

ISLAM & WOMEN

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Bismillah-irrahman-irrahim, alhamdu lillahi rabbil-`alamin, wa-ssalatu wa-ssalamu `ala sayyidina Muhammadin wa `ala alihi wa as-habihi ajma`in.

In the name of the All-Merciful All-Compassionate God

All praise belongs to God, Creator of the Worlds, may His blessings and greetings be upon our master Muhammad, and upon his family and companions altogether till the end of time.

My dear brothers and sisters, assalamu alaykum.

It is with tremendous honor and humility that I address you today.

I'm particularly grateful to Mahfuza Folad for inviting me to participate with the other distinguished speakers. Mahfuza has been an advocate for women's rights for many years. She joined other Muslim women, including my wife, Daisy Khan, in several meetings of WISE, the Women's Islamic Initiative in Spirituality and Equality to bring the issues facing Muslim women around the world to the forefront of public debate. Thank you so much Mahfuza. I pray that

your tireless efforts are recognized by decision makers and that Almighty Allah answers all of your prayers.

The importance of this conference is significant...not only for Afghan women...but for Afghan men, for the Afghan nation, for the whole ummah of Muslims, and therefore for the whole world. This is because happy and successful Afghan women will lead to happy and successful Afghan men; which will result in a happy and prosperous Afghan nation, which will in turn contribute to a happier ummah and a happier world.

In this presentation, I plan to demonstrate to you that women's rights and equality to men is supported by:

1. Islam as a faith and its ethical imperatives;
2. It is supported by Islamic law and its jurisprudence, which was developed by centuries of great Muslim minds, and is still being developed and advanced by contemporary Muslim legal thinkers;
3. And it is supported by the powerful evidence given by the proven economic success of those Muslim majority nations that are most highly regarded in the world.

The Prophet Muhammad, peace and blessings be upon him, in his famous Farewell Sermon at the end of the haj pilgrimage that he performed towards the end of his life and of his mission, summarized the most important teachings of his mission, at the end of which he asked Allah to bear witness that he had in fact completed his mission on earth. This was a very significant

event, and a most significant sermon. Among his pronouncements that day, he said, **“The best of you are those who are best to their women; and I am the best of you to my women.”**

As Muslims, we are taught, and we believe, that the Prophet was the ‘walking Quran,’ who embodied in his practice (his sunnah) the fullest, most perfect and complete realization of the Quran’s teachings, which is why we call him the Perfect Human (al-insan al-kamil), whose example is the basis for us to follow. Moreover, the Quran itself teaches us this, in verse 33:21 where Allah says: *“la qad kana lakum fi rasulillahi uswatun hasanatun li-man kana yarju-llaha wal-yawm al-akhir wa dhakara-llaha kathira;”* “Indeed in the messenger of Allah is a perfect example for whomever desires Allah and the Last Day and remembers Allah frequently.” And in more than one verse (47:33, 58:13, 64:12) Allah commands the Muslims to “Obey Allah and His Messenger” (ati`ullaha wa rasulah).

We all know that the quality and degree of our obedience to the Quran and to following the Prophet’s sunnah is the measure of the perfection of our faith. If we accept that as true, shouldn’t that then mean that the Prophet’s declaration that the best of us are those who are best to their women, and that he was the best to his women, mean that we also should be good to our women? That being not only good—but the best—to our women is an important basis—one of the criteria—by which we measure how well we have followed the Prophet’s sunnah, and thereby our faith, and thus the measure of our Islam (our submission to Allah), our Iman (our faith) and our Ihsan (our virtue)?

The Quran and the Prophetic Sunnah are the primary sources (usul)—the two primary and fundamental bases and foundation of Islamic law—of our fiqh and our Shari`ah; it therefore

follows that treating women well is an imperative of Islamic law, and any interpretation of the law that denies women justice, their rights or mistreats them is a violation of our law.

Rights are organically linked to responsibility. There is no right without a corresponding duty or responsibility. As a rule, the more rights you have as an individual, it means that you have greater responsibility. And if and when you place a responsibility on someone, that individual has a right to what he or she needs to discharge that duty or responsibility.

The Quran requires women to believe in God, as it requires men to believe. It requires women to pray, to fast, to give charity, to perform haj, and to act morally and ethically, to the same degree as it requires men. In sura 33, v 35 Allah praises the Muslim (submitted to God) males and females, the believing males and females, the supplicating males and females, the truthful males and females, the patient males and females, the males and females who humble themselves to God, the charitable males and females, the males and females who guard their chastity, and the males and females who frequently praise God; to all of these God has prepared forgiveness for all these and a mighty reward. All religious obligations are due upon both men and women.

While women are given a break from praying during their monthly cycles and in times of advanced pregnancy and childbirth, this is a license analogous to the license all Muslims have—men and women— to shorten their prayers while travelling. It is a license due to circumstances and not to a fundamental difference of rights between male and female.

The Islamic approach to justice as articulated by the Quran and the Prophet demands more of those who are given more, and places less responsibility on those who have less. Thus a child or a mentally retarded individual is deemed not responsible, and may not be punished for sins committed by a sane adult. As a corollary, the Quran warns the Prophet's wives that because of their exalted position, both their reward for their good deeds and their punishment for their negative deeds will be doubled (Sura 33, verses 30 and 31).

It is therefore a travesty of justice to deny an individual a right, and punish them even more harshly for their mistakes, a grave error many Muslims wrongly commit. This is injustice, and as the famous jurist Ibn Taymiyyah reminds us, "Allah will exalt the just nation, even if it is non-Muslim, and Allah will abase/humiliate the unjust nation, even if it is Muslim." There can be no real Islam if there is no real justice. And because many Muslim people and nations are unjust, we can rightfully conclude that they are 'Islamically bankrupt,' and will be deemed so by Allah on Judgment Day, according to the famous hadith of the Prophet where he once asked his companions if they truly knew who the bankrupt person was. He then explained that the truly bankrupt person is the one who does a lot of prayers, fasts, umra's and haj's, but wronged people and usurped their rights. On Judgment Day, each person he wronged will come to claim justice before Allah, and Allah will transfer some of his good deeds to the person he wronged. One after another, those he wronged will come to lay claim, until the man runs out of any more good deeds, and still more come to lay claim against his injustice. And when the man remonstrates that he has no more positive assets to be transferred, the wronged person will say, "O Allah, transfer some of my sins to his account!" The end of his judgment is that he will be committed to hell.

Such is the importance of justice and its power to bankrupt us spiritually if we lose sight of its importance on Judgment Day before the Almighty.

We know that, although the Prophet set down general rules to ensure justice, he also recognized when they could be adjusted. For example, although the general principle is laid down that in many legal cases, two witnesses were required, the Prophet so highly regarded the veracity and honesty of his companion Khuzaymah, that he said that his evidence was equal to that of two men, and accepted his evidence in a particular case.

Which brings me to the question that some Muslims have asked me; and that is, because the Quran (in Sura 2 v. 282) requires two female witnesses in a legal case as a substitute for one male witness, and because the Quran, in giving rights to all the children of a deceased's estate, generally gives the male heir double the share of the female heir, doesn't this mean then that women's evidence is generally and always worth half of the male, and that women in general always have half the rights of a male across the board?

Unfortunately this understanding— and a state of affairs that follows from such understanding— persists in some Muslim societies where the study of Islamic law was cut off from its tradition, where the writings of many scholars of past centuries have been ignored, and people feel that it is enough for them just to read the Quran and extrapolate from there. But had you studied Islamic law and the writings of the scholars who lived 7-10 centuries ago, you will learn— and here I'm quoting from my book written to inform the general public of Islamic legal principles—that

In Islamic jurisprudence, the number of witnesses differs according to the different schools and types of cases. It also depends on the trustworthiness of the witnesses and not merely upon their number. A witness may be disqualified due to forgetfulness, suppression of evidence or willful distortion of the facts resulting from partiality, incitement or bribery. He or she may also be disqualified if there is enmity between the witness and the party against whom the testimony is to be given. Neither is it accepted where prospective benefit or avoiding of loss may be involved, such as in situations where there is a blood relationship, or a relationship of employment, partnership, and the like. For example, the testimony of a father in favor of his son, or a spouse in favor of the other, is not admissible, although it may be utilized if the testimony of the one is *against* the other. The integrity, experience and level of expertise of the witness, male or female, is always a factor in assessing the witness's trustworthiness. In general, the testimony of two just men is the minimum required according to all jurists in all penal matters with an unalterable fixed punishment (*hudud*) except for adultery, which requires four. Testimony in cases involving property such as sale, loan, wrongful appropriation, debts, can be as little as one man plus the oath of the plaintiff; this is accepted in all schools except the Hanafi and the followers of Imam al-Awza'i. This is based on a hadith where the Prophet gave judgment on the basis of testimony of one witness endorsed by the oath of the plaintiff in support of his claim.¹

The Hanafi school amongst others accepts the testimony of one man in some exceptional cases. For example, the testimony of the teacher alone is sufficient in cases of juvenile delinquency. The testimony of one expert is permissible for the assessment of damage to property, and for purposes of informing about the defects in the object of a sale, and other similar matters.

There were also Muslim jurists who were satisfied with the testimony of only one truthful witness. One of them was Ibn al-Qayyim al-Jawziyyah who said,

Everything which brings out the truth constitutes evidence. Neither God nor His Prophet disregarded a right after it had been established by any means. That which was prescribed by God and His Prophet is that once truth has come out by whatever method, it should be implemented and endorsed and may not be annulled or suspended.

Following up on this argument he adds,

A judge may give judgment in cases other than those involving the rights of God on the testimony of one man whose integrity is established. God did not make it a duty for judges not to give judgment save on the testimony of two witnesses, but merely ordered the owner of a right to safeguard his rights by two male witnesses or one man and two women. This does not mean that a judge may not give judgment on any lesser testimony. In fact the Prophet gave judgment on the basis of one witness and an oath and even on the basis of one testimony only.

Thus we note that the methods by which a judge gives judgment are of greater latitude than those through which God has guided the owner of a right to safeguard it.

Ibn al-Qayyim bases his contention on the fact that the Qur'an does not mention the testimony of two male witnesses or one male and two female witnesses as the procedure by which a judge arrives at a judgment, but it mentions this procedure in connection with a person's endeavor to safeguard his right.

¹ Reported by Muslim in *Sahih*, V, 128.

He also bases his contention on a hadith in which the Prophet approved the sole testimony of a Bedouin regarding his sighting of the crescent moon which signalled the beginning of the fast of Ramadan. He was also reported to have accepted the sole testimony in a case of robbery, and to have accepted the sole testimony of a woman in a case where only women are able to have knowledge of the necessary information. He was also reported to have considered the testimony of Khuzaymah, a man of unassailable integrity, as equivalent to two witnesses, saying, "It is sufficient unto a person to have Khuzaymah as a witness."² Ibn al-Qayyim interprets this hadith as being based on a cause, namely the integrity and truthfulness of Khuzaymah. Therefore, a judge may, by analogy, accept the testimony of a single witness if his truthfulness is established. This hadith does not conflict with the Qur'an, and like other parts of the *sunnah*, serves to "interpret it, explain it, and qualify its absolutes."

Applying the above understanding, how many of us know women whose testimony is worth more than many men's, whose honesty and personal integrity is so high, that like the hadith just mentioned, their testimony is worth that of two men? So if the Prophet made exceptions in the case of Khuzaymah, whose reputation was so sterling, shouldn't we also be able to make those exceptions and determinations? In circumstances such as childbirth and cases pertaining to women's health, where traditionally female midwives and medical practitioners are the professionals involved, the only witnesses to issues that might generate legal claims are women. If Muslim jurists centuries ago, in recognition of such circumstances, exercised such nuanced understanding, why shouldn't we today?

Most Muslim jurists argue that the reason why the female gets half of the male inheritance, is because she is not required to pay for the upkeep of her family; the wealth belongs to her exclusively, whereas the male is required to maintain his wife and his children, plus any other dependents living in his household (such as elderly parents, employees of the household, etc.).

If this is indeed the case, isn't this then evidence of the organic and causal relationship between right and responsibility, specifically between *financial* right and *financial* responsibility? If we

² *Sunan*, Abu Dawud, *Kitab al-Aqdiyah*, 20.

agree that the Quran gave women half the financial right in inheritance, but no financial responsibility requiring her to maintain the family from her financial resources, would it not mean that it is equally just to give women equal share in inheritance, but then impose upon women the obligation to maintain the family from her financial resources?

The truth is that most women sacrifice themselves for their families, and especially their children. Many contemporary women are in fact financially responsible for their families' financial wellbeing, and willingly contribute whatever they have of financial means, in addition to their time and effort, to supporting their families. Since they have assumed and do discharge greater financial responsibility, doesn't this then mean that they should at least get equal right in the financial share of their parents' estate? If half a financial share equates to no familial financial responsibility, should not familial financial responsibility then equate to, and require, an equal financial share to that of a male? If justice is our fundamental objective, isn't this what justice dictates?

From early in the development of Islamic law, Muslim jurists asked, to what extent may laws be modified from the time of the Prophet? The general consensus was that laws pertaining to acts of worship, called *'ibadat*, were fixed and unchangeable, as the man-God relationship is fixed and unchangeable. But in the area of man-man relations, called *mu`amalat*, they recognized that laws established at the Prophet's time were based on interests, including the public interest, within the cultural context of 7th century Arabia; and therefore such laws may change and evolve based on how differing cultural contexts or evolving circumstances determine the public interest.

You probably know me as an American imam. But you should also know that my parents are Egyptian, I was born in Kuwait, and growing up I spent five years in England, ten years in Malaysia, and forty-nine years in the USA...and still growing up! My father was a graduate of the famous al-Azhar University in Cairo, and I grew up learning from him and from legions of the greatest Muslim scholars of al-Azhar. I have an office in New York, and an office in Malaysia, where one of my most important projects, that of defining the meaning of an Islamic State, and seeking to develop a methodology of measuring such a definition of a state, is being done with the endorsement and support from the Malaysian government.

One of the scholars in this project of Islamic law is the now retired Malaysian Chief Justice Abdul Hamid Mohammad, who prefaces his argument for the equal rights of women in Islam, by first discussing the issue of slavery in Islam.

We all know that the Quran and the Prophetic practice highly encouraged the freeing of slaves. "*Fakku raqabah*," (literally, 'freeing a neck') is the Quranic expression that highly values this act, and positing it a moral imperative and a major good. It is evident from a study of the Quran and Prophetic sunnah that Islam promotes human equality, and if the Prophet had had more time and felt he could, he would have abolished slavery. The argument is simple and clear: If freeing *one* slave is a good act, evidently freeing *all* slaves, past and future, by abolishing slavery altogether is the epitome and 'furthest and ultimate degree' of freeing one slave. But slavery was not abolished during the Prophet's time. Now slavery is abolished in most countries (although human trafficking exists and is the modern version of human slavery).

Because Muslims believe the Prophet to be the ideal human being, (*insan kamil*), and that his sunnah is the roadmap of behavior to be followed, Muslims have extrapolated the idea that Medinan society at his time was the best and most perfect society. If so, Chief Justice Abdul Hamid asks, “Should we re-introduce slavery into modern society so that modern society can be more like that of Medina during the Prophet’s time? Will that make our modern societies more perfectly Islamic?” He has asked several Islamic scholars and no one has answered yes.

Therefore, he concluded, it is possible for us, by understanding the major goals and objectives of Islamic law, to further advance modern law beyond the letter of the law developed at the Prophet’s time, all in keeping with Islam’s objectives and intentions of the law.

He advances a similar logic to women’s rights, arguing that the Quran and the Prophet promoted the principle of women’s equality, although at the time of the Prophet full equality could not have been done in one step, just as abolishing slavery could not have been done in one step. But by unpacking the issues of rights and responsibility and their organic relationship to each other, and by looking at the demands made upon women today, he concludes that continuing to advance the rights of women to full equality is in fact the intended objective of Islamic law, and that to do so is to better fulfill what Allah and His Prophet commands us to do.

Many Muslims around the world regard Malaysia as one of the most developed Muslim countries in the world. As many of you may know, women in Malaysia excel. There are women ministers, women presidents of universities, and the Central Bank governor is a woman. She was appointed at the height of the 1997 financial crisis when several South-East Asian countries had their currencies under attack, and is regarded in the international financial community as

one of the very best and most competent Central Bank governors in the world, managing the nation's monetary policies. As many of you know, Malaysia is the leading country in the world in the field of Islamic finance, developing cutting edge advancements in the field of Islamic banking and Islamic financial instruments.. Many of Malaysia's scientists and academics are women, who have made and continue to make invaluable contributions to Malaysia's success. There is no doubt, not only in my mind, but in that of others, that Malaysia's highly qualified, highly educated and accomplished women, are an important part of Malaysia's development, its progress, and its success.

Because Malaysian women are highly educated, and work in all levels of society, and because women generally constitute half a nation's population, Malaysia benefits from a double sized work force, and double the national economic productivity and resulting GDP. If on the contrary, women are disempowered, uneducated and mistreated in a nation, that means that half of that nation's population is disempowered, ignorant and deprived of justice. Its economy and GDP will be, at the very most, half of what it could otherwise be. It's like the difference between punching with one hand and punching with two. It makes the difference between winning and losing.

There is therefore a multiplicative impact in either direction when women are treated well or badly. The Prophet advised us to marry a woman based on her beauty, her wealth or her piety. Women who are beautiful, rich or pious are invariably empowered, educated women; and they become beautiful, rich and pious because they are well treated and well educated.

Disempowered women are not rich; disempowered women are not pious; disempowered women very quickly lose their beauty, even when naturally beautiful.

Afghan women are known to be naturally very beautiful. Educating them will make them even more beautiful, more wealthy and more desirable as wives. In this context I'd like to quote you a story related to me by a woman friend of ours who founded a girls' school in Pakistan. The mullah in that town was extremely opposed to this school, going public with his opposition and giving our friend a very hard time. After a couple of years however, he came with two of his daughters to admit them to her school. When our friend, surprised, asked what led him to change his mind, he said, "I want to get my daughters married; and nowadays boys want to marry educated girls. So I'm doing this to enhance my daughters' prospects of getting good husbands."

A woman is invariably someone's mother or wife. As such, she is an essential part of the family. An educated wife or mother adds immeasurably to a husband's capacity in his work; an educated mother enhances her children's intelligence and wisdom, and even their piety, for as the Prophet said, "The difference between the *`alim* (knower or possessor of knowledge) and the *`abid* (the mere performer of religious ritual) is like the difference between the full moon and the stars;" and in another version the Prophet says "it's like the difference between me and the least of you." If the piety of an educated person, man or woman, according to the Prophet, in comparison to the piety of a mere worshipper, is like that of the Prophet, the perfect human, to the lowest grade Muslim, why would we not prefer to have an educated pious mother over that of a mere worshipping lady? An educated pious mother will enhance her children's piety,

just as a rich mother enriches her family and her children, and has greater capacity to advance them further on the scale of accomplishment.

I'm pleased to learn that The Justice for All Organization, with help from the United States Institute for Peace, is pursuing a vision that seeks to advance Muslim women— and specifically Afghan women—in all areas of life.

I'm also pleased to learn that both President Ashraf Ghani Ahmadzai and Prime Minister Abdullah Abdullah have acknowledged that Afghan laws, policies, and practices must continue to advance women's rights, including access to education.

Yet, legislating real change is always difficult. Just because a law is passed doesn't mean reality on the ground will shift. We must address the underlying societal perceptions that give rise to the barriers that stand in the way of women's rights, and demonstrate that these are actually against the teachings of our faith. That was the purpose and aim of my presentation today. The Afghans are a deeply pious Muslim people, and therefore we must deploy Islamic arguments, based on the Quran, the Sunna and our rich legal heritage, to convince the majority of the Afghan people that advancing women's rights is a fundamentally genuine Islamic imperative.

For example, the patriarchal interpretation of *qiwamah*, which portrays men as guardians of Muslim women, is based on historical circumstances where there was no law and order, no police and law enforcement that provided public safety. These circumstances are no longer true nor relevant in most modern societies, and for us to project rules based on circumstances that

are no longer valid— as I showed above based on the rulings of Muslim legal scholars from 1000 years ago—especially if it results in injustice, is profoundly un-Islamic, and violates the very principles of Islamic law.

Women in many Muslim-majority countries have made great strides. Many have gained political office...in countries such as Pakistan, Indonesia, Bangladesh, Senegal, Kosovo, and Turkey, they have even risen to president or prime minister; something many Americans are hoping may happen in the next Presidential election!

Here in Afghanistan, we're happy to learn that President Ashraf Ghani Ahmadzai has said he aims to see women represented at all levels of government, as their full participation in the life of the country is vital to the development of Afghanistan's future. He has called for a "sustainable revolution" that will lead to a long-lasting role for Afghan women in leadership, and has even promised to designate a female judge to the Supreme Court.

The President may also be thinking what many around the world have begun to realize: that women's voices are essential to fighting extremism, promoting moderation and peace. For this reason, the United States Institute for Peace focuses on building capacity among international women leaders in conflict settings.

In seventh-century Arabia, the advent of Islam and the teachings of the Prophet Muhammad began a revolution towards a truly egalitarian society. I conclude by repeating what I said in the beginning: it is for the collective good of Afghan men, for the collective good of the Afghan nation, for the collective good of the *ummah* and for the collective good of the wider global

community that today I urge you to continue this movement of advancing women's rights; for women's rights are organically related to men's rights, and therefore by advancing women's rights we advance human rights.

Thank you and salaamu aleikum.

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