to the safety of his/her body is considered one of the rights of special importance in Islamic legislation, because it is considered one of the highest interests that Islamic Sharia dictates its preservation, and not to prejudice it in a way that harms that safety, whether that harm is small or large, because self-preservation is one of the basic purposes that come after the purpose of preserving the religion. This calls for the utmost respect for it, and it is forbidden to neglect it in any way.

A woman's right to the safety of her body and the obligation to protect it and not touch it is characterized by the fact that - with that, the general preservation established for the human soul of a man or a woman - there is another aspect that is related to preserving honour in Islamic legislation, and honour is one of the

considered interests that God commanded to protect. It is one of the purposes of Islamic Sharia, and therefore the preservation of the woman's body was related to two of the purposes of the legislation, namely: preserving the soul and preserving honour, because harm to the woman's body includes her right to protect herself and her honour together.

Islamic law has decided penalties for the assault on the self, and other penalties for the assault on the show, in the verse:

*"And We prescribed to them in it that (Torah) life for a life, and eye for an eye, and nose for a nose, and ear for an ear and tooth for a tooth, and reprisal in wounds. But he who forgives it (remits the retaliation); it shall be expiation for him (for his sins). And whoever does not judge by what Allah has sent down, such are the wrongdoers"<sup>94</sup>,*

and saying ﷺ in his speech the day of Sacrifice in Mina in the farewell argument:

*"your blood and<sup>95</sup> your wealth and your honor is haram you sacred as this day, in this month of yours, in the country, not do you hit ",*

It is known that the prohibition requires punishment that prevents harmful prejudice to those interests.

The guardianship of a woman's right to the integrity of her body and her honor is proven to the one who has the right to it, and he is the woman herself, because her guardianship over herself is more deserving than the guardianship of others over her. Allah says:

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<sup>94</sup> Suratul Maida Verse 45

<sup>95</sup> Narrated by Bukhari in the Chapter of Hajj, hadith no 1739

*We have fastened every man's omen to his neck.<sup>14</sup> On the Day of Resurrection We shall produce for him his scroll in the shape of a wide open book, (saying): "Read your scroll; this Day you suffice to take account of yourself."<sup>16</sup>*

and saying The Most High:

*Whoever does an improving deed (the soul's cleansing), it is for his own soul, and whoever does an evil deed, it is against himself. Then to your Lord you shall be made to return<sup>17</sup>*

Allah says:

*No soul burdened with sin will bear the burden of another.<sup>18</sup>*

Allah says:

*All souls are held in pledge for what they have earned.<sup>19</sup>*

The woman is endowed with intellect, understanding, awareness, knowledge and experience, and therefore her mandate in preserving the integrity of her body and defending it in front of the aggressor and before the judiciary was established for her by virtue of her priority, her eligibility, and the preservation of her rights. Hence, her will and her decision must be respected, and she should not be forced to do any work she does not agree to, or to marry someone she does not want, because in marriage a violation of her

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<sup>16</sup> Suratul Isra Verses 13-14

<sup>17</sup> Suratul Jathiya Verse 15

<sup>18</sup> Suratul Fatir Verse 18

<sup>19</sup> Suratul Mudathir Verse 38

body and honor, and the shame of her body, and therefore her consent to marriage was a prerequisite for the validity of this contract.

Also, this consent on the part of the woman is not a condition of marriage alone; Rather, in every behavior that constitutes an insult to her body, such as surgeries or medical practices, and the like, such as her right to family planning, intimate relationship with her husband, and protection from all harmful practices such as female circumcision and forced and early marriage, and this is evidenced by the Almighty's saying:

*Women have rights similar to those of men equitably*<sup>100</sup>

and the Almighty's saying:

*The believers, both men and women, are guardians of one another*<sup>101</sup>,

And his saying (peace be upon him):

*"Women are but half-breeds of men"*<sup>102</sup>

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<sup>100</sup> Suratul Baqara Verse 228

<sup>101</sup> Suratul Tawba Verse 71

<sup>102</sup> Narrated by Abu Dawd in his Sunani hadith no. 236 and Tirmidhi in his Sunani hadith no 113

and his saying - peace be upon him:

*"The most worthy of the conditions for you to fulfil are those conditions you stipulated to legitimize sexual intercourse".*

And these and many other narrations in the same context show the extent of the woman's right to the safety of her body, her guardianship over it, and her own exercise of the rights of that guardianship.

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A high-angle photograph of two women walking on a wide, paved bridge or promenade. The bridge has a metal railing on the right side, overlooking a body of water. Long, dark shadows of the bridge's structure are cast across the pavement. The woman on the left is wearing a dark coat and a light-colored headscarf. The woman on the right is wearing a light-colored coat and a blue and white patterned headscarf. The word "CONCLUSION" is written in large, white, bold capital letters across the lower part of the image.

# CONCLUSION



This doubly rich and informative book on women's rights in Islam offers valuable perspectives that will equip practitioners with the relevant knowledge and skills to continue to work for social transformation. The contributors have addressed some of the most recurrent and challenging women's rights issues within Muslim communities in diverse parts of the world. Though the focus of the book is on women rights within Muslim communities, the same challenges are faced by women in other communities and as such are not unique to Muslim communities. The practice and theological chapters on the key women's rights issues have highlighted that the notion that Islam denies women their rights is mistaken. This is attributable to problematic interpretations of the sacred text, as well as allowing local cultures to take priority, instead of implementing the right interpretations of Islam. There is, therefore, hope that as more communities are accompanied in their engagement with the right teachings of Islam, there shall be more rapid progress in securing women's rights.



This volume, with voices from different parts of the world, provides some key learnings.

Thus:

- Discussions on women's rights in Islam (as, indeed, in any religion) are most effective when they are undertaken within well-defined local contexts
- Bringing together diverse voices from different contexts, as this volume has done, facilitates cross-cultural conversations and enriches perspectives on women's rights in Islam
- Investing in understanding practice at the local level is critical. This enables practitioners to appreciate the factors that prevent women from enjoying their rights
- There are some passages from the sacred text, as well as citations of the traditions of the Prophet (SAW) that are appealed to more often than others in the different contexts. It will be vital for theological institutions and theologians to continue to identify such and continue to have a critical engagement with them
- Generating principles for effective and liberating interpretations of sacred texts in order to promote women's rights in religion can be an effective strategy



- While religion is a major factor that influences the rights of women, it is equally important to acknowledge the relevance of other factors. For example, in some contexts, there is a need to expand livelihood opportunities for the women who derive economic benefits from female genital cutting. Further, historical and political factors in specific regional, national and local contexts have a bearing on women's rights to, among others, the right to property rights and custody of children
- A sizeable number of contributors to this volume are men. While from an activist perspective it is important to have as many women being involved in the struggle for women's rights as possible, the presence of men is also strategic. Having male theologians and activists promoting women's rights in religion and beyond is a positive step towards securing women's rights
- The quest to secure women's rights in religion and beyond is an ongoing one, requiring the contribution of as many individuals and institutions as possible.

# THE CONTRIBUTORS





## THE CONTRIBUTORS

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