



ABUSING WOMEN, ABUSING ISLAM:

Re-Examining Sharia Court Rulings
in Contemporary Times



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Introduction

How women fare correlates directly with how society fares overall. The complex and appalling stream of news reports describing Muslim women being punished under Islamic law for everything from wearing pants to not having sex with their husbands to being raped cannot be ignored. Muslim women around the world are being disproportionately abused using outdated Islamic rulings and ages-old customs, while men who commit the same actions often go free.

At the same time, many small but important victories for women in the Muslim world have been won. In the last decade, women in Saudi Arabia, Afghanistan, Morocco, Bahrain and Qatar have won political and legal reforms that would have been considered unthinkable a decade before that.

In Qatar, Oman, Bahrain and Kuwait, the ruling emirs have finally extended voting rights to women in recent years. Several women now hold high government offices.

In Morocco, the personal-status code (*moudawana*) was reformed, giving women more rights in marriage and divorce, as well as the appointment of 50 women preachers for mosques, schools, hospitals and prisons. King Mohammed VI of Morocco himself married a computer engineer, who has become a role model for many Moroccan women.

In a rare exception to the treatment of “marital rape,” a Muslim man in Malaysia who forced his wife to have sex with him was recently sentenced to jail, in the country’s first successful prosecution under a new law to prevent the grotesque practice.

In Saudi Arabia, where intense traditionalism is used to enforce strict gender segregation in all aspects of public life, women were allowed to run, campaign and vote in elections for the board of the Jidda Chamber of Commerce and Industry for the first time in 2005. Two successful businesswomen were elected overwhelmingly. Women also finally won the right to their own identity cards and, in 2006, a Saudi woman appeared without *hijab* for the first time ever in a Saudi feature film.

In Afghanistan, the constitution now enshrines the equality of the sexes, and Afghan women constitute a third of the elected representatives in the lower house and a quarter in the upper house of parliament. The Afghan Government has committed to fast tracking women in the civil service to 30 percent by 2013. There is a female cabinet minister, an Afghan Women Judges Association, and two women are standing in the presidential elections.

Most of these reforms were in fact *imposed* by government decree over fierce opposition from conservative Islamic parties. Thus, they do not necessarily reflect a fundamental societal shift and can be reversed by a change in government or if it proves politically necessary to win the support of the clergy.

Despite these signs of slow progress, the political, legal and social position of women in the Muslim world is diminished on a daily basis, when women are not provided the same

rights as men, and are punished disproportionately using patriarchal and outdated interpretations of *sharia*.

Family laws in all Muslim countries still disproportionately favor men, and literacy rates of women, on average, are half those of males.

While women may be in more Parliamentary seats in Afghanistan, President Hamid Karzai also recently signed an amended version of what has become known as the “marital rape law”, to retain popularity with clerics and his male followers. The law allows a man to deny his wife food if she denies him conjugal sex, grants guardianship of children to fathers and grandfathers, lets rapists pay to avoid being prosecuted, and requires women to get permission from their husbands to work.

There must be awareness-raising campaigns in the United States and Europe about human rights violations committed against women. Ultimately, the realization of women's rights in the Muslim world will require a multigenerational, cross-societal commitment to social change; the political will of international leaders, and the continued bravery of women who have fought, argued, lobbied, schemed, pushed, and badgered for women to enjoy life with dignity.

This brief paper is an effort to expose how patriarchal and distorted interpretations of *sharia* have been used to subjugate women and rob them of their fundamental rights, in direct opposition to the central teachings of Islam. It is our hope that this analytical framework will provide diplomats, aid workers, and Muslims themselves with some crucial theological tools to be able to argue for the equal status of women using an Islamic framework.

Executive Summary

The status of Muslim women worldwide has been a major challenge for Islamic reform movements. One major obstacle is the apprehension to address *sharia* in a constructive manner, one that promotes the central tenet of Islam – justice.

In this paper, the Muslim Public Affairs Council presents three case studies involving abuses of Muslim women worldwide in the name of Islam. These cases have been widely reported and have been used as precedence for exploitative laws against women throughout the Muslim world. The cases are rooted in three typical cases involving women – child marriage, rape laws, and freedom of movement without a male chaperone.

One important distinction to make at the outset, is the difference between *sharia* and *fiqh*. *Sharia* is drawn from the Islamic values and rules represented in the Qur'an and authenticated traditions of Prophet Muhammad, whereas *fiqh* is the man-made interpretation of those values, subject to cultural and political contexts. While *sharia* has been translated to mean "Islamic law," *fiqh* is actually the basis for many rulings in courts and governments throughout the Muslim world.

Adding to the complexity of ongoing abuses against Muslim women is the ongoing abuse of human rights in general by governments that claim to operate under an Islamic framework but violate the essence of Islam.

The U.S. State Department has established the Office of Global Women's Issues and the White House created the Council on Women and Girls. A significant portion of the Council's work will involve Muslim countries. One of the barriers in dialogue between the United States and the Muslim World is framed as a cultural or religious encroachment on the religious identity and sovereignty of Muslim countries.

The Muslim Public Affairs Council aims to open the dialogue by removing this barrier. It is our attempt to assist the White House and State Department by providing an authentic and mainstream Islamic perspective on troubling abuses of Muslim women and provide references and knowledge with which they can make better decisions.

We hope to include Muslim Americans in the discourse on women's rights in a meaningful and constructive way. As such, we provide the following case studies as tools for U.S. policy makers to engage in discourse among their colleagues and counterparts in the Muslim world on women's rights from within an Islamic framework.

Hudood Laws: A Case Study of Pakistan's Safia Bibi

Background

Hudood laws are ordinances taken from Islamic law, or *sharia*,¹ to define punishments for an array of offenses, including extramarital or premarital sex (*zina*). In Pakistan, these ordinances were introduced under the military regime of Zia-ul-Haq in 1977, and have continuously received criticism from women's groups and human rights organizations due to their unjust and unchecked application of *hudood*. The case of Safia Bibi, a 13-year-old blind girl who was raped by her employer and his son, is a prime example of the faulty application of these laws. She didn't report the crime. Because Safia showed clear signs of pregnancy and was unmarried, it was readily assumed that she had committed the unlawful act of premarital sex. Her failure to prove that she was raped prompted the judge to sentence her (under Pakistan's *hudood* ordinance) to three years of imprisonment and 15 lashes. The ruling cast her as the perpetrator instead of the victim. Her rapist was never prosecuted and did not spend any time in jail. In cases such as these, if a married victim is unable to provide four male witnesses to the rape, her pregnancy serves an absolute proof against her and the harshest punishment of *zina* may be levied against her. If she is single, she can be charged with "fornication," as in the case of Safia Bibi. Because of the national and international outcry, Pakistan's Federal Court set aside the judgment. Unfortunately the court also concluded there was insufficient evidence to incriminate the offenders who consequently never served any jail time.²

Pakistan's judicial system is shaped by two legal sources, English common law and classical Sharia laws interpreted by the Hanafi School of *fiqh* (jurisprudence). Since Pakistan's inception in 1947, the *sharia* courts have mainly dealt with civil cases with a focus on family issues. The 1977 *Zina* Ordinance established a patchwork of legal codes seeking to conform Pakistan's laws with Islamic injunctions. It is important to note that these laws have generally been misused and levied to enforce tribal and political affiliations.³

An Islamic Perspective

The Islamic definition of *zina*, with the consensus of all schools of thought, is the process of sexual penetration in an unlawful relationship. The manifestation of a pregnancy does not serve as evidence that a woman or a man have committed an illegal act of *zina*. The application of *hudood* laws in Pakistan represents an extreme misapplication of Islamic law.

¹ These two terms (Islamic law and *sharia*) will be used interchangeably.

² Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* (Lahore: Rhotas, 1990), 88-89.

³ Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective* (Michigan Journal of International Law, Vol. 18, No. 2, Winter 1997).

In the Qur'an, God mandates that four eye witnesses must be brought forth to testify in cases of adultery. However, these four must have all witnessed the actual act of penetration between the partners involved.⁴ In *sharia*, this is meant to serve as a preventative measure against anyone being falsely accused or punished unjustly and without due cause. The Qur'an is also very specific regarding what these witnesses must have seen. For example, if and only if a minimum of four witnesses were to see two people completely naked lying together it would still be insufficient testimony because the act of penetration was not seen. In addition to this, the Qur'an places all of the burden of proof onto the accuser not the person said to have participated in the illegal act of premarital or extramarital sex.

Unfortunately, Pakistani courts seem to consider pregnancy as circumstantial evidence against the woman. Although it is clear in the Qur'an and in the Prophetic teachings that *zina* punishments are to be carried out for both men and women⁵, oftentimes a man can escape punishment through simple denial. In fact, today men are regularly exonerated of accusations of rape on the victim's failure to provide proof.

In a culture that places high value on a woman's purported virtue or purity, any allegations of loose conduct or immoral behavior can sentence a woman and ruin her reputation before she is even heard in court. Because of feelings of shame or guilt, and certainly due to a fear of punishment, many women refuse to report incidences of rape, thereby allowing critical time to pass in which collection of DNA evidence is no longer an option. She is only discovered when she begins to show signs of pregnancy that she can no longer hide her state and questions of her virtue are made. Many Islamic courts rule that an allegation of rape is an admission of sexual intercourse, therefore, the dismissal of the prosecution's case amounts to an implied confession of adultery. If she cannot prove that she was raped, her allegations oftentimes serve as an admission to consensual sexual intercourse.

During the time of Prophet Muhammad, cases of *zina* were never given any convictions; despite the fact that the handful of cases recorded were personal confessions of premarital or extramarital sex. The Qur'an itself severely reprimands those who unjustly accuse others of *zina* without producing the necessary evidence. In fact, they themselves become subject to harsh punishment.⁶ Rape is a separate type of crime in illegal sexual relations.

In the Qur'an's discussion of *zina*, rape is never mentioned, thus indicating that an entirely different set of rules and considerations must be made in these cases. In a court of law, a victim of rape must be protected, instead of entrapped and imprisoned. Pakistani courts seem to have no provisions for cases of rape, and the fact that these are tried on the same basis as cases of *zina* is a severe failure in the protection of human rights.

Additionally, if a strict interpretation of corporal punishment is applied but yields unjust results, this is a betrayal of the fundamental objectives of Islamic law. The Qur'an demands:

O you who have attained to faith! Be ever steadfast in upholding equity, bearing witness to the truth for the sake of God, even though it be against your own selves or your parents and kinsfolk. Whether the person concerned be rich or poor, God's claim takes

⁴ "Al-Nur," *The Message of The Qur'an*. Translated by Muhammad Asad (Gibraltar: Dar al-Andalus Limited) (24:13).

⁵ Ibid., (24:2).

⁶ Ibid., (24:4, 23).

*precedence over [the claims of] either of them. Do not, then follow your own desires, lest you swerve from justice: for if you distort [the truth], behold, god is indeed aware of all that you do!*⁷

The superseding Qur'anic principle of *adl*, or justice, as seen in this verse requires that the rights of each individual be protected, even if it be in direct contrast to an individual's views, or for our purpose, or for that of an entire society. Clearly, as in the case of Safia Bibi, corporal punishment cannot be applied without taking into account the context of each case, and more importantly in cases of *hudood*, they should not be applied when there is such a severe lack of evidence or betrayal of justice. Therefore, the literal and non-contextualized interpretations of Islam are counterintuitive and also counterproductive to the enjoinder of justice, as demanded in the Qur'an.⁸

⁷ Ibid., (4:135).

⁸ For a detailed discussion of the application of justice in Islam, please reference *In Pursuit of Justice: The Jurisprudence of Human Rights in Islam*, by Dr. Maher Hathout (2005).

Child Marriages: A Case Study of the 8-Year-Old Saudi Bride

Background

Several cases of child marriage in certain areas of the Muslim world in recent years have brought the issue of children's rights in Islam to the forefront of human rights debates. Of significance is the case of the 8-year-old Saudi bride, which surfaced on the international stage in February 2009. The young girl was given by her father in marriage last year to a 47-year-old man as a form of repayment for a personal debt held by the father. Although the girl was not reported to be living with the husband, her mother opposed the marriage and appealed to local courts to grant her daughter a divorce.

Based on the legal objection of Saudi Judge Habib al-Habib that the girl's mother was not her lawful guardian due to her separation from the girl's father, the appeal was rejected on two occasions by the Unaizah court; once in December 2008 and a second time in March 2009. It was not until international outrage was expressed and pressure was exerted upon Saudi officials that the 8-year-old girl was granted a divorce from her 47-year-old husband. In this case, the girl was treated as though she was the property of her father. Her mother had no legal guardianship until granted that right by appealing to a higher court. Both issues run contrary to the spirit and teachings of Islam.

Here it is important to take into consideration the judicial makeup of Saudi society. Since the establishment of the Kingdom of Saudi Arabia, *sharia* courts have been the primary instrument of law and punishment. The ideological underpinning of these courts is a literal interpretation of religious texts that is inspired by the teaching of Muhammad ibn Abdul Wahhab, an 18th century religious scholar who called for returning to a more puritan understanding of Islamic law. Many of the laws that are today referenced in Saudi legal cases are based on classical works that do not take into consideration the current context within society. Critics of these *sharia* courts, including many Saudi lawyers, have called for a complete overhaul of the judicial process, how judges are appointed and how laws are derived and referenced in modern cases.

An Islamic Perspective

The Qur'an, which Muslims believe to be the direct, unchanged word of God, and which serves as the highest source of Islamic law grants women full legal autonomy, the right to choose or refuse marriage proposals and right to pursue divorce.⁹ Qur'anic text abolished

⁹ Parveen Shaikat Ali, "Equality as a Basic Human Right in Islam," *Human Rights in Islamic Law*, ed. Tahir Mahmood (New Delhi: Institute of Objective Studies, 1993), 142.

all notions of inheriting women as property in chapter 4, verse 19 “*Oh you who have attained to faith! It is not lawful for you to [try to] become heirs to your wives.*”¹⁰ Rather, religious Islamic text treats marriage as a co-equal partnership. A social, legal and moral contract built upon the mutual equality of both parties.¹¹ Marriage is a contract that can only be agreed upon by adults.

To understand the factors contributing to child marriages, it is important to contextualize the occurrence of this phenomenon by surveying the geographical regions in which it most commonly appears. This way, we are more able to understand the cultural, social, economic, and even religious markers which coexist to contribute to this practice. Statistical evidence reveals that child marriages occur in greater numbers in areas of the world which suffer an overall lower quality of life. According to the findings of the United Nations International Children’s Emergency Fund (UNICEF), the greatest percentage of women who are married before the age of 18 are found in South Asia, Sub-Saharan Africa, Latin America/Caribbean, East Asia/Pacific, and the Middle East/North Africa, respectively.¹² These findings indicate that, irrespective of religious identification, the areas of the world which witness the highest occurrence of child marriages, correlate to those areas that are in the lowest ranges of the Human Development Index (HDI).¹³ This takes in to account issues such as literacy, health care, life expectancy, and educational and employment opportunities. Not surprisingly, the highest percentages of child marriages occur in rural or tribal areas where the aforementioned factors of the HDI remain quite low.

While this sheds light on the global factors that contribute to the existence of child marriages, MPAC is aware that religious clerics and certain Muslim communities defend the practice of child marriage within Islam. This makes it impossible to dissociate the Muslim faith from the discussion and it brings to light questions regarding the true respect for human rights in Islam. However, through our analysis of the Qur’anic text and traditions of Prophet Muhammad, whose examples Muslims take to be the exemplification of Qur’anic law, we intend to debunk the myths behind child marriage in Islam and set forth our recommendations for confronting its occurrence in the Muslim world.

The traditions of Prophet Muhammad – comprised of his teachings, sayings and actions – are compiled for the most part in the form of *ahadith*, which are passed down to us through a chain of narration and were collected by well-known Islamic scholars. Through the examination of *hadith*, a general consensus can be made that Prophet Muhammad encouraged women to choose whom they marry. In fact, in a *hadith* recorded by several well-known Islamic scholars, a woman named Khansa’ bint Khidam Al-Ansariya came to Prophet Muhammad complaining that her father forced her in to marriage to elevate his own status in society. Prophet Muhammad then told her that she was free to dissolve the

¹⁰ “*Al-Nis’a*,” *The Message of The Qur’an*. Translated by Muhammad Asad (Gibraltar: Dar al-Andalus Limited) (4:19).

¹¹ Maher Hathout, et al. *In Pursuit of Justice: The Jurisprudence of Human Rights in Islam*, (Los Angeles: Muslim Public Affairs Council, 2006), 173-174.

¹² Unicef, “Childinfo: Monitoring The Situation of Children and Women”; available from <http://www.childinfo.org/marriage.html>; Internet; accessed 17 August 2009.

¹³ United Nations Development Programme, “Human Development Reports”; available from <http://hdr.undp.org/en/statistics>; Internet; accessed 17 August 2009.

marriage and choose whomever she wished to marry.¹⁴ Though she opted to stay married, this case provides a precedent that women cannot be forced into a marriage against their will and may leave a marriage they did not agree to.

In another instance, a woman came to Prophet Muhammad to tell him she desired a separation from her husband simply because she did not want to remain married. Upon hearing this, Prophet Muhammad advised her husband to separate based on the wishes of his wife.¹⁵ These traditions reveal that Prophet Muhammad himself did not attempt to make marriage obligatory for any woman.

A number of Islamic legal scholars, such as Ibn Baz Al-Uthaymin, clearly state that consent is a prerequisite to a lawful marriage.¹⁶ Force of any sort is in complete opposition to the institution of marriage in an Islamic framework. There is no substantive support for compulsory marriage in the credible *hadith* available to us. Moreover, the Qur'an emphasizes the importance of marriage as a source of tranquility, a point that legal scholars such as Khaled Abou El Fadl argue "weighs the balance in favor of full autonomy for children in choosing their spouses."¹⁷

Furthermore, the Qur'an, affirms a woman's right to divorce. Multiple verses in chapter two of the Qur'an (*Baqara*) relay the legal framework of marriage as set forth by God. They even allow for a woman to freely marry whomever she pleases after a certain period passes after her divorce or death of her husband.¹⁸ This is only to ensure that there is no fetus remaining in her womb from the previous marriage.

In addition to this, the Qur'an also condemns the use of force in the husband's treatment of his wife, especially in any way that may harm her:

*Do not retain them [your wives] against their will.*¹⁹

Islam's stance is freedom of choice and the enforcement of mutual-benefit in marital relations. Compulsory marriage of a young girl is a violation of her right to freedom of choice and an even clearer violation of just and equal treatment between the sexes. Furthermore, since the Prophetic tradition and Islamic principle of human dignity emphasize freedom of choice and the importance of will power, it becomes illogical to assume that a young girl who has not achieved mental as well as physical maturity can make sound decisions for herself in regards to marriage.

Perhaps the staunchest support for child marriages in the Muslim world comes from the widely-held belief that Prophet Muhammad's marriage contract to Aisha was first drafted when she was seven years old, thereafter consummating his marriage to her when she was nine. Islamic scholars worldwide have increasingly called for the re-evaluation of this widely accepted

¹⁴ This *hadith* has been recorded by multiple Islamic Scholars. They include Ahmad, Nasa'i and Ibn Majah. (Bukhari: See Hadith No. 69, Vol. 7)

¹⁵ Narrated by Sahih al-Bukhari (63:199)

¹⁶ Khalid Abou El Fadl. *Speaking in God's Name: Islamic Law, Authority and Women* (One-world Publications, Oxford, 2001), 193.

¹⁷ Abou El Fadl, 195.

¹⁸ "Al-Baqarab," *The Message of The Qur'an* (2:234-235).

¹⁹ *Ibid.*, (2:231).

narrative. A number of contradictions exist within the accounts claiming Aisha was a child at the time of her marriage. These contradictions occur even within the works of the same scholar. For instance, Al-Tabari states that Aisha was seven when she legally married the Prophet in 620 CE. However, Al-Tabari also asserts that all of Abu Bakr's children (including Aisha) were born prior to the message of Islam.^[20] The first revelation of Islam took place in 610 CE. . Moreover, Al-Tabari also claims that Aisha began living with the Prophet as his wife in 624 CE. Simple math proves she was at least 14 years old at that time, thus rendering Al-Tabari an unreliable source on this issue.

Another example that leads us closer to determining Aisha's age at the time of marriage is by assessing the age of her older sister, Asma. According to a number of sources, Asma died at the age of 100 in 73 or 74 AH. This would have made Asma 27- or 28-years-old at the time of *hijra* (migration from Mecca to Medina in 622 CE). Given that a number of sources indicate Aisha was 10 years younger than her sister Asma, this puts Aisha's age at 17- or 18-years-old at the time of her legal marriage to the Prophet, and consummation of that marriage at 19 or 20 years of age.²⁰ While we are aware that some religious clerics would adamantly reject this view, several historical accounts from Prophet Muhammad's life lead us to believe that the view that Aisha was seven years old at the time of her marriage is an unfortunate indication of the manipulation of historical facts to support dismal and oppressive cultural norms.

The general manipulation of certain truths by a majority to defend an internal agenda is not an uncommon occurrence. It must be remembered that at the time of Islam's advent in the Arabian Peninsula during the 7th century AD, Arab society was tribal in hierarchy and completely patriarchal. Women were bought and sold as slaves, no limit on the number of wives was placed, and female infants were killed at birth, as males were valued more highly. After the death of Prophet Muhammad and in the decades that followed, the patriarchal structure which had existed before was once again slowly re-introduced and implemented. The only way to make these changes agreeable in a society that had predominantly accepted Islam as a way of life would have been to link such practices as child marriages with the example of Prophet Muhammad. This way, no one would be able to question the validity of the practice itself.

However, by viewing the changes which were brought about to elevate the status of women through Prophet Muhammad's example and the teachings of the Qur'an, we cannot accept the belief that this faith subjugates women in any respect. The Qur'an introduced inheritance and divorce rights for women, which were unprecedented, not only in Arabia, but in most of the world.²¹ The Qur'anic principles of justice, human dignity and the right to security and stability do not allow any room for the support of child marriages as acceptable.

Flogging:

²⁰ Ibid.

²¹ The verses condemning female infanticide were revealed to Prophet Muhammad in *Al-Takwir* (81:8-9). Women's inheritance rights are discussed in *Al-Nisaa* (4:7), and divorce rights for women are mentioned numerous times in the Qur'an, including the following verses: *Al-Baqara* (2:228-241) and *Al-Talaaq* (65:4-7).

A Case of a Woman Flogged in the Swat Valley

Background

When a video of a young woman being publicly flogged in a Northwestern Valley of Pakistan (Swat Valley) surfaced in April of 2009, it sparked international outrage. Official details about what led to the flogging are hard to verify due to the region's hostile governing agents. The young woman was reported to have left her home with a man other than her husband. Numerous reports indicate the man was her father-in-law. It has been suggested that Taliban rule in the region forbids married women from leaving their homes unaccompanied by their husbands or an immediate male relative (i.e., father, brother, uncle).

When the incident took place, the Northwestern Valley of Pakistan was virtually abandoned by Pakistani authorities in the face of increasing Taliban influence. On April 14, 2009, a peace deal was struck between Pakistani officials and hard-line clerics in the area, who were aiding the government in decreasing the level of violence witnessed in recent months. This, however, gave the Taliban free reign to carry out their prescribed notions of justice. A spokesman for Swat Valley and the Taliban regime defended the punishment, although conceding that it should not have been carried out in public and that the man performing the flogging should have been an adolescent. Public displays of flogging, humiliation, and harassment have become the norm in the region for anyone who does not comply with the Taliban authority's decrees.

The complicating factor in the North West Frontier Province (NWFP) has been the lack of a strong central authority and as well as the pervasive nature of patriarchal tribal structures. Due to its mountainous and uncompromising topography, the NWFP has been a semi-autonomous region where a resurgence of Taliban rule has brought a vigilante-style judicial system with complete discretion given to tribal heads and mullahs.

An Islamic Perspective

Ad-hoc tribal law in Swat does not comply with either the laws of the State of Pakistan or *sharia*; rather, the Taliban have put into place their own form of governance, without any real justification from the Qur'an or the teachings of Prophet Muhammad and with very little oversight from Pakistani authorities. Taliban and tribal edicts claim to be upholding *sharia*. What is currently taking place is a gross misinterpretation of the Islamic law.

In the Qur'an, God ordains specific measures to be taken by a husband if his wife is mistreating him. A relevant verse from Chapter Four (*Al-Nisaa*) in the Qur'an reads as follows:

Men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their

possessions. And the righteous women are the truly devout ones, who guard the intimacy which God has [ordained to be] guarded. And as for those women whose ill-will you have reason to fear, admonish them [first]; then leave them alone in bed; then strike them; and if thereupon they pay you head, do not seek to harm them. Behold, God is indeed most high, great.²²

This may be where most extremists derive their justification for beating women, however, a closer look at the Arabic vocabulary illuminates the varying meanings of the word “strike.” As in the English vocabulary, the Arabic word for strike, *daraba*, holds different meanings. The word may imply striking an example or going on strike against something, meaning abstention from that thing. This would seem most in line with the previous part of the verse concerning abstaining from the wife’s bed. Scholars are increasingly shedding light as to the varying meanings relayed in this verse, none of which sanction the beating of the wife.

In addition to this, Prophet Muhammad himself was known to have been strictly opposed to the beating of women and was never known to have done so in his life. He even put forth the question, “How does anyone of you beat his wife as he beats the stallion camel and then embrace (sleep with) her?”²³ In another instance, it is said that some women came to him to complain that their husbands abused and beat them. To this, Prophet Muhammad replied, “they are not the best of you.”²⁴ It is this model which should be exercised in the treatment of women.

Prophet Muhammad’s own wife Aisha was known to have been a great scholar. Unlike the ludicrous sanctions set forth by the Taliban of women not being able to leave their homes with someone other than their husbands, it is well known that Aisha was often approached by men who sought her advice and clarification on a multitude of issues. This was the example set forth by Prophet Muhammad and the women in his life, the greatest role models to Muslims. Islam’s teachings concerning women in no way condone the oppressive and violent rhetoric and practice witnessed in areas of Northwestern Pakistan and beyond.

In addition to this, it should be noted that the Qur’an only sets forth examples here on how a man may reproach his wife. It does not sanction any form of reprimand by men in societies towards other women, be it their neighbors, sisters, mothers, or female relatives. The violent and subjective approach used by the Taliban and others like them to be a distinctly patronizing form of control, with no direct relation to or justification in Islamic tradition. What the Taliban employ is an authoritative form of rule called *taazeer*. Proponents of *taazeer* claim that if a crime is not provable beyond a doubt by using criteria outlined in Islamic law, it then falls to the jurisdiction of the governing forces to decide on an appropriate punishment. This form of law lends itself to misapplication based on the fact that it is subjective; therefore, it allows cultural or social norms to influence judgment. The faults of this system are many, and unfortunately, they most commonly affect weak and vulnerable groups in societies. In this case, they are the women who are being humiliated and controlled.

²² “Al-Nisaa,” *The Message of The Qur’an* (4:34).

²³ *Al-Bukhari*, English Translation, vol. 8, *Hadith* 68, 42-43.

²⁴ *Riyadh Al-Saliheen*, op.cit, 137-140. For more information on the subject of gender equality and the treatment of women in Islam, see Dr. Jamal Badawi’s *Gender Equity in Islam*, which is referenced here: <http://www.jannah.org/genderequity/>

Recommendations

As an American organization, MPAC is committed to working in conjunction with the United States government, human rights groups, community-based groups and women's groups to protect the rights of women. We offer the following recommendations, which we hope can be utilized to formulate policy approaches to counter the troubling assault on women's rights, within Muslim countries.

1. The education of women and their communities, particularly in tribal and rural areas is critical to ending child marriage, and resisting growing fundamentalism which justifies the misuse of *hudoood* and misapplication of *sharia*. The United States government should offer monetary incentives to countries that foster expanded educational programs for women and children. Through education and increased employment opportunities, we can empower Muslim women to work for an end to the subjugation and humiliation they are exposed to daily.
2. The United States must place pressure on allies, such as Saudi Arabia, to uphold a minimum legal age for marriage and to enforce punishments for those who transgress the law. This has proven to be successful in the case of Yemen's marriage laws. After international outcry over an eight-year-old Yemeni girl who sought divorce after her father married her to a thirty-year-old man, Yemeni legislators amended the law to ban child marriages under the age of 17 in February 2009.
3. Islamic law calls for the proper application of justice based on contextual factors as well as historical precedent. We recommend that the U.S. government and its officials empower and support voices of Muslim organizations, women's rights groups, and scholars like Tariq Ramadan who advocate for "an immediate moratorium on corporal punishment, stoning, and the death penalty."²⁵ Muslim scholars and community leaders should highlight the Islamic principles of justice and clearly define how they have been distorted under the guise of cultural and patriarchal subjugation of women and the poor.
4. The U.S. government should connect with domestic grassroots organizations that work to promote women's rights in Muslim countries. We also recommend that speeches, conferences, and programs be put into place where American and non-American NGO's are given the opportunity to collaborate on issues concerning women's rights. This will raise awareness to the problematic issues facing women throughout the Muslim world and mobilize people from a grassroots level.

²⁵ Tariq Ramadan Official Website, "An International Call for Moratorium on Corporal Punishment, Stoning and the Death Penalty in The Islamic World": available from <http://www.tariqramadan.com/spip.php?article264>; Internet; accessed 18 August 2009.

5. The U.S. government should place pressure on Pakistan to reform its *hudoood* laws. In order to facilitate this, the government should increase the powers of the National Commission on the Status of Women from simply being a “recommending body” to an agency which has more enforcement powers.
6. The U.S. government should encourage Pakistan and other countries, governed by Islamic law, to reform their legal systems to include the participation of women. Legal discourse in Muslim countries in particular has become an exclusive domain for men, which produces laws and codes that are more restrictive towards the women. By supporting women’s groups and education, female leaders can be developed to change this unfortunate and suppressive status quo.

Conclusion

Many of the issues discussed in this paper provide us with a glimpse of separating cultural and political biases from religion. The history of Islamic civilization was not only a religious experience but also a human struggle. The Prophet Muhammad (peace be upon him) was divinely-guided but his struggle was human as well.

If we cannot read the Qur'an as a source that addresses human concerns, realities and weakness, then there is no value to Islam as a relevant component in our lives. Hence, analysis of Muslim countries today, and the laws they formulate must be tested by the Islamic framework of justice, mercy, human dignity and freedom. Also, the goals of *sharia* that are accepted by all the scholars of Islamic jurisprudence must become the litmus test for the Islamic constitutionality of laws emanating from Muslim countries. These goals are the rights to life, mind, faith, family and property. Anything that violates these goals can and must be challenged. The issue becomes how to challenge human rights violations in an effective manner.

At times, the U.S. government and Muslim American organizations can work jointly on issues, such as support for literacy programs. At times, they must work independently, such as reform within Muslim societies. The role of the government is to remove socio-economic barriers for Muslim and non-Muslim non-governmental organizations to work on social issues of importance for women. What is critical is the emancipation of Muslim women which can lead to the development and advancement of Muslim societies, and the rising voice of Muslim men and women speaking for change must be coupled with the voice of support for them in America.



The Muslim Public Affairs Council is a public service agency working for the civil rights of American Muslims, for the integration of Islam into American pluralism, and for a positive, constructive relationship between American Muslims and their representatives. Since 1988, MPAC has worked diligently to promote a vibrant American Muslim community and enrich American society through exemplifying the Islamic values of Mercy, Justice, Peace, Human Dignity, Freedom, and Equality for all. Over the years, MPAC has built a reputation as a consistent and reliable resource for government and media, and is trusted by American Muslims as an authentic, experienced voice.

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