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ARAB WOMEN ORGANIZATION

WOMEN IN ISLAM

-Selected Issues-

2017

WOMEN IN ISLAM

- Selected Issues -

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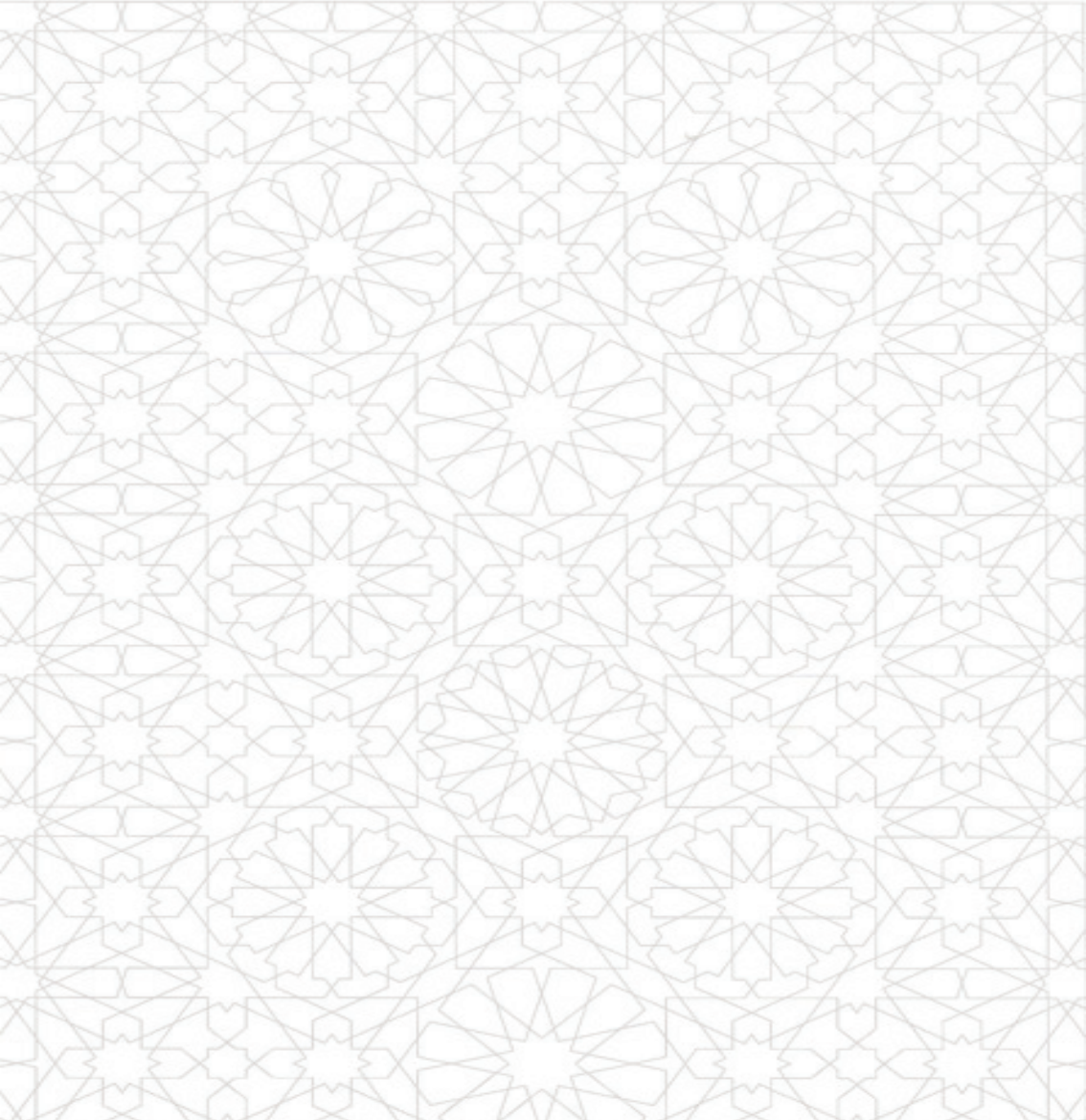
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PREFACE



This book, although written in few pages, is greatly rich with significant and meaningful information. It is very dear to my heart. I see it as a means for enlightenment to clear misconceptions and show the truth concerning one of the most critical issues of contemporary Muslim community; namely, the real status of Muslim women in Islam.

Many people from different western and foreign cultures misunderstand and even have critical confusions about women's position in Islam. Unfortunately, even some Muslims in Arab and Muslim countries do have similar confusions and misconceptions.

The reason of taking this endeavor of writing that valuable book goes back to my participation in the meetings of the UN Committee on the Elimination of Discrimination against Women (CEDAW) in New York years ago. To my surprise, some reports from Muslim governments faultily mentioned shameful brutal practices as Sharia-based practices. I then observed how negative matters are frequently attributed to women and their social position in Islam. I was astonished that these false matters appeared in official reports issued by Muslim States.

Some officials do not thoroughly examine the governmental reports they receive concerning women. Those reports may confuse the tradition-based practices and cultural customs with the true Islamic authority and reference. It is

regrettable that such wrong attribution to Islam results in shameful effects on woman's position in the society e.g., wrong claims that Islam approves the torture of women or looks down upon them.

I was the only Muslim woman among the representatives of 23 countries in that meeting. It was my duty to show and affirm that the shameful practices against women, like those mentioned in such reports, have no relation whatever to Islam. Islam, on the contrary, stresses women's equality to men and ensures their noble social position. It gives a woman an independent legal and financial capacity. The participants

welcomed my defense, especially the representatives of non-Muslim countries who expressed their surprise at the differences between my statements and the mistaken image they have in minds about woman's position in Islam.

The participants agreed that it is highly important to collect all issues related to women in one source, well simplified and documented, to prove women's positions and provide answers to any alleged misconceptions. When I returned to Egypt, I brought the idea to Al-Azhar Al-Shareef in its capacity as the first and foremost Muslim religious authority.

I met the Grand Sheikh of Al-Azhar Jad Al-Haq 'Ali Jad Al-Haq (may Allah rest his soul in peace), who expressed his deep welcoming to the idea and promised to form a six-member committee of Al-Azhar scholars in addition to a representative from the Ministry of Social Affairs to author a comprehensive book tackling these issues. Dr. Zainab Radwan (may Allah have mercy upon her), the Dean of the Faculty of Arabic and Islamic Studies then, was nominated by me as the Ministry's representative to participate and supervise the writing of this book.

In 1999, this book was successfully published in Arabic, and it was written in a simple language that everyone understands. It reveals many of the rights that Islam gives to women, including the right to education, work, political participation, legal equality, and marital rights among many others. It also removes misconceptions about the status of women in Islam, especially those related to inheritance, testimony, and assumption of judicial positions.

And its important to note that the original Arabic version of this book was revised and approved by Sheikh Jad Al-Haq 'Ali Jad al-Haq, Sheikh Muhammad Sayyed Tantawi, Sheikh Muhammad Al-Ghazali, and Dr. 'Ali Jum'a revised .

When I was honored to act as the director general of the Arab Woman Organization (AWO), I expressed my concern about the need of correcting the image of women in Islam to the Executive Council of AWO, which strongly reaffirmed the importance of adopting a project that aims at translating valuable writings on “Women in Islam” from Arabic into foreign languages.

In this regard, AWO consulted Al-Azhar to translate this book into English. AWO aims at distributing and promoting it worldwide on a very large scale ;as it will be sent to major international bodies and mechanisms concerned with women as well as distributing copies of it to important meetings and conferences attended by the AWO in its capacity as the regional organization in charge of empowerment of women in the region.

It gives me honor to present the book in its English version to all readers inside and outside Muslim countries to know the true image of women from the Islamic perspective.

We are urgently in need of presenting this truth to the world to defend Islam against extremist and terrorist movements, which distort its image through their shameful offenses against women and the entire society in the name of Islam, the religion of tolerance.

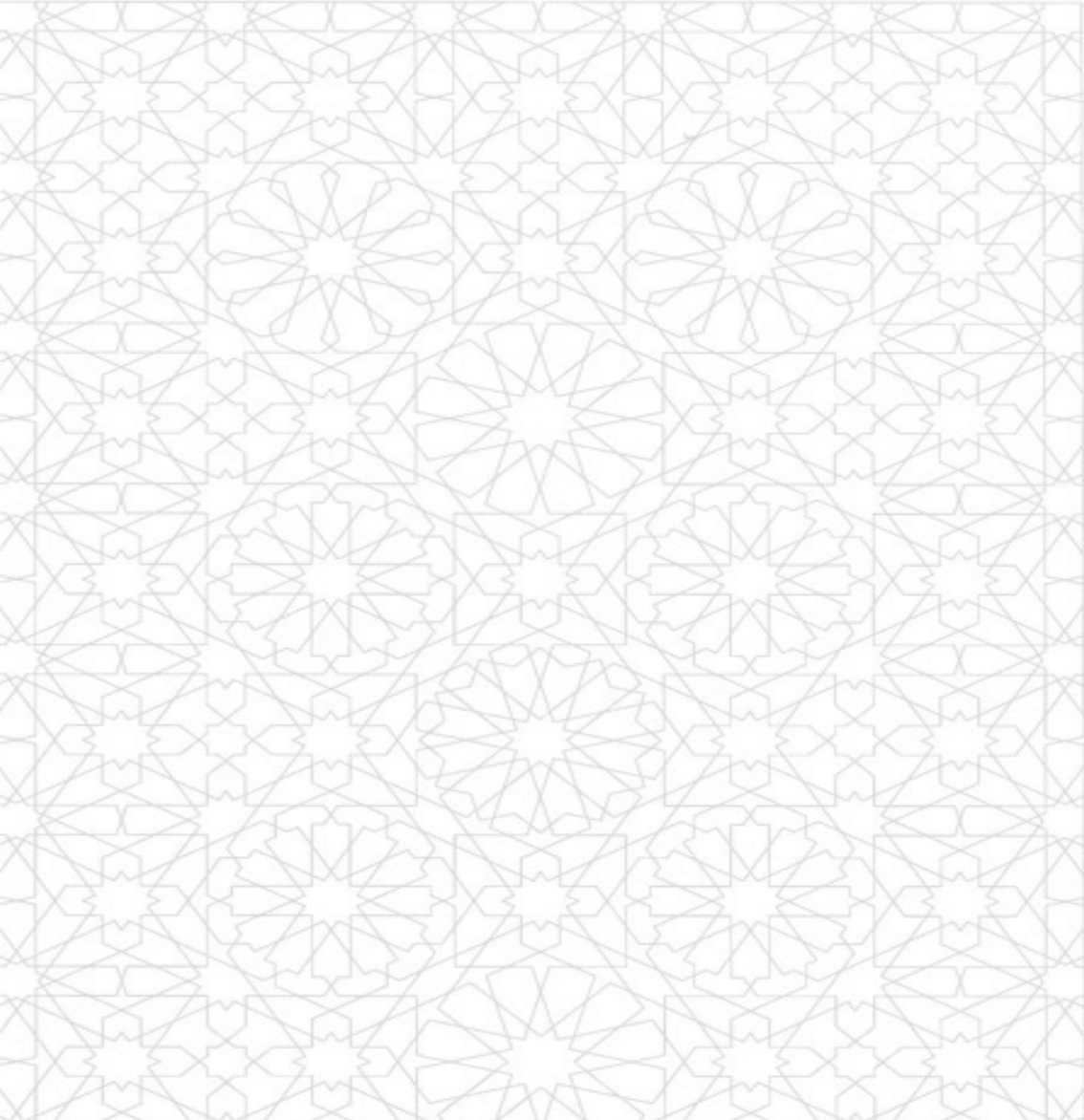
Ambassador,

Mervat Tallawy

AWO's Director General

2017





INTRODUCTION



The position of woman is a standard measurement against which the degree of progress can be weighed in any society. It is even unimagined for any contemporary society to develop and progress while half of its powers are set aside and left undeveloped; women are living alone in isolation from men. As such, men cannot achieve progress independently apart from women. Women are men's equal partners and makers of life from the very beginning. Being a child—she is his mother; being a husband—she is his marital partner; and being a father—she is his daughter.

If she were backward or reactionary, her way of thinking would most likely affect men's thinking and course of life and impede development. Eventually, it becomes a strong barrier to the building of civilization. A review of the history of ancient nations around the world proves these facts. Many examples are there to cite from the deeply past chronicles.

Accordingly, the rights given to women varied in line with the degree of progress and development achieved within each society and in conformity with the degree of its adherence to the inherited social traditions put in force over several centuries ago. The heavenly revealed laws relieved women and saved them many immanent injustices until the rise of Islamic Legislation, which has set right many wrong situations that women suffered. Briefly, it granted women their right position in the society. It eliminated sex-based discrimination and held that both man and woman share the same human value. Furthermore, it granted women material and spiritual rights, elevating women to an unprecedented status higher than their status quo in the most recently issued laws of the most developed contemporary nations.

In fact, the distinguished position of women in Islam reflects the universal Islamic principles that constituted the Islamic general philosophy and social system in which the individual relationship of

each member with other individuals and with the society around her/him is well defined. These principles are centered on the principles of freedom, equality, justice, and social solidarity. Here, the principle of equality has a special relevance to the subject matter of this study. For Islam, equality designates a collection of rights and duties that all members of the society fairly share. In the light of the Islamic principle of equality, we explore man-woman equal stand through two main central issues:

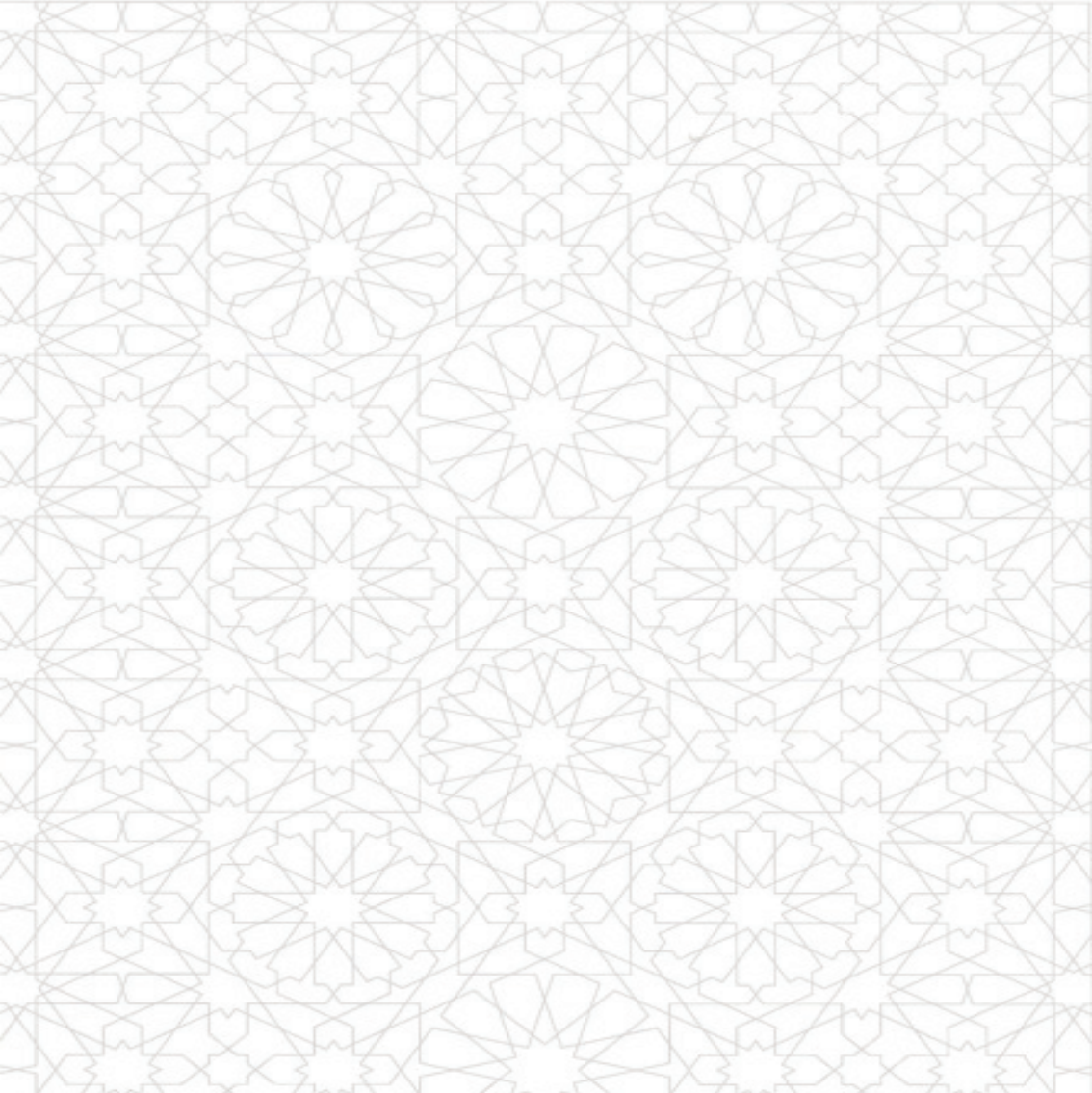
First, the actual implementation of equality between men and women in human value and public life.

Second, the reciprocal rights and duties between men and women in marital life.

At last, we review some misconceptions usually raised about the position of woman and present the right interpretations for them with the aim of removing any confusion about the markedly excellent and unprecedented, actually unparallel until now, position of women divinely enacted and socially admitted fourteen centuries ago. To sum up the common misconceptions, there are as follows:

1. **Inheritance of women**
2. **Polygyny**
3. **Women's right to hold judicial posts**
4. **Women's testimony**

This study mainly depends on the texts of the Quran and the Purified Sunnah as well as the legal views and polemics of jurists. In other words, it essentially consults the fundamental pure sources of legislation. As such, a reader may have a close look at the illustrious Islamic view concerning the issues of women and their positions in the society.



CHAPTER ONE

EQUALITY IN ISLAM



Islam asserts the unity of humankind in origin and destiny as well as in physical laws of life and death. Likewise, they are all equal in rights and obligations before law and before God, in this life and in the life to come. Merits only go for the righteous deeds and honor only goes for the most righteous of people. There is no place whatever for any false claim to vicious discriminations; all human beings share the same essence—humanity, and the same origin. In this regard, the Quran clearly states, “O humankind, 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” (the Quran, 4: 1).

The Quran asserts this noble meaning in several contexts,⁽¹⁾ leaving no trace of doubt in human thought that all humans share the same features of creation and the same origin; they are all made of dust and they are all the production of such humble sperm-drop. By the same token, the Prophet (Allah’s peace and blessings be upon him) repeatedly emphasizes this meaning in several prophetic statements. For example, he said, “You are all the progeny of Adam and Adam is made of dust i.e. you all share the same humble origin of dust.” He also said, “Like comb teeth, people are absolutely equal.”

(1) For example, the Quran states:

- “Did We not create you from a liquid disdained? Then, We placed it in a firm lodging [i.e., the womb] for a known extent. And We determined it and excellent are We to determine” (the Quran, 77: 20-23);
- “Allah created you from dust, then from a sperm-drop; then He made you mates” (the Quran, 35: 11).
- “Certainly We did create man from an extract of clay. Then, We placed him as a sperm-drop in a firm lodging [i.e., in the womb]. Then, We made the sperm-drop into a clinging clot, and We made the clot into a lump [of flesh], and We made [from] the lump, bones, and We covered the bones with flesh; then We developed him into another creation. So blessed is Allah, the best of creators” (the Quran, 23: 12-14).

Since no individual is superior to another in nature or creation, no human race, sex, or nation is superior to another in terms of nature or creation. All members of human community belong to the same family; they stemmed from the same soul and his mate, who are the father and mother of all men and women. In other words, all human beings are full brothers and sisters; they are equal in origin and creation. Had Allah so willed, He would have created them from different souls with no blood relation or connection to bring them together! To conclude, the fact that there are many races and nations shall not be a source for vain claims to superiority. Instead, it should be a genuine reason and call for coming together and building better relations and cooperation to know one another. Allah (may He be Exalted) says, “O humankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted” (49: 13).

The egalitarianism that Islam preaches is basically built on the perfectly pure vision of humanity without the least blemish of discrimination. It oversteps some long standing barriers widely used to separate the members of human community and classify them into walled quarters and secluded groups and classes. Only under the Islamic way of life, they are, and indeed feel, perfectly equal to one another without any consideration of any false discriminatory base. For Islam, this lofty principle is applicable to Muslim and non-Muslim citizens alike.

As such, non-Muslim citizens in States with the Muslim majority or States under Muslim governments have public rights and duties equal to their Muslim counterparts. Both Muslim and non-Muslim citizens submit to the same judicial procedures and laws. Only the religious beliefs and rites form an exception in the sense that the Muslims respect their beliefs and rites, so they enjoy the freedom of belief and the freedom of worship following their standard religious way.

Likewise, the Islamic prescribed penalties are not applicable to them as regards the issues are declared lawful to them in their religion. Since their religion does not impose any punishment on them in such issues, Islam ordains no punishment on them as well. The manner of Islamic respect to the beliefs and rites of non-Muslims goes so far inasmuch that they should not be summoned for courts during their religious feasts.

The Prophet (Allah's peace and blessings be upon him) even told the Jews, "You, the Jews, may not do works in Saturdays." This universal law of equality is equally granted for all citizens in the Muslim State, including polytheists who also have rights equal to the rights of Muslims so long as they respect their conventions with Muslims. As such, the blood-money [a compensation payment] of a polytheist who has a convention with Muslims is equal to that a Muslim⁽²⁾ The rights of non-Muslim citizens are not only restricted to the codes of rights guaranteed by texts of Sharia and laws, for the Muslim ruler must show compliment and kindness to them.⁽³⁾

Given the Islamic assertion of the human value as equally shared by all members of humankind, Islam sees them all equal in human dignity. Allah (may He be Exalted) says, "Indeed, We have conferred dignity on the children of Adam and carried them in the land and the sea, and

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- (2) "Whoever kills a believer by mistake, then the freeing of a believing slave and a compensation payment [diyah] presented to his [i.e., the deceased's] family [is required] unless they give [up their right as a] charity. But if he [i.e., the deceased] was from a people at war with you and he was a believer – then [only] the freeing of a believing slave. Yet, if he was from a people with whom you have treaty, then a compensation payment presented to his family and the freeing of a believing slave" (the Quran, 4: 92).
- (3) "Allah does not forbid you from those who have not fought you because of your faith, nor drove you out of your homes, that you befriend them and behave equitably towards them. For Allah loves the equitable" (the Quran, 60: 8).

We have provided for them of the good things and preferred them over many of those We created in a marked preference” (the Quran, 17: 70).

According to this verse, all human beings are entitled to the same form of dignity, men and women alike. It is a reflection of the Islamic vision of man as the most honorable being in the realms of creation. In no one context does the Quran speak of the creation of Adam without asserting the merits and favors with which he excelled angels and so they had to prostrate themselves to him. Undoubtedly, the angels constitute the highest example in their obedience and sincerity to Allah. For example, Allah (may He be Exalted) says, “Indeed, We have created you, and then formed you; and then We said unto the angels, “Prostrate yourselves before Adam!” So they prostrated themselves, except for Satan; he was not of those who prostrated themselves” (the Quran, 7: 11).

The Quran makes it clear that the honor divinely conferred on Adam must be appreciated and respected. As such, when Satan denies that honor, he disgracefully suffered dismissal and had to leave the blessed world of Paradise. The Quran evidently states, “He said, “What has prevented you from prostrating yourself when I commanded you?” He said: “I am far better than him; you created me from fire and created him from clay!” He said: “Descend from it, for it is not for you to be arrogant here; depart, for you are disgraced” (the Quran, 7: 12-13).

Actually, the denial of human divinely-conferred honor exposes deniers to eternal disgrace and deprivation of the Divine Mercy. Satan, once a peacock-angel [the highest in rank], suffered disgrace and was denied the Divine Mercy on account of his denial of Adam’s divinely conferred dignity. In other words, human dignity is inviolable. Normally, the emphasis placed on human dignity and equality must effectively find touchable demonstrations in human reciprocal practices and mutual respect.

The Quran is highly concerned with giving several examples for the standard moral conduct towards others. Meanwhile, it declares all forms of violating human dignity forbidden, “O you who believe, no community shall ridicule another community; perhaps they may be better than them; nor shall any women ridicule other women; perhaps they may be better than them. Nor shall you mock yourselves or call each other by [racial, ethnic or other offensive] nicknames. Evil indeed is the reversion to wickedness after attaining faith. Indeed, anyone who does not repent, these are the transgressors” (the Quran, 49: 11).

To sum up, human dignity must be inviolable and perfectly safeguarded. The very inclusive, yet deeply indicative, expression “**Nor shall you mock yourselves**” reflects the fact that ‘one’s mockery of others is actually mocking their own selves, since all people belong to the same soul—Adam.’

Gender Equality in Human Value

The Islamic legislative system introduces several fair amendments to the position of women in the sense that it eliminates the false discrimination between man and woman in human value and guarantees women full equality to men. In this regard, Allah (may He be Exalted) says, “It is He who created you all from one soul, and from it made its *mate* so that he might find comfort in her” (the Quran, 7: 189). He also says, “O humankind, 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” (the Quran, 4: 1).

The word “*zawj*” reiterated in the two verses above, though precise, is gender-neutral word and, as such, semantically very indicative of the absolute equality between men and women. In Arabic, the word “*zawj*” literally signifies two corresponding things or two joint parts (two halves) identical to each other in form or

function inasmuch that they together constitute one body—pair. In this sense, the Quran never describes a woman as *zawjat* (marked with the Arabic feminine sign of the marital partner—*wife*) but designates her as *zawj* (lit. spouse or marital partner) in affirmation of the perfect equality with man; she is man’s typical match and equal partner inasmuch that man’s perfection is impossible without her. Meanwhile, a man is an equal *zawj* as well. For example, in respect of Prophet Zachariah and his wife, Allah (may He be Exalted) says, “So We responded to him, and We granted him John, and We cured his *zawj* (lit. marital partner—wife)” (the Quran, 21: 90).

Likewise, Allah (may He be Exalted) says, “People learned from both of them how to create discord between a man and his *zawj*” (the Quran, 2: 102). In further affirmation of this indicative usage, the Quran uses the plural *azwaj* (lit. wives) instead of using *zawjat*, which conveys the same meaning but with the feminine sign: “It so happened that the Prophet told something in confidence to one of his *azwaj* (lit. wives)” (the Quran, 67: 3). Similarly, the Quran uses the same term “*zawj*” for man as a marital partner “Allah has indeed heard the words of her who pleads with you concerning her *zawj* (lit. husband)” (the Quran, 58: 1).

The Quranic semantic carrier “*zawj*” expresses one of the precisely fine Arabic styles of expressions and clearly asserts the equality of men and women in origin, creation and formation; they are just two corresponding halves of the same body and soul whose unity is indispensable for the survival of life. As such, the Sharia laws place them equally in the same frame. Like the founding members of a company or a plant, they stand equal partners entrusted with varieties of jobs in different areas while the survival of this company is contingent upon them both. Each of them does his/her jobs—duties, and each of them has his/her due shares—rights. The distribution of duties and rights reflects knowledge, wisdom, good plans and delicate reasons.

There is also another Quranic context stating, “By what He has created, the male and female, your works are various. As for s/he who gives and is righteous and believes in the truth of the ultimate good, We will ease his/her way to the ultimate happiness—Paradise. But as for him/her who is niggardly and arrogantly thinks that s/he is self-sufficient and calls the ultimate happiness a lie, We will ease his/her way to hardship” (the Quran, 92: 3-10). Note how Allah jointly mentions the male and the female as a translation of the Lord’s vision of them as equal.

As such, the differences of people in doing good deeds and bad deeds as well as the Divine facilitation given to them are all equally applicable to men and women alike. This Quranic principle declares that both man and woman are competently responsible for their religious and worldly actions and they will receive fair recompense for their actions, be they good or bad.

As such, Islam states that each person, male or female, will be fairly rewarded or punished following the works s/he did “Their Lord responded to them, “Never will I allow to be lost the work of [any] worker among you, whether male or female; you are both the same in that respect” (the Quran, 3: 195). Consequently, the Quran makes it clear that each person is liable for his/her own deeds “Everyone will be responsible for his own actions” (the Quran, 52: 21); “Every soul will be duly recompensed for its deeds without being wronged” (the Quran, 45: 22).

The majority of Muslim scholars and Quranic exegetes are in agreement that all masculine singular or plural forms (e.g. believing men, Muslim men, etc.) are equally applicable to women in all matters related to duties, rights and public works unless the contextual evidence proves otherwise. In this manner, each legal

command to do, not to do, to permit, ordain, warn or rebuke is applicable for men and women on equal footing. They both are equally required to contemplate and understand the Divine revelations and signs to put them into practice. Furthermore, they are equal in all devotional financial and physical duties, in rights and permissible matters as well as in forbidden matters and their consequences.

The same standard is indiscriminately effective in issues related to ethics, morals, individual behaviors, and social situations as well as their positive or negative results in this life and in the life to come. Surat al-Tawbah (the Quran, 9) presents two highly significant verses of close relevance to this context. They are as follows:

“The believing men and the believing women, are friends and allies of one another. They enjoin good, forbid evil, establish prayers, pay obligatory charities and obey Allah and His Messenger. Surely Allah will show mercy to them. Allah is All-Mighty, All-Wise. Allah has promised the believing men and believing women gardens beneath which rivers flow...” (the Quran, 9: 70-71).

They evenhandedly declare that men and women equally share faith, good deeds, reformation, obedience to Allah and his Prophet, prayers, charities and mutual support and solidarity in all challenging contexts and circumstances that face the community as well as in Muslim endeavors for public welfare and benefits. The subtext of these verses asserts the actual necessary cooperation of men and women in the procedures of reformation; enjoining good and forbidding evil. This mutual support of men and women affirms women’s equal right to lead the state, reform the community and hold central roles in that process.

The events of Islamic history give illustrious examples of women's remarkable position and honor and stress the sensitive care for her feelings. For example, one of the enemies' army besought Hend Bint Abu Taleb—famously nicknamed Umm Hani', for security and protection during the Muslim expedition to liberate Mecca and she responded positively to his earnest appeals. Then, 'Ali Ibn Abu Taleb came to kill that soldier, but Hend prevented him and sought the judgment of the Prophet (Allah's peace and blessings be upon him). In response, the Prophet said, "We too give protection to whoever you have given protection to, Umm Hani'." Evidently, the Prophet honored and affirmed her promise of protection.

Gender Equality in Public Life

One of the universal Quranic facts is the Quranic affirmation of women's full legal competence to perform all civil personal and economic actions without any restriction other than the legal proscriptions that Allah and His Prophet imposed upon all Muslims. As such, a woman has unlimited right to ownership and is a legally qualified heir, donor and recipient of gifts and legal wills. Likewise, she has the right to own property as well as the right to contract, earning, reconciliation and litigation. She also has the freedom of legal action regarding her belongings, possessions and other resources resulting from all forms of transactions, such sales, alimony, gifts and bequests.

In other words, Islam respects and safeguards the full civil personality of a woman and admits her legal competence to bear liabilities and administer and supervise her properties and economic affairs. Meanwhile, it maintains her full right to own property alone

or in association with others, be she married or not. As such, the married woman exercises her civil legal personality perfectly and has her own wealth independent from her husband and his wealth. It is even forbidden for the husband to take anything of her wealth, be it little or much.

- Allah (may He be Exalted) says, “If you wish to marry another wife in place of your present wife, and you have given her a great deal, you shall not take back anything. Will you resort to malicious calumny and evident vice to take it?” (the Quran, 4: 20).
- He (may He be Exalted) also says, “It is not lawful for you (men) to take back any of the gifts that you gave to your wives” (the Quran, 2:229). Evidently, if it is unlawful for the husband to take back anything of his gifts to the wife, it is worthier that he shall not take anything of her own possessions unless she freely and satisfactorily gives it to him. In this regard, Allah (may He be Exalted) says, “Give women their bridal gift spontaneously upon marriage. But if they are happy to give you some of it, make use of it with pleasure and goodwill” (the Quran, 4: 4).
- Likewise, it is unlawful for the husband to appropriate her property unless she permits or authorizes him to act on her behalf as a legal agent. Being the principal, she has the right—whenever she wills, to terminate this agency and authorize another agent as she likes.

Admittedly, this lofty legal authority that women possess is matchless and unprecedented, even the most developed democratic nations have not reached this level of equality. For example, in France—the bastion of freedom and the source of human rights, women suffered until recently and are still suffering a situation reminiscent of the old legal status of slaves. For example, the law deprived her of the legal competence in several civil affairs, as seen in the article no. 217 of the French Civil law, which states, “The wife, even when she is separate in state from her

husband, cannot grant, alienate, mortgage, acquire, either by gratuitous or encumbered title, unless her husband concurs in the act or yields his consent in writing.”

Given the amendments and restrictions introduced to this article in late times, many of its legal consequences continue to affect the legal position of French women until today. In affirmation of this state of civil slavery imposed on the western married women, the western laws entail women to change their last names after marriage. As such, a woman loses her affiliation to her family name and assumes the name and last name of her husband’s family. This nominal loss is symbolic of the loss of her civil personality and her inclusion in the personality of the husband, which Islam never recognizes.

Marital Rights of Spouses

Women have several rights in Islam, of which the following are exemplary:

1. The Right to Education

Islam not only grants a woman the right to education, but Islam declares it her duty as imposed on all Muslims alike. In this context, the Prophet (Allah’s peace and blessings be upon him) said, “Learning is an obligation upon every Muslim, male or female.” She also finds encouragement in the Quran to attain the highest levels of education, “Say: My Lord! Increase me in knowledge!” (the Quran, 20: 114); “You have been given but little knowledge” (the Quran, 17: 85). The Prophet (Allah’s peace and blessings be upon him) also says:

- “Seek knowledge from the cradle to the grave!”

- “Whoever follows a path to seek knowledge, Allah will make easy for him/her a path to Paradise”
- “Seek Knowledge even if you have to travel as far as China.” Simply, China was the furthest land known to the inhabitants of Arabia at that time. The Quran even obliges the Prophet’s Wives (the Mothers of Believers) to teach all Muslims, men and women, “Recite what is rehearsed to you in your homes from the signs of Allah and His wisdom” (the Quran, 33: 34). As such, men used to consult them and learn the Divine precepts on laws and ethics from them. In this regard, ‘Aishah (may Allah be pleased with her) is known to have played a significant educational role. Muslim men used to take recourse to her for judgments in controversial legal issues and problems, to which she showed them the truth and settled their disputes.

Likewise, ‘Aishah was markedly famous for her transmission of Prophet’s statements, knowledge of Islamic laws, legal decisions, persons’ ancestral lineage, prosody, medicine and astronomy so much so that the Prophet (Allah’s peace and blessings be upon him) said, “Take half of your religion from this redheaded woman.” The same goes true for her sister Asmā’, who is the daughter of Abu Bakr and the mother of ‘Abdullah Ibn al-Zubayr, who was famous for her hadith narrations.

Famous women of the Umayyad era include Umm al-Banīn—the wife of al-Walīd Ibn ‘Abdel-Malek, who was noted for her great eloquence and vividly persuasive and insightful speech. She had a distinguished position in the court of al-Walīd who used to consult her concerning the administration of the state. Likewise, Sakīnah bint al-Ḥusayn Ibn ‘Alī was the leading woman of her age, noted for her exceptional culture and high morality. Once a number of the leading poets of the time, including Jarīr, al-Farazdaq, Kathīr, Jamīl

and Nusayb attended her session and she raised remarks about their poems and then gifted each one a thousand dinar.

Similarly, ‘Aishah bint Ṭalḥah Ibn ‘Abdellah was highly talented in literary arts, histories of Arabs and astronomy. She visited Hisham Ibn ‘Abdel-Malek, the then *emir* of the time, so he convened the elders of Umayyad dynasty to meet her. In this nightly meeting, they mentioned nothing of the days of Arabs and their famous events and poems, but she showed exceptional awareness and information thereof insomuch that she would name each known star in the sky. Hisham, astonished in wonder, said, ‘It is alright that you know the Arabs days and chronicles but how did you acquire the knowledge of stars? In response, ‘I learned it from my maternal aunt ‘Aishah,’ she said. He then rewarded her a hundred thousand dirham and ensured her safe return to Medina.⁽⁴⁾

This illustrious movement continued during the Abbasid rule in which women reached unprecedented levels of culture to the extent that she said poems and debated with men during the eras of al-Rashīd and al-Ma’mūn. Zubaydah, the wife of al-Rashīd, was a highly educated poetess, who excelled in literature and poetry. Actually, women’s excellence and empowerment were not limited to the sciences of religion, poetry and language but they undertook serious roles in the renaissance that Muslims achieved, especially in medicine and nursing.

Famous examples of leading women in this area include Umm Ayman, Umm Sinan from Aslam tribe, Khatmah, Nusaybah bint Ka’b from Mazen clan, Zaynab—a well-known physician of Aud tribe, Rufaydah of Aslam tribe and the daughter of Shihab al-Dīn

(4) Ibn Sa’d, *Kitab al-Tabaqat al-Kubra*, vol. 8, p. 13.

Ibn al-Ṣa'igh. It is most important to indicate that she also occupied the judicial posts; history tells that the mother of the Abbasid caliph al-Muqtadir headed the court of appeal and that 'Omar Ibn al-Khaṭṭab appointed al-Shifā' to take charge of the commercial court of Medina.

2. Participation in Battlefields

Besides the above-mentioned rights, Islam also asserts women's equal right to take part in fight when Muslims are under attacks. In this regard, it is well known that 'Aishah, the Mother of Believers, led the army on the Battle of al-Jamal [The Camel Battle]. Several women participated in the armed conflicts between 'Ali and Mu'awiyah. Some even led armies, such as Umm al-Khayr bint al-Ḥarīsh al-Bariqiyyah, al-Zarqā' bint 'Ady Ibn Qays of Hamdan tribes, 'Ikrimah bint al-Aḥrāsh and Umm Sinan Jashīmah of Madh-hij tribe.

'Aishah bint Ṭalḥah, a granddaughter of Abu Bakr al-Ṣiddīq, even used to shoot bows and arrows with great intensity. The Prophet (Allah's peace and blessings be upon him) even accompanied men and women in several of his battles and wars and gave them equal shares of the spoils. For example, he gave Ka'ībah bint Sa'd a share equal to men in Khaybar Battle and had Umayyah bint Qays of Ghifar tribe ridden behind him twice on the same mount in their way to this battle. After the battle, he awarded her a necklace similar to the contemporary army medals of honor, which she kept throughout her life and recommended her family to place it with her in grave after death.

Umm Ḥakīm bint al-Ḥarith was a newly wedded bride whose wedding perfume was still vividly smelled when she took part in a Muslim battle against the Romans in which she lost her bridegroom. Instead of lamenting that loss, she carried the center post of her wedding tent and fought enemies therewith killing seven men at a bridge that was later named after her “Umm Ḥakīm bridge.” Furthermore, Nusaybah bint Ka‘b—a famous female-narrator of the Prophet’s statements—from Mazen clan, witnessed al-‘Aqabah Convention along with her husband and two sons. She also took part in Badr and Uḥūd Battles, in which she carried water supplies to soldiers and nursed injuries. However, when the military situation grew awkward on Uḥūd Battle, she, besides her two fighting sons and husband, took up arms and fought so bravely to defend the Prophet that she excelled men in power and courage. In reminiscence of this situation, the Prophet (Allah’s peace and blessings be upon him) said, “Whenever I turned right or left, I found her bravely defending me.” She also witnessed al-Ḥudaybiyah convention and peace treaty and al-Yamamah Battle in which her hand was cut off and she suffered serious injuries.

This active role in the military efforts continued during the Abbasid era in which some famous female fighters appeared, such as Umm ‘Isa and Lubabah—two daughters of caliph ‘Alī Ibn ‘Abdullah Ibn ‘Abbas widely nicknamed al-Manṣūr. Over the time of al-Rashīd, they both mounted horses and led men in battles.⁽⁵⁾

When the Romans captured Muslim women and violated them, a Hashimite woman cried out in deep pains to beseech caliph al-Mu‘taṣim for help. Being told of that painful shout, he led a massive army to fight the Romans and defeated them definitely in Amorium

(5) Amīr ‘Alī, Mukhtaṣar Tarīkh al-‘Arab, p. 190.

Battle. Al-Bukhari even narrated from al-Rabī‘ bint Mu‘awwidh that she said, “We used to participate in the military expeditions along with Allah’s Messenger to provide people with water, serve them and bring the dead and the wounded back to Medina.”

3. The Right to Political Participation

Prior to political participation, it is necessary to guarantee the political freedom according to which each adult and sane person shall have the right to take part in administering the affairs of the state and monitor the executive authorities through free elections or referendums. For Islam, the political freedom shall be unlimitedly assured for each citizen and the choice of a ruler [caliph] shall be entrusted to the nation. Indeed, only the caliphate that comes as a result of free choice is Islamic, valid and binding. In recognition of women’s political rights, Islam grants women positions equal to men in this area; she had to express her choice and give the pledges of allegiance equal to and independent from men. Admittedly, it is an open affirmation of women’s independence from and equality to men in political rights and competence. For example, in Surat al-Mumtahanah (the Quran, 60) we read the following verse: “O Prophet! When the believing women come to you to take oath of allegiance that they will neither associate anyone with Allah, nor steal the rights of others, nor commit immodesty, nor kill their children, nor deprive them of good upbringing, nor indulge in fabricating slander - either overtly or covertly – nor disobey you concerning all just matters; accept their allegiance and ask Allah to bestow upon them the protection of forgiveness. Allah is Forgiving, Merciful” (the Quran, 60: 12).

Actually, this very verse forms the oath sworn by men themselves in their pledges of allegiance to the Prophet. Indeed, since the early

days of Islam women attended the meetings of governments and discussed issues with rulers. ‘Omar Ibn al-Khaṭṭab, being the caliph, once delivered a speech concerning the high marital gifts, which he discouraged and attempted to impose restrictions on people in this respect. A woman among many other attendees stood up said, “O Ibn al-Khaṭṭab, would you like to impose restrictions on the marital gifts that Allah has left free saying, “If you wish to marry another wife in place of your present wife, and you have given her a great deal, you shall not take back anything. Will you resort to malicious calumny and evident vice to take it?” (the Quran, 4: 20). At once, ‘Omar approved her view and retracted his own saying, “She is right, whereas ‘Omar is wrong!”

It is evident from the above-cited information that the Islamic laws as built on the Quran and Sunnah award women rights equal to men in rights and duties. Like a man, she has full legal competence and equal civil rights. As such, she has the right to take part in administering the public affairs in the community and the state, including all forms of political and social activities, e.g. parliamentary activities, representing peoples, making laws and regulations for all, and supervising the public affairs in relation to the public welfare and benefits. She also has the right to found and/or participate in various national, social and reformative endeavors, movements, calls and organizations.

4. Gender equality before the law

For the Islamic Sharia, a woman and a man are legally equal before the law in all duties and responsibilities. Both submit to the same laws in their crimes, punishments, testimony and claims. The following verses act as witnesses to their egalitarianism before the law:

Allah (may He be Exalted) says, “As for the thief, man or woman, cut off their hands as punishment from Allah for what they have done. Surely, Allah is Almighty and Wise. But whoever repents after his/her wrongdoing and makes amends, Allah will accept his/her repentance. Surely, Allah is Forgiving, Merciful” (the Quran, 5: 38-39). Evidently, both a man and a woman are equal in punishment and repentance.

Allah (may He be Exalted) also says, “The [unmarried] woman or man found guilty of adultery, lash each one of them with a hundred lashes, and do not let compassion for them prevent you from obeying Allah’s law, if you believe in Allah and the Last Day. And let a group of the believers witness their punishment. The adulterer should not marry except an adulteress or idolatress, and let none marry her except an adulterer or an idolater. Such behavior is forbidden to believers” (the Quran, 24: 2-3). Here, they are equal in penalty and their social position following the crime.

Allah (may He be Exalted) also says, “Whoever does good deeds, man or woman, and has Faith, verily, to him/her will We give a new Life, a life that is good and pure and We will bestow on such their reward according to the best of their actions“ (the Quran, 16: 97). This verse declares them equal in deeds and rewards in this life and in the life to come.

Allah (may He be Exalted) also says, “Surely, the Muslim men and the Muslim women, and the believing men and the believing women, and the obeying men and the obeying women, and the truthful men and the truthful women, and the patient men and the patient women and the humble men and the humble women, and the almsgiving men and the almsgiving women, and the fasting men and the fasting women, and the men who guard their private

parts and the women who guard, and the men who remember Allah much and the women who remember—Allah has prepared for them forgiveness and a mighty reward” (the Quran, 33: 35). This verse declares them equal in position, remembrance, duties as well as in gracious divine promises and rewards resulting from their adherence to Islam and good faith and their related aspects, such as obedience, truthfulness, patience, humbleness, almsgiving, fasting and remembering Allah.

5. Equal Right to Work

The living written chronicles of the early golden era of Arab history prove that Muslim women practiced all familiar political, social, scientific, civil, economic and military roles known at these times. She exercised all forms of freedom and enjoyed the plentiful divine graces and pleasures without restriction or denial. Women’s exercise of her work is actually a practical conformity to the original laws of Islamic Sharia, which asserts her right and competence to ownership, contracting, earning and administration of all her affairs. In all cases, her actions are valid and effective without being made conditional upon a permission from anyone, be he a guardian or a husband. Simply, the contract of employment is one of these familiar contracts and activities. Women’s right to work is an agreed-upon ruling as all Muslims held.

Rights of Marital Partners: Men and Women

For several generations, man-woman relationship and their related rights and duties as well as the distribution of burdens and responsibilities according to their natural abilities and readiness—proved unfair. Women suffered humiliation and suppression for long inasmuch that they lost the ability to choose or lead their life. Infamous injustices of such past

times are documented in the chronicles of history and quoting them is beyond the scope of this short account. Anyway, they are indicative of the humiliated status and slavery that women suffered within societies, which were then considered the highest of human communities at both intellectual and cultural levels, such as the Greek and Roman societies. Likewise, the Arab woman was entirely subservient to the Arab man and subject to his commands. He led her and represented her in all of her special affairs. Their marital life was not based on mutual recognition of rights or on mutual partnership between spouses. Instead, the wife suffered persecution, injustices and abuse.

Employing an exceptionally wonderful expressive style, the Glorious Quran and the Honorable Sunnah pay due attention to the affairs of women and their special specificities and nature. They aim to protect her and organize her position in family and marital life in a way that ensures they are given kind treatment and good care. The following explanatory notes will show the Islamic principles relating to choice of one's marital partners, requirements of marriage contract which fairly defines the rights and duties of the spouses as well as the way they may exercise the right to enforce divorce or to undertake the custody of children after divorce.

Wife's Rights

The right to choose her husband: First of all, Islam gives woman the full right to approve or disapprove the marriage. A woman's consent is a prerequisite for the validity of marriage. As such, if her guardian concludes the contract without her consent, the contract will be null and void. It is reported that the Prophet (Allah's peace and blessings be upon him) said, "A previously married woman shall not be married until her consent is assured and a virgin shall not be married until her permission is sought."

Once the father of Khansā' bint Khidam, a previously-married woman from al-Anṣār [Muslim inhabitants of Medina], gave her in marriage without her consent, but she disliked it and complained to the Prophet, who then declared that marriage invalid. Likewise, the divorced woman has the absolute right to resume marriage with her husband after divorce and no one may prevent her if she so desires. Allah (may He be Exalted) says, "If you divorce the women, and they have reached their required interim period, then do not prevent them from remarrying their husbands if they amicably agree amongst themselves out of what is best. This is to remind any of you who believe in Allah and the Last Day, this is better for you and purer; and Allah knows while you do not know" (the Quran, 2: 232).

For marriage to be valid the husband has to be equal to the woman in terms of social status and financial position. Indeed, only man is required to meet the condition of equality. In other words, it is the husband rather than the wife that has to fulfill the condition of being equal to the wife in respect of social status and financial position.

Marriage Contract: Under the Islamic law, the contract of marriage is based on the mutual consent of both parties. Muslim jurists are in agreement that all possessive terms, e.g., gifting, giving, owning and the like, shall not be used in the contract. Accordingly, the contract is only valid when the terms "*nikāḥ* or *tazwīj* i.e. to marry" are used as has been maintained by Imam al-Shafi'i and others. Ibn Taymiyyah argues that marriage as a contract is subject to the general theory of contracts while maintaining its specific characteristics. Consequently, the intentions as well as the consent of spouses are indispensably essential for the validity of the contract. He also explored the binding conditions attached to the contract of marriage. In principle, the various conditions attached to the contract are effectively binding; a woman may stipulate that her expected husband shall, for instance, reside in her city or house

or shall not take a co-wife with her and the like permissible conditions introduced by modern times. In conclusion, the contract of marriage—like other contracts, is built on the mutual consent of both parties. In this regard, the Prophet (Allah’s peace and blessings be upon him) said, “The worthiest conditions you shall fulfill are those by which you have the right to make intimate relationship with women [i.e. conditions of marriage].” By contrast, it is not for the husband to stipulate that he would divorce the wife after a certain period. In this case, the marriage will be temporary and forbidden. The Quran clearly defines the ultimate ends of marriages as the source of kind comfort, warm intimacy and tranquility for both partners apart from worries, anxieties and fears. Additionally, it also aims to guard marital partners and prevent them from deviation and perversion.

A. Wife’s Post-Contract Rights: Under the Islamic laws, the man shall present his wife with a marital financial gift. There is no imposed limit for its value. Each one may gift his wife within his available means. This kind gift is symbolic of the man’s yearning love of the woman and his desire to be with her. In this context, the Quran finely describes it as follows, “Give women their bridal gift spontaneously upon marriage” (the Quran, 4: 4). This financial gift [*mahr*] entirely belongs to the woman; her father and close relatives have no right to take anything from it. Moreover, it is not her duty to contribute therewith in furnishing the marital house unless she voluntarily does it. Actually, it is the duty of the husband to prepare a marital house befitting the social level of his wife. After the contract, the husband shall provide for all the necessities of his wife as her due right. As such, he pays for her food, drink, clothes, house and the like. As previously noted, a married woman has her own civil personality independent from her husband and his wealth. She is not required to bear any costs regardless of her

riches. In other words, the husband must assume all the financial duties of the family. More to this point, if the husband fails to provide for the wife and the family, the wife is given the right to divorce if she so requested. The assessment of wife's provision is flexibly determined in accordance with the husband's financial abilities as per Allah's command, "The rich shall provide support in accordance with his means and the poor shall provide according to the means that Allah has given to him" (the Quran, 65: 7). It is amazing that, in Islam, the husband's expenses for his wife are more rewarded than spending in the way of Allah. In this respect, the Prophet (Allah's peace and blessings be upon him) said, "A dinar you spend in Allah's way, or to free a slave, or as a charity you give to a needy person, or to support your family, the one yielding the greatest reward is that which you spend on your family." For the Islamic law, it is the duty of the husband to fulfill his wife's rights and guarantee her satisfaction as to her necessary physical and spiritual needs. The Islamic sensitivity is highly wonderful when it comes to the etiquettes of dealing with wife's secrets, which are, in the legal vision, serious inviolable trusts that shall not be disclosed. Imam Muslim narrates from Abu Sa'īd al-Khudri that the Prophet (Allah's peace and blessings be upon him) said, "The most important of trusts in the sight of Allah on the Day of judgment is that a man goes to his wife and she goes to him (and the breach of this trust is) that he should divulge her secret." People of insight and knowledge shall delicately abide by this principle. It is narrated that a jurist decided to divorce his wife. It was said, "What suspicion do you have about her?" In response, he said, "a wise person does not disclose the secret of his wife." After he divorced her, it was said, "Why have divorced her?" In reply, "How can I speak about a foreign woman?" he wondered. Finally, it is the wife's due right upon her husband to honor and treat her kindly and

equitably. He shall also give her gifts to win her heart and endure her patiently. Allah (may He be Exalted) says, “Consort with your wives in a goodly manner, but if you dislike them, it may well be that you dislike something which Allah might yet make a source of much good” (the Quran, 4: 19). Allah (may He be Exalted) also says, “You shall retain them in kindness or release them in kindness (i.e. you shall allow them to live in the same home amicably or let them leave amicably). Do not force them to stay against their will, as revenge. Anyone who does this—wrong his own ‘self’. Do not take Allah’s laws lightly” (the Quran, 2: 231). This Quranic command imposes “*ma’rūf* i.e. kindness” as the standard criterion for one’s treatment with his wife. In other words, he shall do her all good, desirable, acceptable and reasonably beloved matters.

By comparison, he shall not hurt, bother, annoy or harm her in any manner. Actually, the forms of harm and harassment may differ from time to another or from place to another. Retaining the wife in kindness, as the previous verse states, means that leaving one’s wife when kind life is impossible shall be without bothering, abusing or disturbing her. In conclusion, any violation of these two standards stated in the verse—retaining her in kindness or releasing her in kindness, on the part of the husband implies that he is flirting with the divine commands and taking them lightly, God forbids. As far as the Islamic view is concerned, it is a sign of perfect morality and faith that a person treats his wife kindly. The Prophet (Allah’s peace and blessings be upon him) said, “The most perfect man in his faith among the believers is the one whose behavior is most excellent; and the best of you are those who are the best to their wives.” He also said, “The best of you is the one who is best to his wife and I am the best of you to my wives.” Indeed, the honorable treatment of one’s is a sign of the perfect personality whereas the humiliating treatment of a wife is indicative of one’s meanness,

baseness and vileness. The Prophet (Allah's peace and blessings be upon him) said, "Only the honorable man will honor women and only the dishonorable man will dishonor them." Ahmad and the collectors of *Sunan* [Abu Dawud, al-Tirmidhi, al-Nasā'i and Ibn Majah] narrated that the Prophet (Allah's peace and blessings be upon him) said, "All idle pastimes that a man engages in are falsehood, except for his shooting of his bow, his training of his horse, and his playing with his wife, for they are truthful graces." The Quranic command to treat one's wife kindly finds further support in another Quranic context in which Allah says, "Women, in all equity, have rights similar to men" (the Quran, 2: 228). In other words, if husbands request and expect all lawful good values from their wives, such as obedience, honesty, chastity, good treatment, kindness, love, respect, trust, entertainment, due care for their various moods and benefits and meeting their needs as well as abstention from offensive behavior, violence, disturbance, harm, bad temper, arrogance, contempt and overburdening them, the wives also require and expect the same from their husbands. This fair distribution accords the divine system in which the pair of man and woman form one and the same unit. Allah says, "He created you from one person (Adam). He made from it its mate to reside and find tranquility therewith" (the Quran, 7: 189).

Husband's Rights

In his discussion of the husband's rights on his wife, Imam al-Ghazali said that two rights are central in this regard:

First: She shall keep her chastity and respectful behavior.

Second: She shall avoid requesting things beyond her needs or taking his earnings unjustly. The wife shall obey her husband, apart from sins, in lawful issues, keep her chastity and maintain his wealth. In His description of good wives, Allah says, "Righteous wives are truly devout; they guard what Allah has ordained them to guard in their husbands' absence" (the Quran, 4: 34). In the light of the abovementioned facts, we can summarize the duties of a wife towards her husbands as follows:

1. **Leadership:** *Qawamah* [leadership] belongs to a man, for Allah says, "Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means" (the Quran, 4: 34). We should understand the meaning of this honorable verse. Let's first examine the meaning of *qawamah*. It is derived from the verb "*yaqūm* i.e. to maintain someone or something frequently or permanently." The Arabic lexicon of "*al-Mu'jam al-Wasīl*" states that a person is described as *qawwam*—adjective of *qawamah*, when he maintains the affairs of his family; he undertakes all their duties, lead their financial affairs or look after the family. As such, *qawamah* in the current context refers to the husband's duty to administer the affairs of women and look after them. In justification of this duty, the verse highlight the preference divinely conferred on some men over some women to qualify them for this duty. Now, let's contemplate the merits with which some people may excel others. It is a truism that the preference here has nothing to do with the human value of men and women. Indeed, the Creator declares them absolutely equal in

this regard as previously set out. As such, the preference refers to other descriptions whereby some people excel others, such as health, physical strength, intelligence, righteousness, wealth and notability among many others. The fact that some men have these merits will qualify them to lead the women's affairs, since the outcome of preference is the assumption of the responsibility of supporting them from their means "because God has given the one more (strength) than the other, and because they support them from their means" (the Quran, 4: 34). Actually, this understanding complies with the reality. Reviewing the realities of human nature and life proves that the characteristics of perfection are equally shared by men and women and the same goes true for imperfections. In other words, the preference has nothing to do with masculinity or femininity. Being a male does mean perfection and being a female is not identical with imperfection, or else each lewd, deviant and pervert man would be better than all lofty women such as Mary whom Allah described as pure, chaste and preferable over all women, and the Mother of Prophet Moses and the Wife of Pharaoh who is given as a lofty guiding example—from the perspective of the Divine Wisdom—for the believing men to follow. Allah says, "Allah has given an example to those who believed: Pharaoh's wife, when she said, "My Lord, build for me near You, a house in Paradise, and rescue me from Pharaoh and his misdeeds" (the Quran, 66:11). Likewise, that mean person will be better than Khadijah and other Mothers of the Believers—the Prophet's wives, may Allah be pleased with them, and other honorable women! Certainly, it is unacceptable to imagine this fallacy that turns men's vices and demerits into virtues just because they are males or to turn women's perfections and merits into imperfections because they are females. This understanding is against Islam and against the logic of sound minds, which Islam respects and makes a judge of the essential issue of belief itself.

Accordingly, it is fair to say that women's obedience to men is identical with the obedience that someone gives to a person who looks after him/her and the obedient is sure that that person is worthy of that obedience. As far as Islam is concerned, the marital *qawamah* must be built on mercy, love, kindness and sincerity. Therefore, it is conditioned by many requisites to guarantee women's dignity and preserve their rights and best interests. In other words, it is a type of cordial care, sincere love, good planning and guidance. It has nothing to do with authoritative control, dominance or suppression. Islam keenly placed it in a manner that guarantees the welfare of families and women themselves. When a woman is unmarried, the *qawamah* entrusted to her guardian aims to maintain and protect her and meet her all financial needs. As such, *qawamah* here is identical with maintenance, care, protection and providing for all her needs. In this context, it is narrated that a young woman came to 'Aishah (may Allah be pleased with her) and expressed her resentment from her father who gave her in marriage to his nephew against her will just to honor that mean man. 'Aishah advised her to wait until the Prophet (Allah's peace and blessings be upon him) comes. Then, she awaited and presented her case to the Prophet, who said, "A woman has more right to her person than her guardian." In response, the woman said, "O Messenger of Allah, I accept what my father did, but I wanted to know whether women have any say in the matter."

1. Evidently, the obedience in question is not that blind; it shall not violate the woman's personality or rights, or dishonor her. Furthermore, it shall not include any sinful act. The obedience is not a compelling authority that men exercise against women, whereby their life becomes a life of a master and servant. Simply, this goes against the system of marital life, which shall be based on love and mercy as well as material and psychological stability. In This regard, Allah says, "And of His signs is that He created for you, from yourselves, spouses that you may find tranquility in them; and

He placed between you affection and mercy” (the Quran, 30: 21). Evidently, no tranquility or affection will come true if one party dominates the other or persecutes and violates her personality.

2. She shall keep his wealth and prove faithful to him in his absence.
3. She shall take care of herself, so he always sees her beauty, hears her beautiful words and smells her good odor. As for the duty of women to serve the husband, all the traditions narrated in this regard imply that she may voluntarily do that out of her high morality and kind treatment. As such, Imam Abu Ḥanīfah, Malik and al-Shafi‘i among the majority of Jurists held the view that it is not an obligation to serve the husband. The contract of marriage aims at safeguarding the morality of both parties apart from employment and extorting the benefits of each party.



CHAPTER TWO

DIVORCE AND CUSTODY OF CHILDREN

The Right to Divorce:

Man's Right to Divorce: The Islamic law grants the husband the right to divorce in turn for the costs and expenses he endured for the completion of marriage, let alone the expenses he shall endure if he decides to remarry. Indeed, the man endures several financial liabilities payable to his divorced woman. He shall pay for her the deferred amount of her marital gift [*ṣadaq*], the recompense imposed by divorce [*mut'ah*] and the expenses of that woman during her waiting period. However, if he dies during her waiting period, she is entitled to have a share of the inheritance. The waiting period refers to a period determined by Allah, which a divorced woman shall await before remarriage. The waiting period differs from a woman to another. For old women who have no monthly menstruation, they wait for three months whereas menstruating women wait for three consecutive monthly periods. Finally, the pregnant women wait until they give birth. Under all circumstances, the husband must provide for his wife during her waiting period and pregnancy until she gives birth. After giving birth, he shall provide for her and for her child. Evaluating the amount of provision varies in accordance with the financial means of the husband. However, if divorce takes place before consummation of marriage, he must pay for her half the agreed-upon marital gift. Allah says, "If you divorce them before you have touched them and you have already specified for them an obligation [marital gift], then [give] half of what you specified unless they forego the right or the one in whose hand is the marriage contract foregoes it" (the Quran, 2: 237). Again, if the man divorces his wife before specifying any marital gift, he must pay the divorce fine according to his available means. The Quran has not prescribed this fine, to leave a chance for people to evaluate it equitably according to the financial means of the husband. As such, those who have should not be stingy and those whose who have-not should not be overburdened beyond their means. Allah says, "There is no blame upon you if you divorce women you

have not touched or specified for them an obligation. But give them [a gift of] compensation; the wealthy according to his capability and the poor according to his capability—a provision according to what is acceptable, a duty upon the doers of good” (the Quran, 2: 236).

Woman’s Right to Divorce: The Islamic laws have not overlooked the right of wives to demand or enforce divorce. It is even lawful for the wife to stipulate that she has the right to enforce divorce—whenever she likes—in the contract of marriage. Nevertheless, if she has not stipulated it in the contract of marriage and she disliked her marriage whereas her husband is keen to keep her, the Islamic law allows her to use the mechanism of *khul’* [compensated divorce] to free herself from that marriage. Under *khul’*, she repays for the husband the financial costs that he paid for her to build their marriage. For the majority of jurists, it is unlawful for him to take from her more than he had given. This law finds evidence in the narration of al-Bukhari and al-Nasā’i from Ibn ‘Abbas, who said, “The wife of Thabit Ibn Qais came to the Prophet and said, “O Allah’s Messenger! I do not blame Thabit for any defect in his character or religion, but I, being a Muslim, dislike to behave in away against the Islamic morality (if I remain with him).” On that Allah’s Messenger said (to her), “Will you give back the garden which your husband has given you as marital gift?” She said, “Yes.” Then the Prophet (Allah’s peace and blessings be upon him) said to Thabit, “O Thabit! Accept your garden and divorce her once.” Noticeably, the verses of Quranic legislations force the party who dislike marriage to endure the financial loss of that contract:

- If the husband dislikes her, he shall pay her (i) the alimony; (ii) the deferred amount of the marital gift in addition to (iii) a determined recompense imposed by divorce. He is not allowed to restore any marital gift he had given to her before marriage or after it.
- If the wife dislikes him, she shall return the marital mandatory gift

that he gives to her or pay him recompense they both come to accept; and shall waive all other financial rights imposed by the contract.

Under all cases, the husband is forbidden to harass and annoy his wife until she dislikes marriage and resort to *khul'* to terminate it. In case he does that, the *khul'* is void and recompense paid for divorce shall be repaid to her even if a legal verdict is issued to the same effect. Simply, this proscription aims to relieve a woman from enduring double harm: divorce and financial fine; Allah says, "O you who believe, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them" (the Quran, 4: 19). Allah also says, "If you wish to marry another wife in place of your present wife, and you have given her a great deal, you shall not take back anything. Will you resort to malicious calumny and evident vice to take it?" (the Quran, 4: 20). For Imam Malik, *khul'* takes the form of divorce and the husband shall return the recompense he takes from his wife.

Custody of Children

In case the separation takes place between the spouses while they have a child, Islam entrusts the mother with the right of custody over the children unless she has a legal barrier preventing her from that custody. The mother shall simply be in charge of custody and breastfeeding of her children, because she is more able and patient in that area. When it comes to rearing children, she has more knowledge and more time than a father has. In conclusion, it is in the best interests of a child to have his/her mother in charge of his/her custody.

‘Abdullah Ibn ‘Amr (may Allah be pleased with him and his father) reported that woman once said, ‘O Messenger of Allah! This is my son; my womb was his vessel, and my lap was his place of rest and my breasts were his water sources. His father then divorced me and wants

to take him away from me. The Messenger of Allah said, “You have more right to him as long as you do not marry.” (Narrated by Aḥmad, Abu Dawūd, al-Bayhaqi and al-Ḥakim, who graded it as authentic).

Likewise, Yaḥya Ibn Sa‘īd said, “I heard al- Qasim Ibn Muhammad saying, “A woman of the Anṣar was married to ‘Omar Ibn al-Khattab. She bore ‘Aṣim Ibn Umar to him and, then, he separated from her. Later, ‘Omar found his son ‘Aṣim playing in the courtyard of the mosque, so he took him by the arm and placed him before him on his mount. The grandmother of the child saw him and argued with ‘Omar about the child. At last, they referred the dispute to Abu Bakr aṣ-Ṣiddīq. ‘Omar said, ‘My son.’ The woman said, ‘My son.’ Abu Bakr said, ‘Do not interfere between a child and his mother.’ ‘Omar immediately left him and said no word of objection. According to another narration, Abu Bakr said, “A mother is more tender-hearted, more kind, more merciful, more affectionate, and better than the father is. She has more right to the custody of her child, than man has, so long as she has not married.” This explanatory note of Abu Bakr constitutes the essential rationale for mother’s prior right to custody of her children.

Requisites of Ḥaḍinah

It is necessary for the *ḥaḍinah* (i.e. a woman in charge of the custody of children) to fulfill the following requisites of custody:

1. She shall be of sound mind: insane and/or mad persons are disqualified for custody.
2. She shall be of an age of maturity that qualifies her to take care of the child: accordingly minor cannot look after others.
3. She shall be able to undertake the mission of upbringing and education: As such, blindness or disability disqualifies a mother for custody. Likewise, an old woman, who is in need of others to take care of, is not qualified for custody and so is the negligent

woman who usually leaves her house unattended and her children are liable to suffer loss or damages due to her behavior.

4. It is also necessary for the female custodian to be free from any contagious disease and those with whom she lives shall be free from contagious diseases. Similarly, they should not bother the child, or else she becomes unqualified for this legal right.
5. She shall not marry a foreign husband, who has no relation with the child. However, if she is married to the uncle of that child, her custody remains effective. Unlike the foreign person who may not be kind to the child, the paternal uncle has a right to custody and his blood relation with the child creates tender and kindness in his heart towards his nephew. Over the period of custody, the father shall assume the costs of breastfeeding, custody and house rent or equipment in case she has no house to live in with the child. If she need a servant and the father is a well off, then he shall bring her a servant or pay the salary of a servant for her, besides all other costs related to food, clothes, bed and medication among other primary essential needs. The custody continues until the child, male or female, reaches the phase of adolescence, and becomes independent without any need to women's service.

After the end of custody: In case the parents dispute and disagree, the child shall choose between them; the one whom he chooses takes him. Abu Dawūd narrated that Abu Hurayrah (may Allah be pleased with him) said, "I was sitting with the Prophet (Allah's peace and blessings be upon him) when a woman came and said: 'My husband wishes to take away my son, O Messenger of Allah, after he draws water for me from the well of Abu Inabah⁽⁶⁾ and he has been good to me.'" The Prophet (Allah's peace and blessings be upon him) then addressed

(6) It is located one-mile from Medina.

the son saying, “This is your father and this is your mother, so take whichever of them you wish by the hand. So he took his mother’s hand and she went away with him.” (Abu Dawūd). For al-Shafi‘i, this ruling is equally applicable to male and female children whereas Abu Ḥanīfah and Malik held the view that a mother shall remain the custodian of her daughter until she marries.

In fact, the Sharia has no strict law giving preference to a party over the other or giving the child the absolute option between them. However, the jurists are in agreement that one’s ability to maintain and look after the child is the decisive element in deciding the one worthy of custody. As such, if any party is careless or disable and the other is noted for care and ability, the one noted for care and ability shall be the custodian.

Ibn Taymiyyah said it happened that two parents disputed custody. The judge gave their son the right to choose his custodian, so he chose the father. The mother then appealed to the judge, “Ask him, why he chooses the father.” The judge asked him. In response, the boy said, “My mother sends me to al-Kuttab [a traditional local school teaching Quran and the basics of reading, writing and maths] where the teacher beats me while my father leaves me to play with boys.” The judge immediately issued a verdict that the mother shall be the custodian. In his comment on this account, Ibn Taymiyyah said, “If the custodian parent overlooks schooling his/her child and educating them, s/he is sinful and even loses his/her right to custody. Likewise, each person who neglects the duties of his/her job shall lose it.”

The Travel of the Custodian: Ibn al-Qayyem said that if the custodian parent decides to travel for some of his/her needs, whereas the other parent is resident, the resident parent shall be entrusted with the custody, especially when the child is still infant. Simply, traveling with an infant could cause serious damages to him/her.

However, it is agreed that the benefit of the child is the central element in deciding the custody, the destination of travel should be examined to see whether it is better than the local environment or not. Finally, the best location for the child is where s/he receives the best upbringing, and education regardless of residence or travel. This rule is effective unless a moving parent intends to hurt the other party and take the child completely from him/her. If this malicious intention is proved, s/he shall be denied the right to custody.



CHAPTER THREE

MISCONCEPTIONS ABOUT

WOMEN IN ISLAM

Inheritance

A common misconception frequently raised that Islam does injustice to women in terms of inheritance, as she takes only half the share of a man. For more information on this issue, we present the following:

It shall be clear that when Islam granted women the right to inheritance, it undermined the oppressive past tradition of pre-Islamic Arabia. Under such tradition, only the warring men were entitled to inheritance. The Islamic legislation imposed the right of women to inheritance in a very difficult context, which proves the spirit of justice and fairness in Islamic laws.

The Quranic verses first declare this right and, then, set it out in detail. At the beginning, Allah declares women's right to inheritance saying, "For men is a share of what the parents and close relatives leave, and for women are a share of what the parents and close relatives leave, be it little or much – an obligatory share" (the Quran, 4: 7). The details then follow in several verses, such as Allah's statement, "Concerning your children, Allah commands you that a son should have the equivalent share of two daughters. If there are only daughters, two or more should share two-thirds of the inheritance; if one, she should have half. As for parents, they inherit a sixth each if the deceased leaves children" (the Quran, 4: 11). Other verses also specify women's prescribed shares, but here we shall only explore the general rules of inheritance as deduced from the abovementioned verses.

- A. A female is at large entitled to half the share of her brother.
- B. A daughter, when no other children exist, takes one-half of the inheritance.

- C. Two sisters or more, when no brothers exist, take two-thirds of the inheritance.⁽⁷⁾

When the deceased dies and leaves children—daughters and sons, and parents—father and mother, the share of each parent is one-sixth of the inheritance on equal footing “As for parents, they inherit a sixth each if the deceased leaves children.” Clearly, in this case the share of the mother (woman) is equal to the share of the father (man), which is an honorary exception made in affirmation of mother’s high position. Here, It should be explained that giving a woman half the share of her brother is a form of maintaining a just balance between rights and duties. Indeed, it reflects the divine mercy and honor conferred on women. Simply, it is the obligation of a man to endure all the financial burdens in relation to maintaining his life and building the family; he shall provide for his wife, children, and other agnate women.

Conversely, a woman is free from all these financial duties while her own costs shall be afforded by her husband, father, brother, son or closest agnate male(s). In a word, she has no financial duties. That is why her brother takes a double share. This law never intends to underestimate women but aims to maintain her full rights and guarantee her a safely stable social and economic life.

Ultimately, the distribution is a kind of harmony between duties and rights and women’s share is evidently better as the following verse

(7) Abu Dawūd and al-Tirmidhi narrated from Jaber Ibn ‘Abdullah (may Allah be pleased with him) that the wife of Sa’d Ibn al-Rabi’ came with her two daughters of Sa’d to the Prophet. She said, ‘O Messenger of Allah, these are the two daughters of Sa’d; he was killed with you on the day of Uḥud Battle, and their paternal uncle has taken all the wealth that their father left behind. Evidently, they will not be married without wealth.’ The Prophet remained silent until the verse of inheritance was revealed to him. He then called their uncle and said: ‘Give the two daughters of Sa’d two-thirds of his wealth and give his wife on eighth, and take the rest.’ Al-Tirmidhi graded it as authentic.

testifies, “If a man or woman leaves neither agnate ascendants nor descendants but has a [maternal] brother or a [maternal] sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt” (the Quran, 4: 12). In this case, a *kalalah* [i.e. a man or woman who dies and leaves neither ascendants nor descendants] and leaves only a maternal sister or brother, then one-sixth is the share of each one and if they are more, the third shall be distributed amongst them justly.

It is noticeable here that when the consideration of financial duties ceases to exist, the shares of inheritance become equal. Simply, the maternal sister’s costs are afforded by males from her father’s side, not mother’s side. At last, the last verse clearly declares equal respect to women’s bequests. When the deceased is a woman and she leaves a bequest, it shall be implemented according to her own plan after paying her debts from the inherited wealth. It is evident that the Quran affirms women’s equal independent personality, rights, and legal competence to take financial and civil actions.

Like men, she inherits, bequeaths, takes loans, and owns independently. At the time of Quranic revelation, these rights were denied in many of the then civilized countries, let alone other underdeveloped ones, which also continued to dominate the world until late decades. Some developed nations even fail to implement these rights until now. As illustrated, the exceptional inequality in some cases of inheritance does not violate the rules approved and deduced from the Quran and Sunnah, which emphasize women’s equal competence and position with men in various areas.

Polygyny

Upon the advent of Islam, polygyny was widely and limitlessly practiced in pre-Islamic Arabia. The Torah also allows unlimited polygyny. Islam addresses the issue of “polygyny” through gradual reformative steps and legislations. It aims to condition this practice with a number of pre-requisites turning it an exception in cases of urgent necessities and exigencies that rest on reasonable justifications and necessary guarantees. Reading the Quranic texts reveals that monogamy has a stronger ground than polygyny, which is exceptionally allowed as an available solution for cases of necessities. Investigating the legal requisites of marriage in Islam elucidates the Islamic vision of permitting polygyny. These requisites are as follows:

1. **Al-Ba’ah:** It refers to the physical and financial ability to undertake the duties of marital life in all of its material, psychological and pedagogical dimensions. In case of polygyny, the required ability on the part of a husband becomes wider and heavier in space and essence. He shall pay for the maintenance of two families or more and give them equal means to an honorable life. In addition, he shall fairly show love, kindness and due care for his all children, sons, or daughters.
2. **Iḥṣān:** It refers to one of the main objectives of marriage—purity and chastity. Actually, keeping one’s purity and chastity is obtained by the first marriage. If the intent of a husband is only sexual pleasure, it is not an approved by Islam. It is reported that the Prophet (Allah’s peace and blessings be upon him) said, “Allah dislikes a man or a woman who frequently [brings about divorce to] remarry for sexual pleasures.” This statement refers to those who marry frequently, men or women, in pursuit of sexual desire only. This aim shall not be the foundation of building a Muslim family whose objective is the continuity of humankind through a systematic and stable family entity based on a set of rights and duties.

3. **Procreation:** One of the main legal aims of marriage is the procreation of children within a well-defined family's frame.
4. **Wife's right to divorce:** Islam declares that the bond of marriage is made of love and mercy to bring about tranquility and comfort for both partners. However, in case the marital life is exposed to instability or absence of love and mercy, the underlying aim of marriage is lost. As such, divorce becomes a necessity to achieve the individual stability for each partner apart from the other. When marriage fails to achieve its objective, its aimless continuity creates hate and nurtures grudge in hearts insomuch that each one may maliciously neglect, cheat on or even seek to get rid of the other. This form of marriage turns marriage from a source of purity, dignity, and chastity into a source of evils, sins, and painful disputes. As such, Allah has enacted divorce for marital partners to find their way apart from sins and evils, which frequently follow when obnoxious family instabilities continue for long. Let each partner have a new life with another marital partner with whom s/he may find love and mercy. Allah promises them good, "If they choose to separate, Allah will enrich both of them from His abundant graces" (the Quran, 4: 130).

Islamic legislation confers on man the right to divorce, but it has not overlooked woman's right to divorce and grants her this right provided that she waives the financial rights incumbent on the husband to her in the context of *khul'*. It comes in affirmation of Allah's statement, "If you fear that they will not honor the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself" (the Quran, 2: 229).

Likewise, Imam al-Bukhari narrated from ‘Abdullah Ibn ‘Abbas that the wife of Thabit Ibn Qais came to the Prophet and said, “O Allah’s Messenger! I do not blame Thabit for any defect in his character or religion, but I, being a Muslim, dislike behaving in away against the Islamic morality (if I remain with him).” Allah’s Messenger then said to her, “Will you give back the garden which your husband has given you as a marital gift?” She said, “Yes.” Then the Prophet (Allah’s peace and blessings be upon him) said to Thabit, “O Thabit! Accept your garden and divorce her once.” (Al-Bukhari in his authentic collection of Hadith, Chapters on Divorce, p. 319).

Similarly, al-Bukhari and Muslim narrated in their authentic collections of Hadith that the Prophet (Allah’s peace and blessings be upon him) said, “Hisham Ibn al-Mughīra’s family have requested me to allow them to marry their daughter to ‘Ali Ibn Abu Ṭalib. However, I do not give permission and will not give permission unless ‘Ali Ibn Abi Ṭalib divorces my daughter in order to marry their daughter, because Faṭīma is a part of me, and I hate what she hates and what hurts her hurts me. I fear that she may be put to trial in regard to religion” (also narrated by Ahmad in his *musnad*; al-Tirmidhi and Ibn Majah in their *sunan*).

Reflections on the majesty of Islamic provisions and laws reveal that the Omniscient Lawgiver has given women an equal right to divorce grounded in the serious consequences that may follow the act of forcing her to continue her marital life, which she strongly denounces. As such, the Lawgiver not only considers the excuses she declares as grounds for the claim to divorce, but also considers the evil consequences that are most likely to follow. The Quranic verse clearly allows divorce in case they fear that they will not honor the limits of Allah when marriage continues while they dislike it.

The statement of the wife of Thabit evidently testifies to his religion, fine morals and noble character. Accordingly, we normally expect his good treatment and kindness to his wife, but she asks for divorce, because she dislikes him and is afraid lest she should commit any sinful acts, were her life to continue with him. In his response, the Prophet did not rebuke her or force her to keep up in patience with her husband. Actually, he respected her opinion, responded positively to her request, and ruled that she could use her right to divorce.

In the other narration on the permission asked for ‘Ali to have another wife, the Prophet asked ‘Ali, if he is persistent to marry another woman, to divorce his daughter. Simply, polygyny is permissible and was widely in practice throughout Arabia. The Prophet never proscribes a lawful matter or permits an unlawful matter. However, this act would hurt his daughter and may put her to trial concerning her religion. Finally, he left the issue for ‘Ali to decide, whether he keeps Faṭima or divorces her and marries the daughter of Hisham Ibn al-Mughīra. ‘Ali decided to keep his wife Faṭima and did not marry another woman until her death. Here, the Omniscient Lawgiver considers the results of forcing a wife to continue marital life against her will and gives examples for more illustration. The Quranic verse allows woman to employ her right to divorce if the continuity of that undesired marital life might lead her not to honor the limits of Allah. The prophetic statement adds that she may behave in away against the Islamic way or put her into a religious trial.

In truth, any husband with pure nature, noble character and upright faith never accepts to keep a wife that dislikes him and sees life impossible with him. If he decides to keep her, despite her dislike of marriage—he only means to hurt and trouble her. The Islamic laws forewarn against hurtful continuation of marriage, because it is expressive of one’s slight regard of Allah’s laws. The Divine Word affirms, “You shall retain them in kindness or release them in kindness (i.e. you shall allow them to live

in the same home amicably or let them leave amicably). Do not force them to stay against their will, as revenge. Anyone who does this wrongs his own ‘self’. Do not take Allah’s laws lightly” (the Quran, 2: 231).

Consequently, polygyny is evidently confined to some limited cases. For example, when the wife is barren or sick and has no one to meet her needs, so she desires to continue marriage as a co-wife. In this case, divorcing that woman goes against the morals of mercy and justice. Anyway, the perfect justice must dominate this marital relationship. In other cases, the wife may employ her right to divorce and enforce separation from her husband.

Likewise, a new wife that did not know that her husband has another wife may also use her right to divorce and take her rights in full. Since she falls prey to deception and faces a form of life entirely different from that promised. The act of deception turns a person sinful and out of Muslim’s morals, the Prophet (Allah’s peace and blessings be upon him) said, “He who acts dishonestly towards us is not of us.”

In conclusion, polygyny would be really very rare, since a husband can only maintain one wife whereas other wives can attain divorce. Furthermore, Islam strictly minimizes the area of polygyny by obligating the husband with, besides his financial duties and spiritual and moral care, just treatment between his wives. As far as Islam is concerned, justice extends to cover several areas and many marital affairs. As such, the Quran conditions polygyny with several reservations as touched in Allah’s statement, “But if you fear lest you should fail to maintain justice, then [marry only] one” (the Quran, 4: 3).

In other words, the mere fear of injustice, not the certainty of one’s inability to maintain justice, is enough grounds to prevent polygyny. The Quran even decides this issue decisively when declaring, “You will

never be able to maintain [emotional] justice between your wives, no matter how keen you are. So do not incline completely [toward one] and leave another” (the Quran, 4: 129). It is evident from the verse that the Quran encourages monogamy and considers polygyny as an exception from the general rule, which needs necessary excuses and guarantees as pointed out.

Women’s Assumption of Judicial Posts:

Reviewing the texts of the Quran and Sunnah in relation to judges proves that they only command judges to impose justice when judging the disputes amongst people: “When you judge between people to judge with justice” (the Quran, 4: 58). They have no indications to the necessary qualifications of a judge. As to the Pure Sunnah, it points out the following:

First: The Prophet prohibits a judge to pass a judgment when he is angry.

Second: A judge shall not pass the judgment based on his own knowledge regardless of his degree of certainty. The judgment of court must rest on a two-witness testimony to justify it. If the judge passes the judgment based on his own knowledge, he exposes his credibility to doubts and malicious suspicions.

Third: The Prophet allows judges to pass the judgment based on, at least, an oath with the testimony of one just witness. The scope of judge’s work covers the area related to people’s rights whereas the rights of Allah—as divinely prescribed, are only implemented in accordance with the divine law under the specific conditions divinely determined. Then, ‘Omar Ibn ‘Abdel-‘Azīz mentioned five characteristics necessary to qualify a person for the post of a judge; losing any characteristic would disqualify the judge. They are as follows: the judge shall be of (i)

high acumen; (ii) forbearance; (iii) determination to support the truth; (iv) knowledge; and (v) sense of responsibility for that knowledge.⁽⁸⁾ In conclusion, the following may be highlighted:

1. There is no text in the Quran or the Sunnah that deprives a woman of assuming the judicial posts.
2. Unlike the current civil and commercial written laws, the Prophet's banning of judges to pass judgments based on their own knowledge denotes that there was no written law to criminalize actions on its basis. Currently, each country has its own law that legalizes or criminalizes individuals' actions. In case of criminalizing them, it specifies the punishments for each violation of the law through its provisions. The knowledge of the contemporary judge relies on his deep knowledge of the laws applied in his own country. Evidently, man and woman are equal in acquiring this knowledge. Eventually, the contemporary judge does not use his own special knowledge or view, but enforces the provisions of law and abides by them. Otherwise, filing an appeal against it would eventually cancel it. As such, the statement of reasons, which explains its legal evidence and arguments underlying the judgment—is highly indispensable. This statement stands for the Prophet's direction that a judge must have evidence in the form of testimony, i.e. two-just witnesses, to support his judgment. The statement of reasons justifies the judgment; if it happens to oppose the rules of laws, the judgment will be appealed and remanded.

The Prophet also states that judgment may depend on an oath with one just witness. This evidence is currently called the material evidence to which the judge shall refer in his judgment. The judge must abide

(8) Zaynab Raḍwān, al-Nazariyyah al-Ijtimā'īyah fi al-Fikr al-Islami (The Social Theory in Islamic Thought), p. 130.

by the provisions of law and seek the guidance of available material evidence to apply the provisions properly. As such, he may have a case in which there is no evidence to criminalize the accused person whereas the judge is fully certain that he is a criminal. Finally, he must grant him acquittal regardless of the judge's personal certainty of his conviction. Several examples of this category occur in drug lawsuits.

Evidently, women had not assumed the judicial posts in the past, because of the social defects that reduced the roles and rights that Islam granted to women. There is no legal text banning women from assuming the post of judge. Furthermore, there is no connection whatever between this matter and the natural faculties and abilities of women. All scientific studies as well as living realities prove that women are equal to men in intelligence quotients, creative and technical abilities. We know that some Arab women assumed the judicial posts long time ago and even chaired the Court of Cassation, which is the highest court within the hierarchy of many legal jurisdictions.

Certainly, it is impossible that Islam forbids or allows a specific matter, then the reality proves contrary to that. For examples, the historical records and experiences prove that over the golden eras of Islam women had full rights, which they were later denied in modern times. For example, the mother of Caliph al-Muqtadir al-‘Abbasi (d. 320 AH/932 CE) headed Baghdad's Supreme Court of Appeal. At an earlier time, ‘Omar Ibn al-Khaṭṭab nominated al-Shifā‘ as the head of the commercial court in Medina. These historical proofs assert women's legal right and competence to assume the judicial posts.

Women's Testimony

Before discussing the issue of women's testimony, let's first introduce some essential issues concerning the meaning of testimony and its ruling and requirements. *Shahadah* (testimony) is derived from *mushahada* i.e. watching or witnessing, since the witness tells of what s/he witnesses. It is technically defined as a process of declaring what one has known in the form of attestation using the formula "I bear witness." No one is allowed to bear witness unless s/he has already certain knowledge to tell, through the senses of sight, hearing or widely known information in cases where knowledge is necessarily and publically famous. The knowledge of widely known issues is most likely true (*ẓann*) or certainly true (*yaqīn*).⁽⁹⁾

Ruling on Testimony: Declaring one's testimony is an individual duty when officially required or when the truth is liable to loss, even if the legal court does not issue a writ of summons. In this regard, Allah (may He be Exalted) says, "Do not conceal testimony, for whoever conceals it – his heart is indeed sinful" (the Quran, 2: 283). Allah (may He be Exalted) also says, "Establish the testimony for the sake of Allah" (the Quran, 65: 2).

Some Quranic texts specify the required number of witnesses in the issues of the prescribed penalties, divorce, resuming marriage after first or second declaration of divorce and financial rights:

1. In the prescribed penalty for the crime of illicit sexual intercourse, Allah (may He be Exalted) says, "Those who commit unlawful sexual intercourse of your women, bring against them four [witnesses] from among you" (the Quran, 4: 15). He (may He be Exalted) also says, "Those who [falsely] accuse chaste women and do not produce four witnesses, lash them with eighty lashes" (the Quran, 24: 4); and

(9) Sayyed Sabeq, *Fiqh al-Sunnah*.

“When they do not produce the witnesses, then it is they, in the sight of Allah, who are the liars” (the Quran, 24: 13).

2. In Divorce and resumption of marriage, Allah (may He be Exalted) says, “Call two just witnesses from your people” (the Quran, 65: 2).
3. In financial rights, Allah (may He be Exalted) says, “O you who believe, when you contract a debt for a specified term, write it down. Let a scribe write it between you in justice. No scribe shall refuse to write, as Allah has taught him. Let him write and let the one who has the obligation [i.e., the debtor] dictate, but he shall fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. Bring to witness two witnesses from among your men. Yet, if there are not two men, a man and two women [are sufficient] from those whom you accept as witnesses. As such, if one of them [two women] errs, the other can remind her. The witnesses shall not refuse to convene when they are called upon” (the Quran, 2: 282).

Here, we present some explanatory notes on this verse, since it declares the testimony of man equal to the testimony of two women. Some falsely argue that it proves that women are lesser than men in legal competence. This is the controversial point of this discussion. Reviewing the semantic meanings of the verse reveals the exactness of Sharia in its objectives and procedures. It first declares it necessary to write down the contract of debts and a scribe, not a party, shall write it. The debtor shall dictate the amount of debts and its conditions and fixed term. However, if the debtor is of limited understanding, weak or physically or mentally unable to dictate himself for any reason, his guardian shall dictate the debts in justice.

The verse goes on to stipulate that two just witnesses, who are publically accepted witnesses and accepted by the contracting parties, shall be brought to witness the contract. It is recommended to bring men to bear witness but when men are unable, one man and two women come as a second choice. But why should we seek for male witness first? Simply, the commercial activities and business, at that time, were commonly carried out by men. Furthermore, the titles of ownership and documents of debts among other financial activities were mainly attended by men. Women rarely participated in these commercial sessions. As such, men's ability to remember and mention the particulars of this area is greater than women, who were away from them and were most likely unaware of the details of these contexts, which men practiced on daily basis.

The text provides the evidence for making one-man testimony equal to two-women testimony, “so that if one of them [i.e., the women] errs, then the other can remind her” (the Quran, 2: 282). The mentioned error has many causes, such as women's lack of experience, which may result in her inability to perceive all particulars and contextual circumstances. In consequence, she does not have a clear-cut mental image of that issue, so she may not give an ample meticulous testimony when necessary. The second woman here is helpful to remind her of the entire contextual circumstances. We draw a number of benefits from the Quranic rationale:

1. Some women, not all, are liable to error due to the lack of experience, especially in issues outside their interests, which they are unaware of their characteristics and particulars. If a female witness fails to remember all the details, the other should remind her to address this shortage, if any.

2. The act of reminding, which the verse stresses, implies that women's testimony was verbal and given at a later time. The verse speaks of remembering the long-term debts in which one recalls past information seen or heard to declare in a legal form of testimony. It also implies that the intended woman was unlettered, as her testimony is based on recalling the past memories to compare them to the bill of debts as a guarantee for authenticity. As such, a learned person's signature stands for validity and authenticity of the contract when a person acknowledges it. It would be sufficient in the judicial procedures to have the contract signed and summon the witnesses to verify the genuineness of signatures. In that case, the processes of recalling and reminding have but little significance.

The Quran stresses the number of two women in due care for an unlettered community in which women were generally in isolation from commercial affairs as explained above. This testimony aimed to verify the genuineness of the bill of debts based on a woman's hearing from the debtor while dictating the contract. The verse clearly commands the scribe to write down in justice.

In other words, if the contracting parties and witnesses are all learned, they would correct any possible mistake done by the scribe. If an error were to occur, the scribe would assume the responsibility for any damages incurred. However, the divine writ commands the scribe to write down justly, which implies that only Allah and his personal conscience stand as witnesses over him. Then, witnesses will bear the testimony, when necessary, to prove the genuineness of the contract in line with the information they heard from the debtor. Again, a question may be raised about the rationale of accepting the one-man testimony while a man may be illiterate as well. In response, we explained that men, unlike women, were familiar with the commercial activities. Consequently, the possibility that woman may err or forget some details and particulars is greater than man's possible errors.

This procedure reflects the Islamic keenness to maintain the payment of financial rights. In his argument for this rule, Imam al-Qurtūbi said that Allah has provided many ways to document the financial rights, for they are very common and repeatedly occurring. As such, they are documented by testimony, pawn or warranty. In all cases, women and men are equally involved.

In the light of the above-mentioned information, we understand that the verse in question (2: 282) is strictly concerned with the required number of witnesses in loan contracts. Accordingly, it is fair to say that this law is applicable to the community with high illiteracy rates where women rarely participate in commercial and financial activities. In conclusion, the statement in the verse has its own special conditions and contexts. It is not a general rule extendable to other new cases.

Likewise, it does not exclude other mechanisms of verifying the genuineness of contracts. Finally, we have no Quranic or prophetic statement, let alone the statement of a Companion, which assert that. In his work *“I’lām al-Muwaqqi’in i.e. Guiding the Muftis, (vol. I),”* Ibn al-Qayyem explored this issue and concluded that the Quranic texts and prophetic traditions put no restriction on women’s testimonies. As such, her testimony is effective and legally valid in all affairs. He referred to two verses as follows:

- “Call two just witnesses from your people [men or women] and establish the testimony for the sake of Allah” (the Quran, 65: 2).
- “O you who believe, when death approaches any of you, let two just persons [men or women] from among you act as witnesses to the making of a bequest, or two persons from another people if you are journeying in the land when death approaches” (the Quran, 5: 106).

He goes on to argue that there is an agreement that the masculine formulae of the Quran are equally applicable to believing men and believing women unless otherwise is proved by separate evidence. As such, it is right to say that two women stand for the fully acceptable testimony in the situations of divorce (the Quran, 65: 2) and bequests (the Quran, 5: 106).

This conclusion finds further support in the fact that only the verse of debts (2: 282) discriminates between men and women in testimony. Other verses speak generally of witnesses without any reference to their sex. As such, the rule, to which Ibn al-Qayyem refers, is equally applicable to the following two verses:

- “Those who commit unlawful sexual intercourse of your women, bring against them four [witnesses: men or women] from among you” (the Quran, 4: 15).
- “Those who [falsely] accuse chaste women and do not produce four witnesses, lash them with eighty lashes” (the Quran, 24: 4).

Therefore, a woman can stand as witness in prescribed penalties and criminal offenses. Abu Dawūd and al-Tirmidhi on the authority of ‘Amr Ibn Shu‘ayb from his father Shu‘ayb that his grandfather ‘Abdullah Ibn ‘Amr that the Prophet repudiated the testimony of a dishonest man and woman as well as the person who harbors enmity against his/her brother. He also rejected the testimony of one who is dependent on a family and allowed his testimony for others.”

According to another narration, the Prophet (Allah’s peace and blessings be upon him) said, “It is unlawful to accept the testimony of a dishonest man or woman or of an adulterer and adulteress.” According to the narration of Abu Dawūd, “The testimony of nomads against

townsmen is not permissible.” The Quran also denies the validity of the testimony of slanderers, who have been punished for their crime, until they repent (the Quran, 24: 4). As such, a woman—who is not dishonest, adulteress, enemy or punished for malicious slander—may limitlessly act as a legally valid witness. Now, let’s contemplate the following three verses:

- “Bring to witness two witnesses from among your men. Yet, if there are not two men [available] then a man and two women from those whom you accept as witnesses” (the Quran, 2: 282)
- “Bring against them four [witnesses] from among you” (the Quran, 4: 15).
- “Call two just witnesses from your people [men or women]” (the Quran, 65: 2).

They all indicate clearly that the witnesses intended are not randomly chosen, but specific persons requested to give their testimony. There are many cases of financial and non-financial affairs that suddenly and accidentally take place when only one woman or two stand as witnesses for them. In such cases, repudiating the testimony of women may lead to the loss of rights or lead the criminal to escape punishment. Some legal cases may also need women to verify. In all these circumstances, it is necessary to accept women’s testimonies. There is no text in the Quran or in the authentic Sunnah that debars accepting women’s testimonies when they are alone. The wisdom of Allah and that of His Prophet is so deeper and greeter that it never allows the loss of rights or crimes just because only a woman or women stand as witnesses for that.

Imam Muslim, Abu Dawūd and al-Nasā’ narrated from Ibn ‘Abbas that Allah’s Messenger pronounced judgment on the basis of an oath [sworn by the plaintiff] and a witness. The Prophet also accepted the

testimony of one just male witness. Ibn ‘Omar said, “I reported to the Messenger of Allah that I had seen the new moon [of Ramaḍān], so he fasted and commanded people to fast.” In these situations, the Prophet accepted the one-man testimony in response to the exigency and had not required two witnesses or allowed the rights to be lost because of the absence of another witness.

Imam al-Shafi‘i then said that passing a judgment on the basis of one just witness and an oath is not against the declarations of the Quran. Actually, the text does not exclude the acceptance of a fewer number of witnesses. Abu Bakr, ‘Ali and ‘Omar Ibn ‘Abdel-‘Azīz passed their judgments following this rule.

Furthermore, the majority of early and late scholars, including Malik, al-Shafi‘i and Aḥmad and their followers as well as Ishāq, Abu ‘Ubayd, Abu Thawr and Abu Dawūd advocated the same view. Actually, it is the right opinion that no one shall oppose. This conclusion finds further support in the fact that the Ḥanafī jurists allow the testimony of one man to vindicate childbirth and allow a teacher to bear testimony in juvenile crimes.

Likewise, they accept the statement of assayer concerning the assessment of damages and accept the testimony of one person regarding the endorsement or impugnation of witnesses. The same goes true for the news of deposing the agent by the principal and the news of the sold object’s defects. Imam Malik also allows the child-witness testimony ⁽¹⁰⁾ regarding their injuries. The Prophet’s Companions and Medina Jurists also approve the testimony of the juveniles regarding juvenile delinquencies. Such is the preponderant view in this regard. Simply, men rarely attend their plays.

(10) This permission goes against the reliable conditions of testimony, such as adolescence and sound mind, which come next to Islam and justice as the four validity conditions of testimony.

Logically, it is undeniable that the conclusion based on their collective testimony is stronger than the conclusion based on the testimony of two men only. Never think that the perfect noble Sharia, which works for the realization of all human benefits and welfare, would overlook that well-grounded right or waste it. Instead, it accepts the contextual evidence even if it is of a lesser degree when reasonable and persuasive.

Malik, Abu Ḥanīfah and Abu Yūsuf approved the translation of one just translator. Evidently, translation is similar to testimony. It goes without saying that the translation of a woman is equal in authority to that of a man. Ibn al-Qayyem precisely points out that “each indication that proves the truth is legally accepted evidence. Allah and His Prophet never frustrate any way to prove the truth [rights] when evidently manifested. Conversely, the absolutely definitive judgment of Allah and His Prophet declares that whenever the right is vindicated through any means, it must be respected and supported and it is impermissible to hinder or repeal it.” He also said, “It is lawful for the ruler to pass his judgment based on the testimony of one just man, when he is certain of his truthfulness, in issues other than the prescribed penalties [*ḥudūd*]. Allah has not prevented rulers from passing judgments unless two witnesses exist, but commanded the creditor to protect his right by two just witnesses of men or by the witness of a man and two women. It is not an indication that a ruler should not pass the judgment based on a fewer number of witnesses, because the Prophet himself passed his judgment based on one witness backed by the oath of the plaintiff and in other cases on one witness only.

The way that a ruler may adopt shall be wider than the ways divinely specified for holders of rights to protect their financial rights. For example, the Prophet allowed the testimony of a Bedouin regarding the sight of the new moon and allowed the testimony of one witness in

a case of spoils, and declared the testimony of Khuzaymah equal to two just witnesses. He said, “It is enough for a person to have Khuzaymah as a witness [to prove his right].” Actually, this rule is not exclusive to Khuzaymah, as many are better and higher than or at least equal to him in merits and righteousness, such as Abu Bakr, ‘Omar, ‘Othman, ‘Ali and Ubay Ibn Ka‘b whose sole testimony is worthier of acceptance than Khuzaymah’s is. Abu Dawūd [in his *sunan*] even entitled a chapter as follows “If the ruler is sure that the one witness is truthfulness, he may pass the judgment based on his testimony.” The Prophet even accepted the testimony of one woman, when she was reliable and trustworthy.

Al-Bukhari narrated that ‘Uqbah Ibn Al-Ḥarith married a woman and later on a woman came and said, “I suckled you both.” He then asked the Prophet about it. He said, “How can you keep her as a wife when it has been said (that you were foster brother and sister)?” He left her and she married another person.

Similarly, Ibn ‘Abbas allowed the testimony of the midwife concerning the life of the newborn baby through hearing the crying, as the first thing a baby does when s/he comes out of the womb is crying. Narrations to that effect are reported from Al-Sha‘bi and al-Nakha‘i while ‘Ali and Shurayḥ were reported to have passed their judgment accordingly.

For the Ḥanbali jurists, the testimony of women is usually accepted in women-related matters to which men have no access. In conclusion, the testimony of a woman is equal to that of a man, since it is an equal individual duty on all. The claim that women’s testimony is not accepted in some issues has no evidence in the Quran or Sunnah. As to the verse (2: 282) in which two-women testimony is made equal to one-man testimony, it is confined to the case of long-term loans. Since the context proves that women would remind one another concerning

the past contract when necessary to prove the genuineness of the bill of debts. In other words, the woman in question is unlettered and she depends on her memory in delivering the testimony as previously explained. As such, if the context changes the rule shall also change.

Given this fact, the conclusion made between women's testimony in contracts of loans (the Quran, 2: 282) and other affairs is discretionary and based on juristic reasoning; it is limited by the jurist's time, ideas and surrounding circumstances. Actually, this conclusion is not absolute, for the benefit changes following the change of times, places and conditions. Blind imitation of jurist rulings irrespective of their compatibility to the variable realities may prove detrimental to society and religion as well, because it distances life from the essence of religion.

In support of this vision, let us remind of the decision of 'Omar Ibn al-Khaṭṭab when he suspended the prescribed penalty for theft during the Year of Famine. He also suspended the share of obligatory charity specified for the new converts. This share aimed to strengthen their faith. It is based on the following verse "The charities are to go to the poor, and the needy, and those who work to collect them, and those whose hearts have been united, and to free the slaves, and those in debt, and in the cause of Allah, and the wayfarer. A duty from Allah, and Allah is Knowledgeable, Wise" (the Quran, 9: 60).

Although the verse exactly specifies the recipients of obligatory charity and it is effective—not open for abrogation, 'Omar held that the ruling concerning the new converts is flexible and temporary. As far as the legal theories and opinions of juristic commentators are concerned, the view of 'Omar is a source of pride and an indication to the significance of introducing new reasoning-based juristic views.

Likewise, ‘Omar debarred temporary marriage, for it does not fulfill the conditions of usual marriage and fails to give the same effects although the Shiites continue to legalize it in reliance on the following verse, “If you wish to enjoy women through marriage, *give them their bride-gift*; this is obligatory” (the Quran, 4: 24). For ‘Omar, this ruling was temporary and, thus, is now void and ineffective. The same goes true for the laws on slavery in the Quran, which were proven temporary and contextual. Or else, it may be claimed that slavery is permanent in Islam, which implies that liberating human beings goes against the Sharia.

In conclusion, we assert that the testimony of a woman is equal to that of a man, since there is not text that prevents it while the verse on debts (2: 282) is exclusively associated with a certain context and whenever it changes, the law shall necessarily change.

At last, this endeavor highlights the greatness of Islamic legislation and laws concerning the women and their social position. Let us rehearse the supplications of our ancestors:

“O Allah, guide us to see the truth and follow it!

Help us discover falsehood and avoid it!”

May Allah lead us to the best of our nation and religion!”



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