

# Redefining Muslim Women's Roles in the Next Century

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## Introduction

The new millennium is blowing winds of change over the Muslim world. After centuries of relative seclusion, Muslim women have awakened to their critical role in society and are demanding their right to full participation in the public square.<sup>1</sup> Patriarchal customs are being rejected, laws are being revised, and women are increasingly participating in various aspects of public life. Foremost in the struggle for greater roles in society is the revision of antiquated personal status codes (family laws) that have often deprived women of essential liberties. Revising these codes is not an easy matter because they rely primarily on religious law. Attempts to revise them leave the forces of reform open to charges ranging from sacrilege to secularization.

The recent change in Egyptian law is a case in point. After years of attempting to revise the personal status code for Muslims in Egypt, some basic revisions were both proposed and passed in January of this year.<sup>2</sup> The process of revision took nine years and involved religious as well as legal scholars.<sup>3</sup> Nevertheless, when the revisions were publicized they generated significant opposition.<sup>4</sup> Claims of secularization and submission to Western pressure were among the charges levied against the Egyptian government.<sup>5</sup>

Muslim countries watched this development intently. One reason for this interest derived from the tense atmosphere that surrounded the passage of the law and raised the question of possible political ramifications. Another reason was rooted in the fact that Egypt is a

leader in Islamic jurisprudence. This fact gave its proposed revisions added significance. For example, the revisions contained a special provision facilitating the right of the woman to divorce her husband (*khul'*).<sup>6</sup> Years ago, a Pakistani judge issued an opinion that provided Muslim women with certain divorce rights similar to those in the new Egyptian provision.<sup>7</sup> His well-reasoned opinion went mostly unnoticed. Now that Egypt has adopted a similar position in the revised code, the situation has changed drastically.

The difference lies in the fact that, in an important sense, Egypt is the heart of the Muslim world. *Al-Azhar ash-Sharif*, the oldest Islamic educational institution in the world, sits quietly beside a bustling modern Cairo. For centuries it has provided leadership and guidance for Muslims around the world. In January, however, this venerable institution was divided upon itself. Grand Imam of *al-Azhar ash-Sharif*, Muhammad Sayed Tantawi, and many other distinguished religious scholars gave their stamp of approval to the new revisions of the code.<sup>8</sup> Thirty-one other religious scholars, however, issued a strongly worded statement denouncing the revisions as contrary to Islam.<sup>9</sup> The parliament quickly passed the revisions, which have now become law.<sup>10</sup>

But the battle of the personal status code may be far from over. During the administration of President Anwar Sadat, Law No. 44 was passed hastily by the Egyptian parliament in an attempt to improve women's legal status.<sup>11</sup> It was referred to by some Egyptians as "Jihan's law," a reference to the efforts of Mrs. Sadat in having it passed.<sup>12</sup> That law was rejected soon after the death

of President Sadat.<sup>13</sup> Will the new law face a similar fate ultimately? It all depends. In understanding this answer lies the key to predicting the way the winds of change will blow in the Muslim world to define the roles of Muslim women in the information age.

## Obstacles to Change in the Muslim World

In Muslim countries, personal status codes reflect religious law. Religious law, however, is intricately interwoven with deep cultural interpretations and influences.<sup>14</sup> Colonialist rule, which intensified Western legal influence in colonized countries, understood that tampering with the existing configuration would present quite a challenge to occupying authorities.<sup>15</sup> For this reason, it excepted from its ambit family law, naming it in the process "personal status law." Even today, changes in family law continue to evoke a great deal of resistance if society views them as attacks on religion, culture, or family. As a result of the legacy of colonialism, which often destroyed the infrastructure of Islamic education, many Muslims became less educated in religious matters, such as *fiqh* (religious jurisprudence).<sup>16</sup> Struggling to preserve their freedom of conscience, they often opted to cling to tradition rather than venture into new areas of change that may inadvertently be inconsistent with their religious beliefs.

Another complicating element in introducing change is rooted in current geopolitical conditions. Where a third world society (as most Muslim countries are) views change as being imposed by international bodies, foreign governments, or foreign-based or financed NGOs (nongovernmental organizations), it is usually inclined to reject it. For example, this past summer both Pakistan and Egypt cracked down on NGOs they viewed as tools of foreign powers.<sup>17</sup> NGOs have generally succeeded in globalizing various women's and human rights issues. Unfortunately, however, they have been often insensitive to cultural and religious differences. As a result, a great deal of resistance was created abroad to the women's rights movement, which often appeared as a foreign intruder attempting to destroy the family and complete the work of the colonialist.

Muslims have also rejected change that appeared to be imposed upon them by their own rulers. The parliamentary defeat of the right of the Kuwaiti woman to vote was unfortunately as much an expression of defiance in the interest of democracy as it was a rejection of a basic right of women.<sup>18</sup> For this reason, commentaries after the vote both condemned the defeat of Kuwaiti women's rights and celebrated the assertion of the right of the people to a robust democracy.<sup>19</sup> It is quite unfortunate that women's issues are often caught in the middle of other political struggles.

Nevertheless, there is great room for change in the Muslim world. Change has always had its internal rules there. Muslim women and men can go quite far by utilizing these rules. For this reason, the recent Egyptian change in family law is promising as it appears to have utilized some of the better methodologies to bring about change. What the next few years will determine is whether these methodologies were properly applied and adequately pursued.

## Challenges Facing Muslim Women

Problems facing Muslim women are diverse. After all, Islam is the faith of over a billion people on this earth. Also, despite common belief to the contrary, most Muslims are not Arab. In fact, the largest Muslim country is Indonesia. As a result of this ethnic and cultural diversity, it is not possible to generalize about "the problems facing Muslim women." Rather, one must take into account the specific country under consideration. For example, while Afghanistan has denied women adequate education, some universities in the United Arab Emirates boast a female student population approaching 80 percent.<sup>20</sup> Also, while honor killing is a priority issue in Pakistan and Jordan, it is not practiced in Tunisia or Malaysia. Voting is a priority issue for Kuwaiti women, driving for Saudi women, but Muslim women in other countries have voted and driven for many years.

Despite this rich diversity, some personal status codes have exhibited conceptual similarities on issues that present significant difficulty for women. These issues have subtle but deep-rooted justifications that resonate in

other parts of the codes. Uncovering these justifications requires attention to complicated jurisprudential matters. As early as 1992, I pointed out three major issues common to various Muslim personal status codes: (a) the right of the woman to execute her own marriage contract, (b) the requirement that the woman obey her husband, and (c) the woman's right to divorce. Of these, only the third was addressed in the recent Egyptian law, but not without controversy.<sup>21</sup> Underlying all of these issues is a single justification based on a particular interpretation of the Qur'anic concept of *qiwamah* combined with certain gender-based assumptions.<sup>22</sup> In most traditional jurisprudence, that Qur'anic concept has been interpreted to refer to the "superiority" of men over women.<sup>23</sup> Underlying this interpretation is the cultural patriarchal assumption that women are weak and irrational while men are strong and rational.<sup>24</sup> This interpretation has also been used to justify various restrictions on women.<sup>25</sup>

What is stunning about both the interpretation and assumption is the fact that they fly in the face of early Islamic history, which is replete with examples of women who were natural leaders, being neither weak nor irrational. To begin with, Khadijah, the first wife of the Prophet, was a successful business woman who employed the Prophet as a young man.<sup>26</sup> She was hardly a weak and passive woman, even in her own private life. Despite being twenty years older than the Prophet, she proposed to him in marriage, and the two lived happily together until her death.<sup>27</sup> Khadijah was the first Muslim and the Prophet's intimate advisor.<sup>28</sup>

Khadijah's female descendants were no less assertive or accomplished. Denied her inheritance under the theory that children of prophets do not inherit, Fatimah gave a major, well-reasoned speech in support of her claim.<sup>29</sup> Fatimah's daughter, Zainab, gave an even more challenging speech in the palace of Yazid after the latter's army executed all but one of the male descendants of the Prophet.<sup>30</sup> Um Salamah, another member of the House of the Prophet, provided him with valuable advice that prevented a major schism among Muslims.<sup>31</sup> 'A'ishah, a third member, was viewed as a major source of *hadith* (reports of the words of the Prophet) and also engaged in jurisprudence.<sup>32</sup> Furthermore, after the death of the Prophet, 'A'ishah led a faction of Muslims into a major battle.<sup>33</sup>

Activism and scholarship, however, were not limited to the House of the Prophet. Many Arab women of that time fought by the Prophet's side, attended discussion sessions with him, provided religious education, and engaged in business.<sup>34</sup> In fact, one of them was appointed by the Prophet to lead Muslims in prayer from her own house.<sup>35</sup> After the death of the Prophet, other women distinguished themselves in *hadith*, jurisprudence, literature, and even governance.<sup>36</sup> Hence the patriarchal assumption adopted by Muslim jurists flies in the face of the very facts that existed during the life of the Prophet and after his death. Since the Prophet was the model Muslim, one is entitled to point to his life, his respectful interaction with women, and approval of their lifestyles to raise important modern questions about current laws.

There are other issues. For example, many codes restrict the Muslim woman's right to free movement, thus requiring her to obtain her husband's permission for activities ranging from social visits to travel.<sup>37</sup> The originally proposed Egyptian law contained a provision that eased the travel restriction through judicial action, but that provision was dropped due to severe opposition.<sup>38</sup> It was viewed as an attack on the husband's prerogative.<sup>39</sup> In many Muslim countries women are required to travel with their husbands or with a male *mahram* (a close relation who is legally prohibited from marrying the woman, such as her father or brother). Saudi Arabia requires women entering the country for *hajj* (pilgrimage) but who are not part of a pilgrimage group to be accompanied by a *mahram*. Yet 'A'ishah argued centuries ago that since *hajj* is a religious duty, women may go to *hajj* without a *mahram*.<sup>40</sup> Furthermore, she argued that since women are permitted to go to *hajj* unaccompanied by a *mahram*, then they should be able to travel to other destinations without a *mahram* if they fear no *fitnah* (a rich word with meanings ranging from turmoil to temptation).<sup>41</sup>

Another common form of mobility-restrictive laws requires the wife to obtain her husband's permission to work outside the home.<sup>42</sup> Clearly, this form is susceptible to serious abuse and places enormous power in the hands of the husband over his wife's economic independence. Interestingly, however, economic and social changes in some Muslim countries have recently forced legal changes. Some modern Muslim jurists developed



a less restrictive jurisprudence that provided the underpinnings of the revised laws. Today, many codes permit women to engage in "legitimate" work, without the husband's permission, "so long as the work is not detrimental to the family."<sup>43</sup>

Incidentally, the mobility-restrictive laws, even in their most confining form, do not mean that Muslim women are homebound without careers. Many are doctors, teachers, and engineers. Nevertheless, it is significant that the legal system places limitations on the mobility and employability of Muslim women, regardless of actual practice. These limitations become important when there is a disagreement between the spouses and the husband attempts to limit the wife's options by relying on these laws. The new Egyptian laws have addressed such situations by ensuring that the wife has recourse to the courts to demand justice.<sup>44</sup>

Many women would like to see basic changes in personal status law, as opposed to mere remedial action. The critical issue, however, is what would such changes entail. According to my conversations with Muslim women in various Muslim countries, I found them to be hesitant to demand change if that would entail a departure from their religious beliefs. After all, personal status codes are based on religious law, and Muslims are bound by every word in the Qur'an. So, contemplating the passage of laws in contradiction with the Qur'an's letter, or even spirit, is at least as serious as contemplating the passage of an "unconstitutional law" in the United States. Not only would it not work; worse yet, it would be sacrilegious.

Given the lack of adequate knowledge of the Muslim woman's history, the Arabic Qur'anic text, and the assumptions and arguments made by many traditional jurists, most Muslim women are in no position to discern legitimate change from sacrilegious one. Generally, they do not have the tools to separate patriarchal cultural arguments from religious arguments, nor do they have the tools to develop their own gender-equitable jurisprudence. Unless this situation changes, the progress of Muslim women will continue to be severely hampered. The status of the Muslim woman in many Muslim countries is so much at odds with the rights granted her by the Qur'an that recently even male jurists have rejected aspects of patriarchal thinking and declared their support for women's rights.<sup>45</sup>

We can now see the complexity and seriousness of the problems associated with the call for Muslim women's rights. Pious women would rather suffer than sin. Some Muslim men are trying to help, but the movement to liberate Muslim women must emanate from within women's ranks. Western NGOs offer mostly irrelevant secular solutions. Patriarchal voices claim religious foundations for existing patriarchal laws. Everyone is talking past each other, and global politics is not far from the conversation. All of this creates a less than ideal environment for bringing about change.

### Using Internal Rules for Change to Promote Progress

Traditional societies, however, have their internal rules for change, and Muslim societies are no exception. While using these internal rules can help accelerate acceptance, defying them can derail one's efforts. By the same token, radical change may require revision, if not destruction, of some of these rules themselves. These facts raise important questions: Dare women destroy some of the rules? If not, how could women use patriarchal internal rules to achieve their goals? Asked in the abstract, these questions seem daunting. Focused on specifics, answers become quite possible. In either case, it is important to think about these questions, if only to understand the challenges facing Muslim women. We, therefore, turn to a brief overview of how these rules work.

Internal rules of change vary somewhat from one country to the other. Muslim societies are informed by both religious and cultural values, principles, and assumptions. While the former set provides a common ground among all these countries, the second usually does not. Furthermore, because of the interaction of religious interpretation with cultural assumptions, even religious interpretation often reflects variations from one country to the other. These are significant facts given that demands for cultural change are not sacrilegious and that commitment to cultural norms can be overridden by religious principles or even social development.

To understand the full significance of the previous assertions, we need to understand better how personal status laws, which are founded on Islamic jurisprudence, work. There are many schools of jurisprudence,

and each country has historically adopted that school of jurisprudence that best suited its society.<sup>46</sup> Islamic schools of jurisprudence represent particular interpretations of the Qur'an, in light of the *sunnah* (words and example of the Prophet) and sound rules of logic. On some matters, clearly delineated by Qur'anic revelation, the difference among the schools is negligible. On others, where interpretation is a major element, differences may be quite significant. Understanding the difference between the two is critical. Confusing them is a sure path to failure.

Tunisia has properly understood this distinction. For this reason, it and other Muslim countries refrained from revising Islamic inheritance laws in response to international pressures by parties concerned about the laws' fairness to women. As one Tunisian judge stated, inheritance laws will remain unchanged in Tunisia until an Islamic solution to this matter is found.<sup>47</sup> This statement may surprise many non-Tunisian Muslims who view the Tunisian personal status code as influenced by French secularism. After all, it prohibits polygamous marriages and no longer requires obedience by the wife.<sup>48</sup> A closer look at the Explanatory Memorandum of the Tunisian personal status law, however, reveals the robust Islamic jurisprudence on which it relied. This example also helps illustrate two more facts: Islamic jurisprudential interpretations can vary significantly, and there is no single inflexible interpretation that informs all Islamic legal systems.

There are general rules for adequate and proper interpretations, and most are rules of logic, such as *qiyas* (argument by analogy) and the requirement for internal consistency.<sup>49</sup> No interpretation is considered worthwhile if it runs afoul of basic rules of logic because the Qur'an repeatedly defines Islam as a religion based on reason.<sup>50</sup> Other jurisprudential rules for assessing the applicability of a certain law to a specific situation admit such other practical considerations as public interest (*maslaha*) and avoidance of harm (*la darar wala dirar*).<sup>51</sup> These two sets of rules provide a rich base for diverse interpretations and laws.

Additionally, there are several juristic principles that govern *ijtihad* (Islamic jurisprudential reasoning). Two important ones deal with custom (*'urf*) and change.<sup>52</sup> The first principle permits the jurist to include in his or her jurisprudence laws and assumptions derived from cus-

tom, so long as these do not conflict with Islamic law.<sup>53</sup> This principle has permitted broad legal diversity in the Muslim world. While this flexibility is valuable, it has opened the door at times to laws that are gender biased. Although the Qur'an itself is gender-equitable, it is hard to see how a patriarchal jurist who is oblivious to his own biases could recognize the incompatibility between a gender-biased custom and basic Qur'anic principles.

The second principle recognizes the fact that laws change with changes in time and place.<sup>54</sup> Thus, what is suitable for a country in the tenth century may not be suitable for that country today. Countries have been known to change the school of thought they follow. For example, Egypt used to be a Shafi'i jurisdiction.<sup>55</sup> More recently, it opted to follow the Hanafi jurisprudence, which it deemed more suitable for its people.<sup>56</sup> Imam al-Shafi'i himself revised his own jurisprudence when he moved from Iraq to Egypt because the old jurisprudence did not suit the new milieu.<sup>57</sup> Furthermore, what is suitable for Egypt may not be suitable for Pakistan. *Ijtihad*, in other words, is a continuous thinking process that takes into account the very milieu in which it occurs.

Unfortunately, as a result of various historical factors, *ijtihad* shriveled in the Muslim world.<sup>58</sup> The time has come, however, to revive the best of the Islamic intellectual traditions—that of freedom of conscience and thought, that is, freedom of *ijtihad*. Such freedom, however, cannot be cabined to women's rights. If a society is to encourage freedom of *ijtihad* in pursuit of more gender-equitable laws, then that society must also be prepared to reap the consequences of such freedom in areas such as those of human rights, democracy, and civil liberties. This is why the issue of change is such a delicate one in Muslim countries. It concerns not only patriarchy but also general political authority.<sup>59</sup> Once the floodgates of freedom of *ijtihad* are open, the long-term effect would metamorphose all of society. For this reason, many men are willing to stand by women in their search for better laws and conditions, and many countries seek gradual measured change that ensures stability.

This short discussion of the basics of Islamic jurisprudence makes clear that Islamic jurisprudence is a highly flexible endeavor, sensitive to a full range of considerations, whether religious, social, political, cultural, or even contextual, that could arise at any time or place.

For this reason, given all these facts, it is hard to imagine that any serious Muslim scholar would deny the propriety of reviewing old jurisprudence in light of the demands of the modern age. The challenge, therefore, is how to perform such a review competently without creating unnecessary resistance and turmoil.

This is a tremendous challenge requiring thorough knowledge of the Qur'an, *sunnah*, Islamic law and jurisprudence, as well as the conditions in the country at hand. The strength of the recent Egyptian approach for legal change lies in the fact that the scholars involved took the time necessary to examine carefully earlier jurisprudence. Also being sensitive to the social milieu, they developed new jurisprudence suitable for Egypt, resting on firm Islamic ground and utilizing traditional Islamic methodology. This is one reason the new law passed and why it may even survive future challenges. If indeed it does, it may very well spread to other Muslim countries.

### Opening the Doors of Jurisprudence to Women

The Egyptian approach worked well in part because of the enthusiastic support of some distinguished male jurists, but women played an active role as well.<sup>60</sup> Women in Egypt are more comfortable with religious text and tradition than many Muslim women in other countries. There are various reasons that explain this state of affairs. Among them is the fact that the Arabic language is the native language of Egypt. Also, the educational system is wide open to women. Even *al-Azhar* opened its doors in the last few decades to women. Furthermore, there is a strong tradition of women's involvement and assertiveness in Egypt.<sup>61</sup> All of these factors made Egyptian women an active part of the process of change.

This is a key point. If change is going to occur in the Muslim world, it cannot occur without the active participation of women. If change is going to be fundamental, it cannot occur without the leadership of women. Preparing women for this important task is paramount. They need to be educated generally, but also especially in the field of Islamic jurisprudence. Such preparation will lay the objective foundations for the emergence of a new

kind of jurisprudence, one which understands firsthand women's concerns and challenges.

From a religious point of view, this educational requirement is not exceptional. After all, the Qur'an clearly advocates knowledge, and the Prophet himself stated that seeking knowledge is the duty of every Muslim, male or female.<sup>62</sup> Consequently, educating women is not only an option in Muslim societies, it is a duty. Unfortunately, as we all know, some countries have not taken this duty seriously.<sup>63</sup> In fact, they have ignored it, relegating the education of women to the bottom of their priorities.

The reasons for such a travesty are many. However, since many of the countries that limit the rights of women use religious or pragmatic justifications for their actions, the emergence of a class of Muslim women jurists across the Muslim world who would critique such unsound justifications would significantly alter the situation. Even traditional Islamic jurisprudence can be used in arguments refuting both religious as well as pragmatic claims by patriarchal regimes. With respect to pragmatic arguments, Muslim women could rely, for example, on the traditional principle of avoidance of harm, thus making it relatively easy to show the harm befalling more than half the population when restrictive interpretations of women's rights are adopted.

The integration of Muslim women in the religious educational process has taken place in many Muslim countries, among which are Lebanon, Syria, Morocco, and Iran, a fact which appears very promising. The way this integration was achieved differs from one country to the other. Integration alone, however, is not enough. Some women I talked to were confused or frustrated by the patriarchal jurisprudence they were being taught. They did not know how to evaluate critically the information provided. This fact underscores the importance of women's presence as educators and leaders, and not only as students, in the area of Islamic jurisprudence.

It is amazing how many of the quasi-religious arguments used to limit women's rights rely on assumptions that have been refuted in our American society and early Islamic societies time and again. Today, these assumptions are still widely accepted as fact in many countries. Some Muslim women have told me that women were weak and irrational. Muslim women



who have internalized their own oppression can benefit from Muslim women who have rejected it. Many American Muslim women, who were participants and beneficiaries of the American feminist movement, have rejected oppressive assumptions about themselves and other women, but they are also committed to the tenets of their faith. Thus, they make excellent leaders for change within a Muslim context.

American Muslim women can provide valuable leadership, along with their Egyptian, Moroccan, Saudi, Gulf, and other sisters who are already trying to bring about change, each to the extent possible under their own local circumstances. The advantage American Muslim women enjoy over all others is that they are in fact removed from the pressures of local quasi-religious politics. They also live in a society that broadly recognizes women's rights, a society that has refuted many patriarchal assumptions still lingering elsewhere. This is a distinct advantage, because in studying traditional Islamic jurisprudence we become clearer about which assumptions are cultural, refutable, and patriarchal. Once we eliminate that unnecessary baggage, we can then concentrate on a serious discussion of religious issues.

This recommended jurisprudential activity, however, leads to many questions: May Muslim women engage in *ijtihad*? May Muslim women lead their societies? Are American Muslim women in a position to assist Muslim women of other cultures, given that Muslims are entitled to reflect their own specific cultures in their laws? I now examine these critical questions.

## The Role of Women in Religious Tradition and in Society

Since the Islamic faith is based on the Qur'an, it is helpful in answering our questions to establish the Qur'anic view of gender relations. The Qur'an, which is the revealed word of God, states that all humans, male and female, are created from the same soul.<sup>64</sup> It also describes spousal relationships as based on affection and mercy (not domination).<sup>65</sup> The Qur'an itself addresses specifically female believers as well as male believers, and it imposes on all of them similar religious duties and obligations.<sup>66</sup> The Qur'an further states that female believers and male believers are each others' *awliya'* (guardians

or protectors).<sup>67</sup> These Qur'anic assertions are inconsistent with the patriarchal assertion that men are superior to women. Yet it is this very patriarchal assertion that jurists rely upon in interpreting the concept of *qiwamah* mentioned in the Qur'an.<sup>68</sup> Since Muslims believe that Qur'anic verses interpret each other as one integral whole and that the Qur'an is a thoroughly internally consistent revelation, then one could see how existing patriarchal interpretations would be vulnerable to serious religious critiques.<sup>69</sup>

Given the gender-equitable Qur'anic view, one may wonder, therefore, about the glaring absence of women from Islamic jurisprudential circles. As stated earlier, women were not absent from these circles in early Islam, and many of their contributions have survived to this day, especially through citations by men on such matters as *hadith*.<sup>70</sup> The contributions of women to *ijtihad*, however, have not fared as well, and there are efforts now to rediscover those still in existence. Muslims have generally understood that there is no Qur'anic bar to Muslim women engaging in jurisprudence. Many, however, do not await such contributions enthusiastically given the patriarchal assumption that women are weak-minded. Incidentally, many of the men who espouse patriarchal assumptions have no problem being led in *sufi* orders by women.<sup>71</sup>

Since there is no bar to women engaging in Islamic jurisprudence, it is important that they do so in order to change the intellectual landscape. Historically, however, male as well as female jurists were discouraged in their endeavors or even prevented from pursuing them by the arm of an authoritarian state.<sup>72</sup> Yet the Qur'an clearly protects freedom of conscience and human rights;<sup>73</sup> so does our international community. It would thus be much harder to hinder these efforts in modern times. Furthermore, American Muslims do not have to concern themselves with fear of retribution or repression. Protected by American First Amendment jurisprudence, they are free to pursue their own *ijtihad*. Consequently, they have a relatively safe enclave to work from and an important leadership role to play in developing a new Islamic jurisprudence firmly based on the Qur'an and fully suitable for the information age.

If Muslim women, along with supporting Muslim men, succeed in questioning existing authority, then

they would open properly the door to a new era in Muslim societies, one which is closer to the society of Madinah headed by the Prophet himself.<sup>74</sup> In that society, matters were decided by elections (*bay'ah*) and consultation (*shura*).<sup>75</sup> Women made their voices clearly heard, to the amazement of Makkan men.<sup>76</sup> They participated in both elections and consultations.<sup>77</sup> They attended discussion sessions with the Prophet.<sup>78</sup> They prayed in mosques and engaged in business.<sup>79</sup> In general, they took their personal, social, financial, and political rights seriously. The assertiveness of women in Madinah was in fact preserved in one instance by a whole Qur'anic chapter about the woman who argued with the Prophet.<sup>80</sup> While it is clear that Muslim women may participate actively in society, the question remains: May Muslim women lead?

This question has been answered differently by different Muslim populations. Pakistan and Bangladesh appear to have responded affirmatively to the question.<sup>81</sup> But in both cases, the rise of women to power there was based upon the power of a male relative (usually deceased) and reflected cultural reactions rather than religious judgment.<sup>82</sup> Thus, even in those societies, the religious aspect of this question remains open. Women themselves are unclear about the answer. In a meeting with young university women in a particular Muslim country, I learned that the majority of female students agreed that Muslim women are entitled to political participation but not to leadership roles. In other words, if there is a "glass ceiling" in Muslim countries, then it is in part the result of many Muslim women believing in its appropriateness. These women have internalized gender-biased worldviews, even as some major traditional Islamic scholars have recognized the right of women to lead.<sup>83</sup>

While the majority of scholars argue against women's leadership, Muslim history is replete with examples of women leaders, such as Queen Arwa of Yemen, Shajarat al-Dur of Egypt, and Fatimah Sultan of Qasimov.<sup>84</sup> The Qur'an itself mentions positively the example of the Queen of Sheba, a wise woman who consulted her people before taking important decisions.<sup>85</sup> It also contains no prohibition against women's leadership. As stated earlier, the Qur'an describes men and women as each other's protectors and guardians.<sup>86</sup> On the other hand, the Qur'an contains other verses that have been inter-

preted as limiting leadership to men, such as the verse containing the concept of *qiwamah*, which I have already described as having been misinterpreted. So, let me explain that concept and verse briefly.

This concept of *qiwamah* is generally understood as establishing a hierarchical relation between men and women.<sup>87</sup> Yet the complex grammatical structure of the Qur'anic verse in which the concept occurs is not one of generality (*'aam*) but of specificity (*khaass*). Various words in the verse indicate that the verse applies only to *some* men who are related to *some* women in two specific ways: (a) they support them financially and (b) are preferred by God over these women at certain times in certain matters.<sup>88</sup> The latter condition refers to situations where a man (who is financially supporting a woman) may be more sophisticated than the woman he is supporting in some financial, social, political, or other matter. So long as he remains more sophisticated than the woman in that matter while being responsible for her financial support, the man is entitled to advise (be *qawwam* over) the woman in that matter. Once either condition ceases to exist, the verse no longer applies and the man has no right to interfere in the woman's decision making, even as an advisor. In other words, in a patriarchal world where men constantly interfered in the lives of women, this verse was revealed to *limit* that interference, not to encourage it.<sup>89</sup> Unfortunately, traditional interpretations overlooked that fact.

The fact that this verse applies only to specific situations would have been quite clear in early Islam when many women engaged in business and were not in need of being financially supported.<sup>90</sup> Furthermore, Islam gave the woman financial independence even within her marriage.<sup>91</sup> Thus, while the husband is obligated to support his wife, her assets remain hers and are totally separate from the marital property.<sup>92</sup> The husband may not touch them. Furthermore, if he refuses to provide support to his wife (even if she is rich), the wife may seek severe judicial remedies that could include divorce.<sup>93</sup>

However, in authoritarian societies in which jurists were arguing in favor of obedience by the masses of their ruler, even if he were unjust, the concept of *qiwamah* within the family was also interpreted in an authoritarian fashion.<sup>94</sup> The burden of the loss of democracy and human rights in Islamic history that was



felt by the whole population was therefore felt doubly by Muslim women. As women were increasingly relegated to the home in later periods of Islamic history, they became more dependent on the financial support of men. This meant that the first condition of the Qur'anic verse was almost always satisfied.

To further bolster their view, traditional jurists interpreted the second condition of the Qur'anic verse discussed above as referring specifically to the physical superiority of all men over all women, an assumption that they viewed as generally true.<sup>95</sup> This interpretation ensured that the second condition of the Qur'anic verse was also always true. The limited domain of the Qur'anic verse was thus generalized to cover all men and women by using patriarchal jurisprudential interpretations backed by patriarchal restrictions on women in public life.

Jurists buttressed their interpretations by citing other Quranic verses, such as the law of witnessing and inheritance laws.<sup>96</sup> Their arguments again reflected a profound bias in understanding the divine wisdom behind these laws by reducing them to patriarchal advantage. For this reason, Muslim women's jurisprudence is now a necessity. But before it can be effective and accepted by society, it has to address all these issues in a pious, rational, and convincing detail. The task is daunting, given the great minds that developed Islamic jurisprudence over a period of almost fifteen hundred years. Fortunately, these same minds can offer some succor. Many of their arguments, when understood properly, could work in favor of developing a liberating jurisprudence. Very often, these honest jurists themselves stated clearly their cultural and patriarchal assumptions that led them to a specific interpretation. This valuable information facilitates the task of a modern jurist. As noted earlier, Muslims are not bound by the patriarchal or cultural assumptions of other cultures. They are bound only by the Qur'an. Hence, they are entitled to reject the cultural parts of a traditional jurist's arguments and replace them with ones that are more in keeping with our times and our culture. With these revised interpretations, it would be possible to revive the tradition of Muslim women leaders.

We are thus left with the last question: Are American Muslim women in a position to assist Muslim women

of other cultures, given that Muslims are entitled to reflect their own specific cultures in their own laws?

## The Role of American Muslim Women

Regardless of culture, American Muslim women are as bound by the Qur'an as all other Muslims. Consequently, whatever Islamic jurisprudence is followed by Muslim communities in the United States, it must be Qur'anically impeccable. The jurisprudential interpretations themselves may be colored by local customs, experiences, and culture, just as the interpretations of others were similarly colored. But so long as these interpretations comply with *usul al-fiqh* (the basic principles of traditional jurisprudence) they should be acceptable, even if in disagreement with other established interpretations.

This may be surprising to a non-Muslim, but jurists have always maintained an ethic of difference among them.<sup>97</sup> Recognizing that no human is infallible, no jurist claimed for his views the status of absolute truth. Rather, well-known jurists always ended their exposition with the phrase "*wallahu a'lam*" (God knows best).<sup>98</sup> For similar reasons, the Great Imam Malik bin Anas said: "I am a human being, who is sometimes wrong and sometimes right; so look into my views and take what accords with the Qur'an and *sunnah*. Discard that which does not."<sup>99</sup> The other Great Imam Abu Hanifah said: "Do not emulate me, or Malik or al-Shafi'i, or al-Thawri, and seek [your guidance] from [the sources] they sought."<sup>100</sup>

Developing an indigenous American Islamic jurisprudence is not only desirable but also necessary. Jurists of the past recognized the need to change laws in light of changing times, circumstances, and milieus. Unfortunately, the jurisprudence followed today has not been properly revisited since medieval times. It has been simply adjusted or recombined with customary and colonialist jurisprudence, leaving behind a strange mixture of tribal custom, patriarchal bias, and even European culture.

American Muslims are not bound by tribal custom of faraway places nor by values of past colonial powers. For this reason, a patient study of existing jurisprudence is necessary to uncover all these nonreligious assumptions on which it rests and that have either become

obsolete or are unsuitable for our society. An American Muslim female attorney or investment banker is likely to find the assumption that women are naturally weak and irrational unacceptable, especially if all her female friends are successful working women as well. This single assumption, if removed, would alter significantly many laws in existing personal status codes.

For example, the argument for requiring a *wali* (guardian) to execute the marriage contract of a woman on her behalf would lose force.<sup>101</sup> In such a case, jurists may return to the jurisprudence of Abu Hanifah on that point. He argued that the *wali* (who may be the father) has only advisory powers, but the woman executes her own contract.<sup>102</sup> His argument in support of this position was very simple: If Islam gave the woman full independence in financial matters, he noted, how could it be conceivable that it would give her less in matters of greater importance, such as the choice of a husband?<sup>103</sup> Abu Hanifah, nevertheless, gave the *wali* the power to annul the contract, if the woman married an unsuitable man.<sup>104</sup> This condition reveals very clearly the impact of local culture on Abu Hanifah. He defines an unsuitable man as one who is not suitable economically, professionally, or in some other similar way.<sup>105</sup> This is a departure from the Prophetic tradition, which states that all Muslims are suitable for all other Muslims, regardless of class or race.<sup>106</sup> The defining consideration is simply that of piety.<sup>107</sup>

This example shows the constructive role traditional jurisprudence can play in formulating a new jurisprudence. It also shows the need to be careful in sifting through the various positions in order to adjust them to one's society. One part of one position may be acceptable, but another part may not be. This conclusion is not new. Muslim countries reached it decades ago when they started applying the doctrine of *takhayyur* (selectivity) in formulating their own laws.<sup>108</sup> This doctrine permitted them to borrow from each school of jurisprudence those laws that best suited their societies. When utilizing the method of *takhayyur*, a jurist must be very careful and cognizant of the overall effects of the choices made. In the above example, the resulting position that permits the woman to execute her own marriage contract while adopting the pristine Islamic definition of "suitability" combines elements from two

schools of thought, the Hanafi and the Maliki. Hence it is Islamically unassailable. It also reflects the realities of the American Muslim woman's independent lifestyle.

By developing Islamically sound jurisprudence suitable for the United States, American Muslims illustrate to the Muslim world the flexibility of Islam that was revealed for all times and all places. They also provide a prototype of a jurisprudence that is liberating, modern, yet authentic. Such a prototype will no doubt invigorate those Muslim women who labor under the impression that their oppression is divinely decreed. It will also open the door to the critical examination of other pressing issues, such as civil rights and representative government. These developments would usher a new age of reform to the Muslim world.

Many non-Muslims, biased by the stereotypical image of Islam as oppressive, may wonder whether the attempt to reinvigorate the religious intellectual life of Muslims is worth the effort. They may find it hard to believe that such an approach would ultimately lead to full liberation. This point of view invites to two observations. First, Muslim women in the West have an added burden in their struggle for a gender-equitable jurisprudence. For one, their efforts are treated by other Americans with skepticism, suspicion, even rejection. One glaring example of this unfortunate state of affairs is illustrated by an incident that took place a few years ago in our own capital. Muslim women wearing head scarves were not welcomed to a feminist demonstration in support of Bosnian women. Furthermore, Muslim women do not receive the same sort of moral and financial support that secular women from Muslim cultures receive, despite the fact that the latter group has little, if any, grassroots support.

## Conclusion

All over the Muslim world, Muslim women are exploring new roles in public life and new interpretations of Islamic law that are in keeping with the times. They are often assisted in their efforts by men who are interested in advancing the cause of democracy and human dignity. The success of Muslim women in their endeavor requires deeper understanding of and increased participation in Islamic jurisprudential

activity. The road to full participation by women in the public square is long and difficult, but Islamic history is replete with precedents of strong and active women. These historical role models offer both inspiration and validation in the face of entrenched patriarchal forces. Patriarchal forces, whose views are rooted in patriarchal cultures, appropriate religious

language and symbols to achieve their purposes. Educated Muslim women can disarm these forces and expose their cultural biases by developing a sophisticated understanding of Islamic jurisprudence and its liberating potential. In the end, the winds of change blowing over the Muslim world will bring in freedom, justice, and democracy to everyone.



## Redefining Muslim Women's Roles in the Next Century

1. This is not to suggest the absence of a women's movement or of women's participation in public life in certain Muslim countries in earlier centuries. The movement today is distinguished by its broad base spanning most, if not all, Muslim countries.

2. Law No. 1 of the Year 2000, organizing certain litigation measures and procedures relating to matters of personal status (henceforth, "Law 2000"). Egypt has separate codes for non-Muslims based on their religious laws. This is a continuation of the *melli* system used by the Ottoman Empire.

3. Seif Nasr, *Majlis al-Sha'b Yabda' Ghadan Munaqashat Qanun al-Ahwal al-Shakhsiyah* (Parliament Commences Discussion Tomorrow of the Personal Status Law), *Al-Ahram*, Jan. 15, 2000, at 1.

4. See note 9 below and related text; see also Ahmad al-Batriq, et al., *Majlis al-Sha'b Yuwafiq 'ala Qanun al-Ahwal al-Shakhsiyah* (Parliament Approves Personal Status Law), *Al-Ahram*, Jan. 27, 2000, at [www.ahram.org.eg/Arab/Ahram/2000/1/27/INV1.H](http://www.ahram.org.eg/Arab/Ahram/2000/1/27/INV1.H) TM (visited May 12, 2000) (noting that "hot debates" and exchange of accusations surrounded the approval of the law).

5. See, for example, Abdallah Hilal, *Hawl al-Qanun al-Mastuq li al-Ahwal al-Shakhsiyah* (On the Rushed Law of Personal Status), *Al-Sha'b*, Jan. 28, 2000, at 4 (arguing that this law is only one manifestation of the Egyptian government's submission to the power of the United States and attempts at globalization); see also the Statement of the Azhari Scholars, published in *Al-Sha'b*, Jan. 25, 2000, at 2 (warning that by changing Islamic law, there will be no peace or safety); Abd al-Salam Ibrahim Ghaidhan, *Fakhamat Ra'is al-Jumhuriyah: La Tuwaqi' Ala al-Qanun al-Mashhub* (Mr. President: Do Not Sign This Suspicious Law), *Al-Sha'b*, Jan. 25, 2000, at 2 (noting that not even colonialists dared separate personal status law from religion); Majdi Ahmad Hussein, *Al-Sayyed Ra'is Majlis al-Sha'b: Itha Kunta Takhsa Allah fala Tasluq al-Qanun* (Head of the Parliament: If You Fear God, Do Not Rush the Law),

Al-Sha'b, Jan. 11, 2000, at 3 (arguing that globalization and westernization are behind the law).

6. Law 2000, Bk. 3, Ch.1, Art. 20.

7. See *Khurshid Bibi v. Muhammad Amin*, PLD 1967 SC 79. In fact, the opinion in this case entitled the wife to *Khul'* if she satisfied the conscience of the Court that it will otherwise mean forcing her into a hateful union in which she is unable to live in compliance with her religious obligations. See *ibid.* at 99, 121. Law 2000, Bk. 3, Ch.1, Art. 20 uses similar language. This is not surprising, given that scholars in each case relied on a Prophetic incident that legitimated this form of divorce. See *Khurshid Bibi v. Muhammad Amin*, at 122–23.

8. *Mashykhah al-Azhar* [the governing body of al-Azhar] and *Majma' al-Buhuth al-Islamiyyah* [the Academy of Islamic Research] both examined and approved the proposed changes. Among the major scholars providing thoughtful support for this law was Muhammad Salim El-Awa. See Muhammad Salim El-Awa, *Mashru' al-Ahwal ash-Shakhsiyah* [Draft Personal Status Law], Al-Ahram, (visited Jan. 17, 2000) <http://www.ahram.org.eg/Arab/Ahram/2000/1/17/O PIN3.HTM>.

9. See Kamal Habib, *Akthar Min Thalathin 'Alim-an Azhariyan Minhum A'dha' bimajma' al-Buhuth al-Islamiyyah Yarfudun Mashru' Qanun al-Ahwal al-Shakhsiyah* [More Than Thirty Azhari Scholars Among Them Members of the Islamic Research Council Reject the Draft Personal Status Law], Al-Sha'b, Jan. 18, 2000, at 1 (reporting that thirty-one Azhari scholars, including members of the Islamic Research Council, issued a press release demanding that discussion of the law be delayed, and that views of additional religious scholars be solicited, to ensure that the law is not incompatible with the Islamic *shari'ah*. The scholars also compared the law with an earlier one that was later repealed).

10. The Parliament as a whole began considering the law on January 16. It was passed on Jan. 26, 2000. President Mubarak signed it into law on Jan. 29, 2000.

11. Law 44 was passed in 1979.

12. See Jane Friedman, "As Islamic Fundamentalism Rises in Egypt, Government Feels Heat," *Christian Science Monitor*, June 14, 1985, at 9; see also, Sarah Gauch, "Opening Door to the Present Scars Uproar," *Chicago Tribune*, Aug. 6, 1995, at 1. Many women's organizations and religious leaders were involved in the consultations and discussions leading up to the formulation of this law, though perhaps for not the same length of time and with a smaller group of supporters than those involved in the recent revisions. Since the seventies, it appears that more individuals have recognized the need for change. See Jehan Sadat, *A Woman of Egypt* 356–57

(1987). See also Majdi Ahmad Hussein, *supra* note 5, at 3, referring to the period of the earlier failed revisions as the "Jihani era."

13. See Habib, *supra* note 9, at 1.

14. See Subhi Mahmassani, *Al-Awda' al-Tashriyah fi al-Duwal al-'Arabiyah* [Legal Systems in the Arab States] 438–442 (Dar al-'Ilm li al-Malayin: Beirut 1965); see also Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* 283–295 (1991).

15. Western legal thought influenced the Ottoman legal system. Subsequently, colonialist rule augmented and accelerated the influence of the Western legal traditions in Muslim countries. See, for example, Mahmassani, *supra* note 14, at 510–13; Keith Hodgkinson, *Muslim Family Law: A Source Book* 11–13 (1984); see also, *Manna' al-Qattan, Tarikh al-Tashri' al-Islami* 399–402 (Maktabat al-Ma'arif: Riyadh 1996).

16. See, for example, Azizah al-Hibri, "Islamic Law and Muslim Women in America," in *One Nation Under God?* 134–35 (1999); Marnia Lazreg, *The Eloquence of Silence: Algerian Women in Question*, 59–61 (1994).

17. See Amnesty International, "Egyptian Human Rights Defender Faces Years of Imprisonment," *Afr. News Serv.*, Feb. 16, 2000, available in LEXIS-NEXIS Library, Newspaper Stories Combined Papers File (reporting that initial charges against an Egyptian human rights activist were "accepting funds from a foreign country with the aim of carrying out acts that would harm Egypt," and "disseminating false information abroad that would harm the country's national interest"); MENA news agency, "President's Aid Says NGOs Should Not Be Used as Pretext to Interfere," *BBC Worldwide Monitoring*, Feb. 6, 2000, available in LEXIS-NEXIS Library, Newspaper Stories Combined Papers File (reporting that President Mubarak's aid said that "these organizations should be national rather than a Trojan Horse or a facade for activities of foreign organizations"); see also Muddassir Rizvi, "Media-Pakistan: Editor Muzzled by paper Under Government Pressure," *Inter Press Serv.*, June 21, 1999, available in LEXIS-NEXIS Library, Newspaper Stories Combined Papers File (reporting a crackdown on NGOs that are being accused of having a "western agenda" and misusing funds, targeting major women organizations, such as Shirkat Gah and Aurat Foundation).

18. See, for example "A Hundred Years of Fortitude," *The Economist*, Nov. 27, 1999, available in LEXIS-NEXIS Library, Newspaper Stories Combined Papers File (reporting that the parliament voted down the ruler's decree that would have granted women political rights, and that members of parliament voted it down in part because they were annoyed with the government for trying to rule by decree).

19. See, for example, Fahmi Houidi, *Rabihat al-Dimocratiyah wa Khasir al-Islamiyyan* [Democracy Won and the Islamists Lost], (visited May 16, 2000) <http://www.alhewar.com/images/Fahmi%20Houidi.jpg>

20. This number was provided to me by the president of a university in the area when I visited his campus. It was later confirmed by female officials.

21. Azizah al-Hibri, "Marriage Laws in Muslim Countries, Family Law and Gender Bias," 4 *International Review of Comparative Public Policies* 231–238 (1992); Law 2000, Bk. 3, Ch.1, Art. 20, relating to *khul'*.

22. See Azizah Y. al-Hibri, *Islam, Law and Custom*, 12 *Am. U. J. Int'l L. & Pol'y* 1, 25–34 (1997) (discussing this claim at length).

23. See, for example, Abu Ja'far al-Tabari, 4 *Jami' al-Bayan fi Tafsir al-Qur'an* [The Comprehensive Clarifications of Qur'anic Interpretation] 34 (Dar al-Kutub al-'Ilmiyah: Beirut, reprint 1992) (9th century); see also Abu Bakr bin Abdallah (known as Ibn 'Arabi), 1 *Ahkam al-Qur'an* [Qur'anic Rulings] 188–89, 416 (Dar al-Ma'rifah: Beirut, reprint 1987) (12th century).

24. See, for example, Nasser al-Din al-Baydawi, *Tafsir* (Dar al-Fikr: n.p., reprint 1982) (19th century) (explaining that male superiority is reflected in the fact that males have been selected over women for prophethood, being imams and *walis*, and in such matters as laws of witnessing and inheritance); see also Abu Bakr bin Abdallah, *supra* note 23, at 416 (noting that males are superior in, among other things, mind, rationality, and piety); Muhammad Rashid Ridha, 5 *Tafsir al-Qur'an al-Hakim* 67 (Dar al-Ma'rifah: Beirut, reprint 1973) (stating that males are superior in physical strength and power, causing differences in responsibilities).

25. See notes 37–43 below and related text.

26. See Ibn Hisham, *Al-Sirah al-Nabawiyyah* [The Prophetic Biography] 187–88 (Dar al-Fikr: Amman, reprint n.d.) (9th century).

27. *Ibid.*, at 187 n.2, 189–90.

28. *Ibid.*, at 240; see also Abd al-Halim Abu Shuqqah, 1 *Tahrir al-Mar'ah fi 'Asr al-Risalah* [Liberation of Women in Early Islam] 191 (Dar al-Qalam: Kuwait 1990).

29. See Abbas Mahmoud al-Aqqad, *Fatimah al-Zahra'* *passim*, esp. 45–52 (Dar al-Kitab al-'Arabi: Beirut 1967); Muhammad Baqir Sadr for passages from and commentary on Fatimah's speech, *Fadak* [name of property Fatimah was to inherit], *passim.*, esp. 87–88, 92–110 (Dar al-Ma'arif li al-Matbu'at: Beirut 1990).

30. See 3 Al-Tabari, *Tarikh al-Umam wa al-Muluk* [The History of Nations and Kings]

339–40 (Dar al-Kutub al-Ilmiyyah: Beirut, reprint 1988) (9th century) (describing how Zainab called Yazid an oppressive ruler); 8 Ibn Kathir, *Al-Bidayah wa al-Nihayah* [The Beginning and the End] 195–96 (Maktabat al-Ma'arif: Beirut, reprint 1974) (14th century).

31. See Abu Shuqqah, supra note 28, at 231.

32. See Sa'id Faye al-Dakhil, *Mawsu'at Fiqh 'A' isbah Um al-Mu'mineen* [The Encyclopedia of the Jurisprudence of 'A' isbah, the Mother of the Believers] passim (Dar al-Nafa'is: Beirut 1993).

33. See Saif al-Assadi, *Al-Fitnah wa Waq'at al-Jamal* 144–172 (Turmoil and the Battle of the Camel) (Dar al-Nafa'is: Beirut 1993) (8th century).

34. See Abu al-Hussein bin Muslim, 6 *Sahih Muslim bi Sharh al-Nawawi* [The True Statements of the Prophet with Exegesis by al-Nawawi] 190–95 (containing a whole chapter on warrior women); see also Abu Shuqqah, supra note 28, at 171–73, 175–76, 118–22, 126–27; Umar Kah.halah, 2 *'Alam al-Nisa'* [Famous Women] 43 (Mu'assasat al-Risalah: Beirut 1977); Ibrahim al-Wazir, *Ala Musharif al-Qarn al-Khamis 'Ashar al-Hijri* [At the Cusp of the 15th century Hejirah] 62–65, 71 (Dar al-Shuruq: Cairo 1989); Muhammad Sa'id Mubayad, *Mawsu'at Hayat al-Sahabiyat* [Encyclopedia of Female Companions' Biographies] passim (Maktabat al-Ghazali: Damascus 1990).

35. See Sa'id Hussein Ali Jabr, *Fiqh al-Imam Abi Thawr* [The Jurisprudence of Imam Abi Thawr] 225 (Dar al-Furqan: Beirut 1983).

36. See, for example, 1 Kah.halah, supra note 34, at 27–28, 86, 179–80, 253–54; see also 2 Kah.halah, supra note 34, at 47–56, 65–66, 68–70, 71–72, 75–77, 91–99, 105–107, 166–72, 202–24.

37. See, for example, Family Law No. 84-11 (1984) (the Algerian Code), Bk. 1, Tit. 1, Ch.4, Art. 38; see also, Personal Status Code, Provisional Law No. 61 (1976) [The Jordanian Code], Ch. 9, Art. 69; Royal Decree No. 343.57.1 (1957), as amended by Royal Decree No. 347.93.1 (1993) [The Moroccan Code], Bk. 1, Ch. 6, Art. 35. See also Azizah al-Hibri, supra note 22, at 12; Ahmad al-Khamlishi, 1 *Al-Ta'liq 'Ala Qanun al-Ahwal al-Shakhsyyah* [Commentary on Personal Status Code] 227–40. (Maktabat al-Ma'arif: Rabat 1987).

38. See, for example, Hussein's critique of the travel provision of the law as against *Shari'ah*, supra note 5, at 3.

39. Ibid.

40. Sa'id Faye al-Dakhil, supra note 32, at 542–46.

41. Ibid.

42. See supra note 37, and infra note 43.

43. See supra note 37; see also Law No. 51 (1984) Regarding Personal Status [Kuwaiti Code] Part 1, Bk. 1, Tit. 3, Art. 89; Law No. 25 (1920) in respect of Maintenance and Some Questions of Personal Status, as amended, [Egyptian Code] Bk. 1, Ch. 1, Art. 1. See also Jordanian Code, Ch. 9, Art. 68 (a woman who works outside the home without her husband's permission is not entitled to maintenance); Syrian Code, Decree No. 59 (1953) Regarding Personal Status Law, amended by Law No. 34 (1975) Bk. 4, Ch. 3, Art. 73 (stating that the woman who works outside the house, despite her husband's prohibition, is not entitled to maintenance).

44. See Law 2000, Bk. 2, Ch. 1, Art. 9, section 3.

45. See, for example, Abu Shuqqah, supra note 28 (providing many instances in early Islam where women had more rights than later jurists accorded them); Taha Jabir al-Alwani *The Testimony of Women in Islamic Law*, 13 *American Journal of Islamic Social Sciences* 173-96 (1996) (explaining witnessing laws in a less patriarchal fashion); Muhammad Mahdi Shams al-Din, *Abliat al-Mar'ah li Tawalli al-Sultab* [The Eligibility of Women to Assume Power], (Al-Mu'assasah al-Duwaliyah li al-Dirasaat wa al-Nashr: Beirut 1995) (arguing that women are eligible).

46. See, for example, Subhi Mahmassani, *Falsafat al-Tashri' fi al-Islam* [The Philosophy of Legislation in Islam] 201 (Dar al-'Ilm li al-Malayin: Beirut 1975); 2 Wihbah al-Zuhaili, *Usul al-Fiqh al-Islami* [The Foundations of Islamic Jurisprudence] 835–37, 1116–18 (1986); see also Azizah al-Hibri, *Islamic and American Constitutional Law: Borrowing Possibilities Or a History of Borrowing*, 1 *Univ. of Penn. J. Const. L.* 492, 509 (1999); Azizah al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 *Case W. Res. J. Int'l L.* 1, 8 (1992).

47. Comments made at "Women in International Law: A Closer Look at the Arab and Muslim World," Panel Forum at the U.S. Supreme Court, Sept. 28, 1999.

48. Personal Status Code Decree, dated 13 August, 1956, as amended 1993 [The Tunisian Code], Bk. 1, Art. 18, 23 (as amended, 1993).

49. See al-Zuhaili, supra note 46, at 600–716; Muhammad Shalabi, *Usual al-Fiqh al-Islami* [Foundations of Islamic Jurisprudence] 200–266 (Al-Dar al-Jami'iyah: Beirut, n.d.).

50. See, for example, Qur'an, 3:190–91, 2:242, 6:98–9; see also, Seyyed Hossien Nasr, *An Introduction to Islamic Cosmological Doctrines* 6–7 (1964).

51. See al-Hibri, supra note 46, at 8–9. See, e.g., 2 al-Zuhaili, supra note 46, at 752–827; al-Shalabi, supra note 49, at 294–324; Subhi Mahmassani, supra note 14, at 480.

52. See, for example, 2 al-Zuhaili, supra note 46, at 828–837; al-Shalabi, supra note 49, at 325–348; Mahmassani, supra note 14, at 428–39; Mahmassani, *Muqaddimah fi Ihya' 'Ulum al-Shari'ah* [Introduction to Reviving Shari'ah Sciences] 66–70, 72–77 (Dar al-'Ilm li al-Malayin: Beirut 1962); Abd al-Hamid Mutawalli, *Al-Islam wa Mabadi' Nitham al-Hukm* [Islam and the Principles of Governance] 71–72 (Mansha'at al-Ma'arif: Alexandria 1976); see also al-Hibri, *Islamic Constitutionalism*, supra note 46, at 8.

53. See 2 al-Zuhaili, supra note 46, at 831–32; al-Shalabi, supra note 49, at 332, 338.

54. See, for example, Mahmassani, supra note 14, at 478; al-Zuhaili, supra note 46, at 1116–18.

55. Muhammad Abu Zahrah, *Muhadarat fi 'Aqd al-Zawaj wa Atharub* 15 (Dar al-Fikr al-'Arabi: Cairo n.d.).

56. See, for example, Egyptian Code, Law 78 for the Year 1931, Bk. 4, Chap. 1, Art. 280; Executive Order Promulgating Law 2000, Art. 3.

57. See Muhammad Abu Zahrah, *Al-Shafi' I* 145–46 (1948); al-Hibri, supra note 46, at 509.

58. There were many reasons for this development. Major among them is decline of democracy and colonialism. See, for example, Hussein Zein, *Al-Islam wa al-Fikr al-Siyasi al-Mu'asser* [Islam and Contemporary Political Thought] 45–48 (Dar al-Fikr al-Hadith: Beirut 1997); see also Azizah al-Hibri, *Legal Reform: Reviving Human Rights in the Muslim World*, 20 *Harv. Int'l L.J.* 50–51 (1998); al-Hibri, supra note 46, at 6–7.

59. See supra note 58.

60. Among the women are Amina al-Nusair, a professor with extensive knowledge of Islamic jurisprudence, and Muna Zulfaqar, a practicing attorney and women's rights activist.

61. See, for example, Amal al-Sibki, *Al-Harakah al-Nisaiyyah fi Masr* [The Egyptian Women's Movement] (Matabi' al-Hay'ah al-Misriyah li al-Kitab: n.p. 1986); see also, Margot Badran, *Feminists, Islam, and Nation* 14–16, 223–26 (1995); Afaf Marsot, "The Revolutionary Gentlewomen of Egypt," in *Women in the Muslim World* 261–276 (Lois Beck and Nikki Keddie eds., 1978); Thomas Philipp, "Feminism and Nationalist Politics in Egypt," in *Women in the Muslim World* 277–294 (Lois Beck and Nikki Keddie eds., 1978).

62. Abu Hamid Al-Ghazali, *Ihya' 'Ulum al-Din* [Reviving Religious Sciences] 15 (Matba'at



Mustafa al-Babi al-Halabi: Cairo, reprint 1939) (12th century); 2 Abu Shuqqah, supra note 28, at 41; 1 Muhammad Ibn Majah, Sunan 80–83 (Dar al-Kutub al-'ilmiyyah: Beirut, reprint n.d.) (9th century); see also, al-Hibri, supra note 37, at 36.

63. Witness the example of Afghanistan under the Taliban government.

64. Qur'an, 4:1, 6:98, 7:189.

65. Qur'an, 30:21

66. See, for example, Qur'an, 9:71, 24:12, 48:25, 33:35.

67. Qur'an, 9:71.

68. Qur'an, 4: 34.

69. See, for example, Badr al-Din al-Zarkashi, *2 Al-Burhan fi 'Ulum al-Qur'an* [Proof in Qur'anic Sciences] 175–6 (Dar al-Jil: Beirut 1988) (stating that the best method for interpreting the Qur'an is by having parts of it explain the other parts); Ridha, supra note 24, at 22 (noting that Qur'anic verses interpret each other).

70. See supra notes 34, 36.

71. A major contemporary female *sufi* figure with a large male following is Fatimah al-Yashru'iyah of Damascus. See also Margaret Smith, *Rabi'a The Mystic*, passim, esp. 1–3 (1974)

72. See supra note 58.

73. Two specific verses are fundamental, Qur'an 2:256 (there is no compulsion in religion), and Qur'an 17:70 (God gave humans dignity).

74. The Prophet was given *bay'ah* (a form of election) to the leadership position in Madinah. See al-Hibri, supra note 46, at 511–516.

75. Ibid., at 510–516.

76. See al-Wazir, supra note 34, at 63–67; see also Ruth Roded, *Women in Islamic Biographical Collections* 15–44 (1994); Hassan Khalid, *Mujtama' Al-Madinah* [The Society of Madinah] 214–15, 219 (Dar al-Nahdah al-'Arabiyah: Beirut 1886); Muhammad bin Sa'd, *Al-Tabaqat al-Kubra* [The Great Categories] 131 (Dar al-Tahrir: Cairo 1970).

77. Qur'an, 60:12 (mentioning the *bay'ah* of women to the Prophet); see also 1 Abu Shuqqah, supra note 28, at 125–26, 230–31; al-Wazir, supra note 34, at 63–67; see also, al-Hibri, supra note 22, at 39.

78. 1 Abu Shuqqah, supra note 28, at 171–73; see also Roded, supra note 76, at 19–30.

79. 1 Abu Shuqqah, supra note 28, at 175–76, al-Wazir, supra note 34, at 71–72; see also supra note 34.

80. Qur'an, Chap. 58; see Abu Shuqqah, supra note 28, at 103 (explaining this incident).

81. Bangladesh and Pakistan have both had women in high governmental positions, such as that of prime minister.

82. In the case of Benazir Bhutto, former prime minister of Pakistan, she succeeded her executed father. In the case of Khalida Zia, former prime minister of Bangladesh, she succeeded her assassinated husband.

83. See Shams al-Din, supra note 45; see also Jabr, supra note 35, at 224–25.

84. See Kah.halah, supra note 34, at 61 (1977); Ali Ibrahim Hassan, *Nisa' Lahunna fi al-Tarikh al-Islami Nasib* [Women Who have a Share in Islamic History], passim, esp. 59–61, 78–100 (Maktabat al-Nahdah al-Masriyah: Cairo 1950); Roded, supra note 76, passim.

85. Qur'an, 27: 23-33

86. Supra note 67 and related text.

87. See supra note 23; see also Wazarat al-Awqaf wa al-Shu'un al-Islamiyah, *34 Al-Mawsu'ah al-Fiqhiyah* [The Encyclopedia of Fiqh] 77–8 (Dar al-Sufwah: Kuwait 1995); Abd al-Wahab al-Shishani, *Huquq al-Insan wa Hurriyatuhu al-Siyasiyah* [The Rights of a Human Being and His Political Rights] 691 (Matabi' al-Jam'iyah al-Islamiyah al-Malakiyah: Saudi Arabia 1980) (describing the view that the *qiwamah* verse justifies excluding women from higher education).

88. For a thorough translation and discussion of this verse, see al-Hibri, supra note 22. Also helpful is Maysam al-Faruqi, "Women's Self Identity in the Qur'an and Islamic Law," in *Windows of Faith* 82–97 (Gisela Webb ed., 2000)

89. Al-Hibri, supra note 22, at 30–32.

90. See supra notes 34, 79.

91. See, for example, Muhammad Abu Zahrah, *Al-Wilayah 'ala al-Nafi* 127 (Dar al-Ra'ed al-'Arabi 1970), Mahmassani, supra note 14, at 495.

92. See supra note 91.

93. See, for example, Muhammad al-Dusuqi, *Al-Uusra fi al-Tashri' al-Islami* [The Family in Islamic Legislation] 155–56 (Dar al-Thaqafah: Doha 1995), Abu Zahrah, supra note 55, at 269; Mahmassani, supra note 14, at 496–97.

94. See, for example, 34 Wazarat al-Awqaf, supra note 87, at 77–8; al-Shishani, supra note 87, at 691.

95. See supra note 24.

96. Ibid.

97. See, for example, Taha Jabir al-Alwani, *The Ethics of Disagreement in Islam*, passim (1996); Mahmassani, supra note 52, at 30, 35–55.

98. Muslim, supra note 34, at 19, 21, 24, 26, 27; see also Abu al-Barakat al-Dardir, *1 Al-Sharh*

*al-Saghir* [The Little Exegesis] 739 (Dar al-Ma'arif: Cairo, reprint n.d.) (19th century); 2 al-Dardir, at 765, 3 al-Dardir at 728.

99. Quoted in Mahmassani, supra note 52, at 30.

100. Ibid.

101. There are two major arguments supporting the need for a *wali*. The first revolves around protecting the woman, the second revolves around protecting her family, but both arguments are based on the same assumption, namely, that the woman is weak-minded and emotional. The first argument states that women are emotional and weak-minded, thus they may be ensnared by designing men unworthy of them. The second states that an emotional woman may marry beneath her station, thus sullying the name of the family. So the family has a vested interest in the matter. See, for example, Abd al-Karim Shahbun, *1 Sharh Mudawwanat al-Ahwal al-Shakhsiyah al-Maghribiyah* [Exegesis of Moroccan Personal Status Law], 91 (Maktabat al-Ma'arif: Rabat 1987?); 4 Abdul Rahman Al-Jaziri, *Kitab al-Fiqh 'ala al-Mathahib al-Arba'ah* 49 (Dar Ihya' 'Ulum al-Din: Beirut 1969); Muhammad Abu Zahrah, *Al-Wilayah 'ala al-Nafi* 125–26 (Dar al-Ra'ed al-'Arabi 1970).

102. Ahmad Ghandour, *Al-Ahwal al-Shakhsiyah fi al-Tashri' al-Islami* 126 (Jami' at al-Kuwait Press: Kuwait 1972), Muhammad Zakariyah al-Bardisi, *Al-Ahkam al-Islamiyah fi al-Ahwal al-Shakhsiyah* 199 (Dar al-Nahdah al-'Arabiah: Egypt 1965); Abu Zahrah, supra note 101, at 122–23 (Dar al-Ra'ed al-'Arabi 1970)

103. See Abu Zahrah, supra 101, at 127–29. See also Ghandour, supra note 102 at 126; al-Jaziri, supra note 101, at 46; al-Bardisi, supra note 102, at 199.

104. See Abu Zahrah, supra note 101, at 129–30. See also al-Jaziri, supra note 101, at 51, 56, al-Bardisi, supra note 102, at 192; 1 Muhammad al-Dijwi, *Al-Ahwal al-Shakhsiyah li al-Masryin al-Muslimin*, 48, 539–53, esp. 544–45 (Dar al-Nashr li al-Jami' at al-Masriyah: Cairo 1969).

105. See Abu Zahrah, supra note 55, at 163–67; see also al-Jaziri, supra note 101, at 54–58; al-Bardisi, supra note 102, at 217–19.

106. See al-Bardisi, supra note 102, at 217 (noting that the Prophet ordered that the Ethiopian former slave Bilal be permitted to marry a woman from an Arab tribe). See also Abu Zahrah, supra note 55, at 167; al-Jaziri, supra note 101, at 58.

107. See El-Awa, *On the Political System of the Islamic State* 111 (1980); Muhammad Hamidullah, *Majmu'at al-Washa'iq al-Siyasiyah* [Collection of Political Documents] 362, 364, 367 (Dar al-Nafa'is: Beirut 1987). See also supra note 106.

108. See al-Hibri's discussion of this concept, *supra* note 22, at 9. See also, Mahmassani, *supra* note 14, at 179–80; al-Khamlishi, *Wijbat Nathar* [A Point of View], 36 (Dar Nashr al-Ma'rifah 1988).