



Women in Islamic Law: Examining Five Prevalent Myths

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Abstract

Concerns are often raised about the status of women in Islamic law. Often, misrepresentations and misconceptions about how women are treated by *sharī‘ah* are used to advance the notion that Islam is misogynistic. This paper serves as a primer in examining five common misrepresentations of Islamic law as it relates to women, focusing on domestic abuse, divorce, legal testimony, inheritance law, and polygamy. By delving into the historic and contemporary nature and application of Islamic law, this paper seeks to provide clarity, background, and explanation in these five areas. While many more myths exist, our review of the five most prevalent myths seeks to introduce the reader to nuance and understanding as a counterpoint to common anti-Islamic rhetoric regarding the status of Muslim women.

Introduction

What is Islamic law? To answer this question, we need to clarify the difference between “*sharī‘ah*” and “*fiqh*.” In addition to its theological doctrines, and spiritual and ethical teachings, Islam came with a set of practical rules about how to live one’s life and conduct oneself in society. This set of rules, derived from Islam’s sacred sources, the Qur’an and the Prophet’s ﷺ teachings, are part of what is conventionally referred to as the *sharī‘ah*, which literally means a “path.”

What many may not realize is that there is no such thing as a book called “*The Sharī‘ah*” that lists all of these rules. That’s because in order to arrive at the rules, scholars study various texts of the Qur’an and sayings of the Prophet ﷺ in order to derive rulings. There are core issues where the texts are definitive and unequivocal (*qat‘ī*) and there are other subsidiary probabilistic issues (*ẓannī*) where scholars must rely on human interpretation to understand how these texts are to be implemented.

This process results in *fiqh*, which is the scholarly discipline of studying the practical rulings of the *sharī‘ah* derived from its sources. Aside from the fundamentals that everyone agrees on, most subsidiary issues in *fiqh* have always

been subject to multiple opinions because scholars naturally differ in their interpretations. Thus we have the four most famous schools of Islamic law in Sunni Islam—the schools of Abū Ḥanīfah (d. 150 H), Mālik (d. 179 H), al-Shāfi‘ī (d. 204 H), and Aḥmad ibn Ḥanbal (d. 240 H), but also less famous other scholars who taught their own *fiqh* even though they did not garner the same following as the earlier four: Sufyān al-Thawrī (d. 181 H), al-Layth ibn Sa‘d (d. 175 H), al-Awzā‘ī (d. 157 H), Abū Thawr (d. 240 H), Ibn Jarīr al-Ṭabarī (d. 310 H). *Fiqh* requires extensive knowledge of the scriptural sources and the classical sciences of Arabic to ensure that texts are not misinterpreted nor manipulated to wrong ends. In the case of these common myths about women in Islam, certain points from scripture are distorted to present a misogynistic caricature of Islam, which is far removed from the true teachings of the faith. These misinterpretations can be corrected with reference to other texts and the traditional interpretations of scholars, as well as historical precedents in application.

Some aspects of *fiqh* may also change with time and place (*taghayyur al-fatwā bi-taghayyur al-zamān wa-l-makān*) because the way to best apply a certain ruling often depends on circumstances. Sometimes a legal verdict (*fatwā*) was first made in a particular socio-cultural context only for it to be adapted as circumstances changed. It is important to also note that historically scholars have challenged opinions that lacked scriptural support, and argued for a preferred opinion based on evidence. This is actually a necessary part of *fiqh*—the need for critical re-evaluation by qualified scholars, to ensure that the ways rulings are being implemented accurately serve the goals of the *sharī‘ah* (For a more detailed discussion refer to [Shari’ah in Today’s World: Renewing Islamic Discourse](#) and [Difference of opinion: where do we draw the line?](#)).

General Principles Concerning Islamic Law and Women

Islam invites humanity to an ethico-legal framework constructed upon God’s Divine Wisdom and Justice: “Does He not know best, He who created? And He is the Knower of all subtleties, the All-Aware” (Qur’an 67:14). All human

civilizations draw upon some ethical value system in order to construct norms of conduct. While most societies agree upon some fundamental principles, the drastic variation between the moral standards of different societies has been cited as proof in favor of moral relativism.¹ Meanwhile, those who believe in the existence of objective morals find it difficult to anchor their values in a materialistic conception of the universe bereft of any purpose. The Islamic concept of humanity being Divinely assigned the task of establishing virtue provides such ontological anchorage.

Islam maintains that humanity stands in need of Divine Guidance in order to attain true prosperity in this life and the next, and secondly, that the entire collective system of rulings and regulations that comprise Islamic Law are ultimately ordained for humanity's benefit/best interests (*maṣlaḥah*). Thus, Ibn al-Qayyim (d. 751 H) writes, "Verily the *Sharī'ah* is constructed and founded upon wisdom and serving humankind's best interests in this life and the next."² Similarly, Abū Ishāq Al-Shāṭibī (d. 790 H) writes, "The established principle is that the religious laws came solely in order to secure the best interests (*maṣāliḥ*) of the servants."³

The foundation upon which the Islamic system of law is built is the concept of justice. "For verily, God sent His Messengers and revealed His Scriptures so that humanity may establish justice," writes Ibn al-Qayyim, echoing the Qur'an's statement in verse 57:25 that messengers were sent "so that people may uphold justice."⁴ Crucial to this conception of justice is the fact that all human beings—regardless of gender or ethnicity—have an equal standing before God and attain distinction only through the pursuit of virtue: "O Humankind, verily We created you from male and female and made you into nations and tribes so that you may know one another. Verily, the noblest amongst you in the sight of God is the most pious. Indeed, God is All-Knowing, All-Aware" (Qur'an 49:13). The Qur'an is rather explicit that God does not discriminate between genders: "I will not lose sight of any who labors in My Way, whether male or female, you are of one

¹ For instance, see Jesse Prinz, Morality is a Culturally Conditioned Response. *Philosophy Now* 82: 6-9 (2011).

² Ibn al-Qayyim, *I lām al-Muwaqqi 'īn*, (Beirut: DKI, 1991), 3:12.

³ Al-Shāṭibī, *Al-Muwāfaqāt*, (Cairo: Maktaba Tijariya, 1975), 1:148.

⁴ Ibn al-Qayyim, *al-Turuq al-Ḥukmiyyah fī al-siyāsah al-shar 'īyyah*, (Mecca: Dar 'Alam al-Fawā'id, 1428H), 1:31.

another” (Qur’an 3:195). As explained by the classical exegetes, the phrase “you are of one another” indicates that men and women have an equal rank before God and receive the same reward for their deeds.⁵ The Prophet Muhammad ﷺ stated, “God does not look at your external appearances or your physical bodies, but rather He looks at the condition of your hearts and your deeds.”⁶

Moreover, Islamic Law has utilized as a general maxim the Prophet Muhammad’s ﷺ statement, “Women are the equal partners of men.”⁷ Abū Sulaymān Al-Khaṭṭābī (d. 386 AH) writes, “His saying that women are counterparts of men means their equals and their likeness in creation and nature, as if they split off from men. In jurisprudence, it is affirmation of the analogy and equivalence in rulings, equal by equal. Such that if the speech is conveyed in the male grammatical form, it is also addressed to women, except for specific topics whose specification is established by evidence.”⁸ In other words, as a general principle, all of the rulings in Islam apply to both men and women, unless otherwise specified due to a relevant gender difference, such as in the case of norms of dress (for a more detailed discussion refer to [Do the Qur’an and Sunnah Speak More Often to Men than Women?](#)).

There are of course indisputable biological and psychological differences between men and women which extend beyond obvious reproductive differences.⁹ Biological differences include everything from size and growth disparities, average life expectancy (greater for women), relative risk of disease (e.g., the incidence of Alzheimer’s dementia is higher in women while the incidence of Parkinson’s dementia is higher in men),¹⁰ to physical capabilities (e.g., weightlifting versus

⁵ Makkī ibn Abī Ṭālib, *Al-Hidāyah fī Bulūgh al-Nihāyah*, (Sharjah: University of Sharjah, 2008), 1206.

⁶ *Sahih Muslim* 2564. *Hadith* citations in this article reference the Arabic numerals used on the search engine Sunnah.com. Those compilations not present on that site are instead cited using the numbering on the Arabic site IslamWeb.net.

⁷ *Musnad Ahmad* 5869.

⁸ Al-Khaṭṭābī, *Ma’ālim al-Sunan* (Aleppo: Maṭba‘ah al-‘Ilmiyyah, 1932), 1:79.

⁹ For a comprehensive discussion, refer to Eagly, A. H., Beall, A. E., & Sternberg, R. J. (Eds.) (2004). *The psychology of gender* (2nd ed.). New York: The Guilford Press.

¹⁰ Miller, Ivy N., and Alice Cronin-Golomb. Gender Differences in Parkinson’s Disease: Clinical Characteristics and Cognition. *Movement Disorders*, 25.16 (20 10): 2695–2703; Viña J, Lloret A. Why women have more Alzheimer’s disease than men: Gender and mitochondrial toxicity of amyloid-beta peptide. *J Alzheimers Dis.* 2010; 20 Suppl 2:S527-33.

long-distance swimming).¹¹ In the realm of psychology, there is a difference in the relative predominance of personality types, with women generally ranking higher in traits of Agreeableness (including aspects of Politeness and Compassion) than men,¹² as well as differences in social-cognitive processes with women generally surpassing men in emotion recognition, empathy, perspective-taking, and other components of emotional intelligence.¹³ Indeed, “the male is not like the female” the Qur’an reminds us (3:36). Many of these differences emerge quite early; research has found that amongst one-year-olds, girls are more likely than boys to show empathetic behaviors towards someone in distress.¹⁴ Given gender differences in social and emotional development, parental roles are seen as complementary and not redundant; most fathers do not have the same nurturing capacity as most mothers, nor do they endure the burdens of childbirth; for these reasons, the Prophet ﷺ accorded a higher rank and loftier status to mothers over fathers.¹⁵

Some societal manifestations of gender differences may be seen as the outgrowth of inherent biological and psychological differences (in contradistinction to the radical social constructionist claim that all such differences are *exclusively* the result of cultural upbringing).¹⁶ Consequently, there is good reason to expect that some practical rulings will differ between men and women to ensure better outcomes for both. It’s important to remember that *fairness* is not necessarily

¹¹ Thibault V., Guillaume M., Berthelot G., et al. Women and Men in Sport Performance: The Gender Gap has not Evolved since 1983. *Journal of Sports Science & Medicine*. 2010;9(2):214-223; Knechtle B., Rosemann T., Lepers R., Rüst C.A. Women outperform men in ultra distance swimming: The Manhattan Island Marathon Swim from 1983 to 2013. *Int J Sports Physiol Perform*. 2014 9(6):913-24.

¹² Weisberg Y. J., DeYoung C. G., Hirsh J. B. Gender Differences in Personality across the Ten Aspects of the Big Five. *Frontiers in Psychology*. 2011; 2:178. doi:10.3389/fpsyg.2011.00178.

¹³ Adenzato, M. et al. Gender differences in cognitive Theory of Mind revealed by transcranial direct current stimulation on medial prefrontal cortex. *Sci. Rep.* 7, 41219; doi: 10.1038/srep41219 (2017).

¹⁴ Zahn-Waxler, C., Robinson, J. L., & Emde, R. N. (1992). The development of empathy in twins. *Developmental Psychology*, 28(6), 1038-1047.

¹⁵ *Sahih Muslim*, 2548b.

¹⁶ One counterpoint being that “Empirically, sex differences in most psychological traits—in personality, sexuality, attitudes, and cognitive abilities—are conspicuously larger in cultures with more egalitarian sex role socialization and greater sociopolitical gender equity.” Schmitt, D. P. (2014). The evolution of culturally-variable sex differences: Men and women are not always different, but when they are . . . it appears not to result from patriarchy or sex role socialization. In V. A. Weekes-Shackelford, & T. K. Shackelford (Eds.), *The evolution of sexuality* (pp. 221-256). New York, NY: Springer.

sameness. In the interest of justice, one would expect a Divinely revealed system of guidance to accommodate differences in those select instances where they prove relevant. For example, modesty in clothing is prescribed for both genders but what constitutes modest dress differs between the genders due to physical differences and underlying differences in the psychology of attraction between genders which remain constant across all cultures.¹⁷ Islam’s guidance also shows us that some presumed gender differences are *not* well-founded. For instance, culturally it is often assumed that beautification is solely the domain of women, whereas the Prophet’s ﷺ cousin Ibn ‘Abbās identified it as a reciprocal aspect of the marital relationship: “I love to beautify myself for my wife just as I would love for her to beautify herself for me, because God says ‘Wives have [rights] similar to their [obligations], according to what is recognized to be fair.’”¹⁸

Many Muslim women combating the mistreatment of women within their own communities find strength and empowerment in the spiritual teachings of Islam and its code of values, and in a call for a return to the Prophetic exemplary moral character. Indeed, the Prophet’s ﷺ emphasis on women’s rights was so central to his call that he reiterated it in his famous farewell sermon, “My parting counsel (*waṣīyya*) to you is to treat women with kindness,”¹⁹ and throughout his life he emphasized, “The best of you are those who are best to your women.”²⁰ He criticized the custom of gender bias in favor of sons and taught, “Treat your children equally when you give gifts. And if I were to favor anyone over another, I would favor women over men.”²¹

¹⁷ Buss, D. M., Abbott, M., Angleitner, A., Asherian, A., Biaggio, A., Blanco, A., et al. (1990). International preferences in selecting mates: A study of 37 cultures. *Journal of Cross-Cultural Psychology*, 21, 5–47.

¹⁸ *Sunan al-Kubrā al-Bayḥaqī* (14264).

¹⁹ *Jāmi‘ at-Tirmidhī* 3367. The hadith continues to say, “For verily they are in your presence *‘āwān*”. The word *‘āwān* (feminine singular *‘ānīyah*) means those who are a captive or prisoner; Abu ‘Ubayd, *Gharīb al-Ḥadīth*, ed. Ḥusayn Muhammad Sharaf, (Cairo: al-Hay’ah al-‘Āmmah li-Shu’ūn al-Maṭābi‘ al-Amīriyah, 1984), 1:407. The analogy provides a vivid image of a relationship the audience would have been familiar with in which the power differential was obvious. The Prophetic emphasis is on taking that as a lesson in responsibility, duty, and accountability for one’s kind treatment towards one’s spouse.

²⁰ *Jāmi‘ at-Tirmidhī* 1162.

²¹ *Sunan al-Kubrā al-Bayḥaqī* 11095, *Sunan Sa’īd ibn Manṣūr*, 295. Ibn Ḥajar considers its isnād *ḥasan* (good) in *Faṭḥ al-Bārī* (Cairo: Dar al-Rayan 1986), 5:253. Contemporary *hadith* scholar, Hātim al-‘Awnī, [notes](#) that while this report is *mursal*, its narration by early scholars demonstrates that “this concept of equality springs from deep within our Islamic tradition.”

To presume that Western liberalism represents the standard of moral progress to which all other societies must conform is nothing short of a cultural imperialism that ignores and marginalizes the experiences of women of other cultures, and calls upon them to erase their identities and embrace the ‘superior’ values of European/North American women. Equating progress with Westernization and calling for a departure from religious tradition actually undermines the efforts of those women for whom religious identity is a source of empowerment and their greatest tool in rectifying gender oppression and misogyny. As Anna Korteweg writes, “A failure to recognize that Muslim women’s agency can be embedded in religion is problematic, not only because it narrows public debate, but also because it risks a narrowing of possible policy responses to concerns of immigrants from the global South to the North.”²²

Moreover, critics have argued that far from representing a bastion of moral enlightenment, the modern Western value system is riddled with internal contradictions such as promoting a culture of promiscuity and sexual exploitation of women while simultaneously aiming to desexualize and de-objectify male perceptions of women.²³ In attempting to dismantle the ‘patriarchal’ norm of the male breadwinner and female homemaker, women have poured into the labor market, galvanizing the engines of capitalism²⁴ in ways that have unfairly burdened some women.²⁵ Serious progress in the realm of women’s rights will require setting aside preconceived notions, stereotyped tropes, and slogans and listening to the experiences of women of all backgrounds, including Muslim women.

²² Korteweg, Anna. The Sharia Debate in Ontario: Gender, Islam, and Representations of Muslim Women’s Agency. *Gender & Society*, August 2008, p. 448.

²³ For a discussion of such arguments, see Anne Barnhill, “Modesty as a Feminist Sexual Virtue,” in *Out From the Shadows: Analytical Feminist Contributions to Traditional Philosophy*, edited by Sharon L. Crasnow and Anita M. Superson (New York: Oxford University Press, 2012), pp. 115-137. From a social psychology perspective, see Cikara, M., Eberhardt, J. L., & Fiske, S. T. (2011). From agents to objects: Sexist attitudes and neural responses to sexualized targets. *Journal of Cognitive Neuroscience*, 23, 540-551.

²⁴ Fraser, Nancy. How feminism became capitalism's handmaiden - and how to reclaim it. *The Guardian*. Oct 14, 2013. <https://www.theguardian.com/commentisfree/2013/oct/14/feminism-capitalist-handmaiden-neoliberal>.

²⁵ Slaughter, Anne-Marie. Why Women Still Can’t Have it All. *The Atlantic*. 2012. <https://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>

Myth 1: Islam instructs men to beat their wives

First of all, Islam affirms that marriage must be based on love and mercy between spouses—“And amongst God’s signs is that He created for you spouses from amongst you and placed between you love and mercy” (Qur’an 30:21). Islam unequivocally condemns all forms of cruelty and abuse; the Prophet ﷺ stated “there is to be no harm nor reciprocating of harm.”²⁶ One of the Islamic ethical teachings scholars have recorded is the saying, “An honorable person treats women with honor and respect, and only a despicable person treats women poorly.”²⁷ The Prophet Muhammad ﷺ made a clear pronouncement against domestic violence stating, “Do not strike the female servants of God”²⁸ and “Do not hit them and do not revile them.”²⁹ The Prophet ﷺ encouraged all Muslims to follow his example and by the testimony of his wife, ‘Ā’isha, he was someone who “never once hit a servant, a woman, nor struck anything with his hand.”³⁰ Moreover, the Prophet Muhammad ﷺ actually invoked God’s wrath upon a person who engaged in domestic violence in the following incident:

The wife of Al-Walīd ibn ‘Uqbah came to the Prophet ﷺ, and she complained to him saying, “O Messenger of God! Indeed, Al-Walīd has beaten me!” The Prophet replied, “Tell him: the Prophet has protected me.” She returned shortly thereafter and said, “He only hit me more!” The Prophet tore a piece from his garment (as a symbol of proof) and he said, “Say to him: Verily, the Messenger of God has given me protection.” It was

²⁶ *Sunan Ibn Mājah*, 2341.

²⁷ Ibn ‘Asākir, *Tārīkh al-Dimashq* (13/312), related as a *hadith* from the Prophet ﷺ.

²⁸ *Sunan Abī Dāwūd* 2146, *Sunan al-Dārimī* 2219 (under “Chapter on the prohibition of hitting women”). These *hadith* also mention that after this, ‘Umar complained that the women had rebelled against their husbands so a dispensation was given for physical discipline, whereupon the women then came and complained to the Prophet ﷺ so the Prophet expressed his disapproval of the men hitting, and in one *hadith* (*Ṣaḥīḥ Ibn Hibbān* 4186 authenticated by Shu‘ayb Al-Arnā‘ūt) it states explicitly that the Prophet ﷺ then forbade them from hitting (*fa nahāhum*) once again. If this narration is taken at face value, the implementation of 4:34 would be restricted (*takhṣīṣ*) as explained by Ibn ‘Abbas and ‘Aṭā ibn Abī Rabāḥ below, and similarly this applies to the farewell sermon.

²⁹ *Sunan Abī Dāwūd* 2144. Another *hadith* says, “Do not raise a stick against your family” (*Al-Adab al-Mufrad* 18); this is one of two wordings of the *hadith* which are both authentic. See Faḍl Allah al-Jīlānī, *Faḍl Allah al-Ṣamad fī tawdīḥ al-Adab al-Mufrad*, (Beirut: DKI, 2002), 81-82. See also Husayn al-‘Awāyishah, *Sharḥ Ṣaḥīḥ al-Adab al-Mufrad*, (Beirut: Dar Ibn Hazm, 2003), 1:35.

³⁰ *Sunan Ibn Majah*, 2060.

*not long before she returned and said, “He only hit me more!” The Prophet raised his hands and he said, “O God, you must deal with Al-Walīd for he has violated my command twice.”*³¹

What is important about this narration is that the Prophet ﷺ does not seek any justification or explanation from al-Walīd; in other words, he considers al-Walīd’s actions unacceptable regardless of the circumstances. He immediately declares his protection for the wife and does not make her feel as though she was to blame in any way, shape, or form. This is precisely the type of decisive action needed to protect women experiencing domestic abuse.

The Prophet’s ﷺ words regarding al-Walīd serve as an incredibly stern warning against any physical abuse. Indeed, given all the foregoing evidence against marital cruelty and abuse, it would seem absurd to suggest that Islam condones domestic violence, so where does this notion come from?

People notoriously cite a passage in the Qur’an (4:34) where men are instructed to deal with a wife’s persistent misconduct by first persuading and advising them, followed by deserting the marital bed, before being given permission to take the last resort of *ḍarb*—a word that literally means ‘to hit’ in the Arabic language, and has become the epicenter of debate among modern Muslims. Some modern scholars have argued that given its usage in other places in the Qur’an (e.g., 43:5), the word should actually be translated here as ‘to leave’ (*al-mufāraqah wa al-tark*).

³² However, this is not the way the verse was understood traditionally. Historically, this word was understood by Muslim jurists and exegetes³³ to indicate that in

³¹ *Musnad Ahmad* (1303), *Majma’ al-Zawa’id* (7745). Declared authentic by Ahmad Shakir. See Ahmad ibn Hanbal, *al-Musnad lil-Imam Ahmad ibn Hanbal* ed. Ahmad Shakir (Cairo: Dar al-Hadith), 2:138-139.

³² For instance, ‘Abd al-Ḥamid Abu Sulayman in *Ḍarb al-Mar’a wasīlah li-ḥal al-Khilāfāt al-Zawjīyah* (Cairo: Dar Al-Salam 1424H). This perspective is regarded by its opponents as far-fetched as it represents a departure from the plain-sense meaning of the verb.

³³ Mischaracterizations of the tradition arise from a dogmatic attempt to paint the ‘pre-colonial’ scholarly tradition as fundamentally unconcerned with the well-being of women or mutuality in marital love, as in Ayesha Chaudhry *Domestic Violence and the Islamic Tradition*, (Oxford: Oxford University Press, 2013). For instance, we are told “Pre-colonial scholars never mentioned the reciprocal nature of the marital relationship” (p. 141) and it is only modern-day ‘neo-traditionalist scholars’ who “describe an ideal marriage as one that is premised on love and harmony, positing Q. 30:21 as the necessary context for understanding Q. 4:34” (p. 159). Yet, one of the earliest exegetical works directly cites 30:21 in the explanation of 4:34 arguing that disciplinary measures are not permitted

limited circumstances men could physically discipline their wives just as they would physically discipline their children—which, without further qualification, may sound like [Sean Connery’s view](#)³⁴ of male authority.

Indeed, the presumption of male disciplinary authority in the household was common in most pre-modern cultures. In the pre-modern world, societies tended towards collectivism over individualism, and were thus hierarchically structured with the family as the basic unit, and the male breadwinner as the *de facto* leader of the family responsible for the discipline of the children and his wife.³⁵ Thus, writings in diverse civilizations often spoke candidly on this authority. For instance, the fifteenth century Italian friar, Cherubino da Siena, instructs men in dealing with ‘crude and shifty’ wives: “But if your wife is of a servile disposition and has a crude and shifty spirit so that pleasant words have no effect, scold her sharply, bully and terrify her. And if this still does not work, take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body.”³⁶

Despite affirming the historically common notion of male disciplinary authority, classical Muslim scholars did maintain a strong aversion to violence, universally condemning injurious hitting or beating (*ḍarb mubarrih*), some suggesting instead the use of an innocuous “folded handkerchief” (*mandīl malfūf*).³⁷ The Ḥanbalī jurist al-Buhūtī (d. 1051 AH) stated, “It is better to avoid hitting altogether in order to preserve marital love.”³⁸ Historical court records demonstrate that Muslim judges routinely ruled that husbands who caused any physical harm to their wives

until all other means of returning harmony (*ulfa*) and love (*maḥabbah*) have been exhausted; al-Māturīdī, *Ta’wīlāt Ahl al-Sunnah*, (Beirut: DKI 2005), 163. Furthermore, we find repeated emphasis that avoiding hitting would be better for the sake of preserving love in the marital relationship; see al-Buhūtī’s statement cited below.

³⁴ See Barbara Walters’s interview with Sean Connery, in which he doubled down on his controversial statement that hitting a woman is justifiable if her behavior ‘merits it.’ <https://www.youtube.com/watch?v=mzXkbJwrN38>

³⁵ It’s no surprise that pre-modern jurists catered to that ubiquitous economic reality in their writings. Postindustrial egalitarianism resulted in a cultural shift of authority within the family, although the hierarchical element that has remained is the perception that parents are still responsible for the physical discipline of their children. Comparing modern legislation about parents hitting children with the pre-modern juristic discussion on husbands hitting wives demonstrates similar concerns for distinguishing physical discipline from physical abuse and violence.

³⁶ E. Salisbury, G. Donavin, M.L. Price, *Domestic Violence in Medieval Texts* (Gainesville: University Press of Florida 2002), p.18.

³⁷ Fakhr al-Dīn al-Rāzī, *Tafsīr al-Rāzī*, (Beirut: Dar al-Fikr, 1981), 10:93.

³⁸ Al-Buhūtī, *Kashshāf al-Qinā’*, (Beirut: DKI, 1997), 5:238. “*wa-l-awlā’ tark ḍarbihā ibqā’ a lil-mawadda*”.

were to be punished.³⁹ Moreover, it was explicitly written in jurisprudential manuals, like that of the Mālikī jurist al-Dasūqī (d. 1230 AH), that if a woman complained to a judge of being harmed by her husband’s insults, abandonment, or physical hitting, then the judge could order that the husband himself be physically beaten in retribution.⁴⁰ The Shāfi‘ī jurist al-Rāfi‘ī stated that if the husband was of bad character and irritated his wife for no reason then his behaviour would be forbidden by the judge and if he repeated it, he would be punished.⁴¹

In the writings of jurists the general rule remained that hitting one’s spouse was sinful and prohibited (*ḥarām*) but in exceptional cases as a last resort it was deemed a disliked dispensation (*rukḥṣah*).⁴² Even then, abandoning it altogether was always preferred and if were known to be without benefit then it was again declared prohibited (*ḥarām*).⁴³ The Hanbalī scholar Ibn al-Jawzī (d. 597 H) observed that if someone did not heed verbal admonition, they were unlikely to benefit from physical discipline, and that hitting only increases the feelings of aversion in the heart, and therefore is better off avoided.⁴⁴ By providing a stepwise framework for marital conflict resolution, scholars argued that verse 4:34 was actually intended to eradicate spousal abuse and domestic violence.

³⁹ T. Alkiek, D. Mogahed, O. Suleiman, & J. A. C. Brown, “Islamic Perspectives on Domestic Violence,” *Yaqeen Institute for Islamic Research*.

<https://yaqeeninstitute.org/en/tesneem-alkiek/islam-and-violence-against-women-a-critical-look-at-domestic-violence-and-honor-killings-in-the-muslim-community/>

⁴⁰ Al-Dasūqī, *Ḥāshiyat al-Dasūqī ‘ala Sharḥ al-Kabīr*, (Cairo: Dar Ihya’ al-Kutub al-‘Arabiya, 1980), 2:343.

⁴¹ Al-Rāfi‘ī, *al-Muḥarrar fī al-Fiqh al-Imām al-Shāfi‘ī*, (Cairo: Dar al-Salam 2013), vol 2, p 1041.

⁴² For instance, al-Munāwī (d.1031 AH) states, “This demonstrates that hitting one’s wife is *ḥarām* except for *nushūz* (rebellious conduct), so when she commits it he may hit without hitting severely (*mubarrīḥ*) nor persistently, but if she is not deterred by it then both severe hitting and non-severe hitting is *ḥarām*, and abandoning hitting is categorically preferable.” Al-Munāwī, *Fayḍ al-Qadīr sharḥ jāmi‘ al-saghīr*, (Beirut: DKI 2001), 1:86. Al-Sharbīnī (d. 977 AH) stated that hitting was only permissible as a last resort after repeated instances of *nushūz* (rebellious conduct) according to the [Shāfi‘ī] ‘Irāqīs and Al-Rāfi‘ī, while al-Nawawī was of the view that hitting was permissible even after the first instance of *nushūz* on the condition that one believed it would actually benefit the situation otherwise it would not be permitted even under such circumstances. As for severe hitting (*ḍarb mubarrīḥ*), defined as that which leaves a mark or causes injury, al-Sharbīnī states that the jurists categorically prohibited it (*fa-innahu lā yajūzu muṭlaqan*). He also states that it remains preferable to avoid hitting altogether. Al-Sharbīnī, *al-Iqnā‘ fī ḥal al-fāz abī shujā‘*, (Beirut: DKI 2004), 2:282. The fact that the dispensation remains disliked or offensive (*makrūh*) is mentioned by Abu Bakr ibn al-‘Arabī, in his comments on how ‘Aṭā ibn Abī Rabāḥ demonstrated deep understanding in deriving the offensiveness of hitting (*karāhiyyah*) from the hadith of the Prophet. See Abu Bakr ibn al-‘Arabī. *Aḥkam al-Qur‘ān* (Beirut: DKI 2003), 1:536.

⁴³ Ibn Ḥajar al-Haytami, *Tuḥfat al-Muḥtāj bi Sharḥ al-Minhāj*, (Beirut: DKI 1971), 3:314. “*Ammā idhā ‘ulima annahu lā yuḥḍam*.”

⁴⁴ Ibn al-Jawzī, *Aḥkām al-Nisā*, ed. Amr Abd al-Mun‘im Salim, (Cairo: Maktabah Ibn Taymiyyah 1997), 241.

Moreover, the relevance of socioeconomic factors to marital roles was acknowledged. The classical commentator al-Qurṭubī (d. 671 H) actually stated that a man’s authority in the family is contingent on his role as the breadwinner, and when he is unable to financially provide for her, he is no longer considered to have such authority (*qawāmiyyah*) over his wife.⁴⁵ Ibn ‘Āshūr (d. 1393 H) opined that the relevance of such instructions depended on one’s socioeconomic class and culture, as some Bedouins, women included, did not consider such disciplinary measures to constitute transgression. Meanwhile, in other families, a man attempting to physically discipline his wife would completely devastate any hopes of reconciliation and marital harmony. Ibn ‘Āshūr also went so far as to say,

*It is lawful for the authorities, when they know that spouses will not be able to implement the legislated reprimands appropriately, or if they will not stop from overstepping their limits, then the authorities can stop them from implementing such reprimands and announce that anyone who hits his wife will be liable to punishment, in order to avert the escalation of harm between spouses, particularly in times of weak personal restraint.*⁴⁶

As new situations arise, and the norms of human interactions and cultural expectations changes, scholars like Ibn ‘Āshūr considered how the implementation of such rulings was impacted and what would best yield the Qur’anic objective of marital harmony. In the Modern era, there has been a dramatic shift in cultural gender roles with women’s entry into the labor force and higher education, as well as with the emergence of a culture of individualism.⁴⁷ If the preindustrial economic context resulted in jurists applying 4:34 as a license for a very limited form of physical discipline, does that apply to the modern socioeconomic context or would it result in greater harm? Some scholars argued that in the majority of cases a

⁴⁵ Al-Qurṭubī, *Al-Jāmi‘ li-Aḥkām al-Qur’an*, vol. 5, p.169.

⁴⁶ Ibn ‘Āshūr, *Tahrir wal-Tanwir* (Tunisia: Dar al-Tunisiyyah 1984), 5:44. Discussed in Abdullah Hasan, “The End to Hitting Women: Islamic Perspective on Domestic Violence,” MuslimMatters.org. n.p. 21 Dec 2013.

⁴⁷ Availability of contraception also played a role in women pursuing long-duration professional education. See Goldin, Claudia and Lawrence F. Katz. 2002. The power of the pill: Oral contraceptives and women's career and marriage decisions. *Journal of Political Economy* 110(4): 730-770.

situation would not arise in which physical discipline could be applied, and particularly when both spouses are rational and virtuous, such situations should categorically never arise.⁴⁸

For Muslims, there is nothing more authoritative in guiding how to implement the Qur'an than the Prophetic example. As the Prophet Muhammad ﷺ said, “None hits except the worst amongst you (*shirārukum*).”⁴⁹ There is now a wealth of psychological data connecting spousal violence to a host of negative mental health outcomes for women including major depression, suicidal thoughts, and post-traumatic stress disorder and that children and adolescents who witness violence towards their mother may also suffer from dysfunctional relationships, learning disabilities, and mental health challenges.⁵⁰ The Prophet ﷺ himself explained the psychological impact hitting would have on a marital relationship in eliminating any feelings of warmth, affection, and intimacy: “How could any of you strike his wife like striking a stallion camel and then hope to embrace her?”⁵¹

Muslim scholars must maintain their commitment to standing against injustice without sacrificing their academic integrity and theological commitment to upholding the literal truth of God's words in scripture. Qur'anic verses are not to be interpreted in isolation while ignoring the fundamental values of Islam established in other Qur'anic passages and the life of the Prophet ﷺ. Indeed, the Qur'an notes that selectively using parts of scripture to justify transgression is a disease of the heart (Qur'an 3:7). Implementing Qur'anic instructions must be done in a manner that is most consonant with the collective teachings of the Qur'an, the Prophetic example, and the understanding of the companions and early

⁴⁸ Faḍl Allah al-Jīlānī, *Faḍl Allah al-Ṣamad fī tawdīḥ al-Adab al-Mufrad*, (Beirut: DKI, 2002), 82.

⁴⁹ Ibn Sa'd, *Ṭabaqāt al-Kubrā*, 10516. Also found in the work by al-Suyuti, *Jāmi' al-Ṣaghīr*, 1088. This is part of a longer conversation discussed earlier where an initial prohibition to hit was followed by the revelation of the verse and the Prophet providing the dispensation to hit with the above qualification, “None hits except the worst amongst you.” Although this report has weakness in its attribution to the Prophet, the meaning is undoubtedly authentic.

⁵⁰ See for instance, M.R. Holmes, The sleeper effect of intimate partner violence exposure: Long-term consequences on young children's aggressive behavior. *J Child Psychol Psychiatry* 54, n. 9 (2013): 986-95; and S.V. Menon, J.R. Cohen, R.C. Shorey, J.R. Temple, The impact of intimate partner violence exposure in adolescence and emerging adulthood: A developmental psychopathology approach, *J Clin Child Adolesc Psychol*. (2018): 1-12.

⁵¹ *Ṣaḥīḥ Bukhārī* 6042. The Prophet ﷺ also routinely advised controlling one's anger, and research has linked spousal violence to a lack of anger management. Dew, J., & Dakin, J. (2011). Financial Disagreements and Marital Conflict Tactics. *Journal of Financial Therapy*, 2 (1) 7.

generations. Given that the Qur'an characterizes marital relationships as loving and compassionate, how can one apply verse 4:34 in a manner that is most conducive to fostering marital love?

The famous early Makkan jurist and Qur'anic exegete 'Aṭā' ibn Abī Rabāḥ (d. 114 AH) said about verse 4:34, "A man does not strike his wife, rather he may only show his anger."⁵² This is a very clear, unequivocal, and explicit pronouncement against domestic violence. It turns out 'Aṭā' is the same one who narrated from his teacher 'Abd-Allah ibn 'Abbās the latter's statement that this verse is to be implemented with only a *siwāk* (small twig used as a toothbrush) or its like; i.e., something that cannot cause pain.⁵³ 'Aṭā' must have understood by this that Ibn 'Abbās disdained any suggestion of physical violence, and interpreted the verse to be talking about a purely symbolic gesture (*ramziya*) aimed at conveying the gravity of the situation and laying out conclusively that the marital relationship cannot continue under such circumstances.⁵⁴

In other words, the Qur'anic passage, based on the understanding of 'Aṭā', would be essentially advising one to "convey the gravity of the situation to avoid the termination of the family," "seek the final means of preserving or ending the relationship," "emphasize the consequences," etc. This follows from the Prophet's صلى الله عليه وسلم own conduct with his wives.⁵⁵ This approach does not represent a departure

⁵² Abu Ishāq Al-Jahḍamī (d.282H), *Aḥkām al-Qur'ān*, (Beirut: Dar Ibn Hazm 2005), 113. This is recorded with *isnād* (chain of transmission) from al-Jahḍamī to 'Aṭā' ibn Abī Rabāḥ. The earliest source and the *isnad* are mentioned to note an error in two of the reasons used to dismiss Ataa's opinion by some. See Gabriel Al-Romaani, "Domestic Violence: Critique of some modern opinions on Qur'an 4:34". ICRAA.org. <http://icraa.org/domestic-violence-critique-of-some-modern-opinions-on-quran-434/>.

⁵³ According to Ibn Uthaymeen (d.1421H), it is something that "cannot cause pain or hurt" (*la yuhasul bihi al-alam wa-l-adhā*). Such a gesture could not even be termed "beating" in the English language. *Al-Liqā al-Shahrī* #21. <http://audio.islamweb.net/audio/Fulltxt.php?audioid=112236>

⁵⁴ Ibn 'Āshūr provides an interpretation wherein the final instruction in the verse is speaking to the legal authorities and not husbands and he opines that this was the interpretation adopted by 'Aṭā' (*wa bi-hadha al-ta'wīl akhadha 'Aṭā'*) which led 'Aṭā' to state that a man is not to hit his wife. According to Ibn 'Āshūr, other scholars alluded to by Ibn al-Faras al-Gharnāṭī, agreed with this way of reading the verse. Ibn 'Āshūr, *Tahrīr wa-l-Tanwīr* (Tunisia: Dar al-Tunisiyyah 1984) 5:43. Another aspect of 'Aṭā''s statement is how it relates to his narrating Ibn Abbās's comment on the *siwāk*. According to Abdul Hamid AbuSulayman ("*Darb al-Mar'a*", 2010, p. 18), there is a clear difference between taking the verse as referring to a gesture that is purely symbolic as indicated by Ibn Abbas's statement versus hitting with intent to discipline. The value of 'Aṭā''s statement is fully appreciated when interpreted as an explanation of Ibn Abbās's comment.

⁵⁵ *Sahih Muslim*, 1479a.

from the Prophetic tradition, but the purest return to it. It follows that the Qur’anic verse cannot be understood to permit a man to physically abuse his wife or harm her in any way, particularly given that the Prophet ﷺ cursed the man who hit his wife, the Prophet’s wife praised his example of being someone who never hit, and the Qur’an seeks for marriages to be filled with love and mercy—the clear antithesis of physical abuse.

Myth 2: Women cannot divorce

Marriage is one of the most important institutions in Islam and it serves as a primary source for stability and harmony. In its most basic form, it is a legal contract between two individuals committed to fulfilling each other’s rights and responsibilities.⁵⁶ It should not, however, come as a surprise that Islam seeks to avoid divorce; one tradition even describes it as the most hated of permissible acts to God.⁵⁷ The words of the Prophet ﷺ serve to emphasize the significance of healthy marriages; that said, once a marriage is threatened by any number of factors (e.g., impotency, domestic abuse), Islamic law provides recourse for either spouse to seek a divorce. Any desire to terminate this contract, however, requires explicit procedures.⁵⁸

There are multiple types of legal divorce in Islam. The most common is known as *ṭalāq*, which is derived from the root letters in Arabic *ṭ-l-q* that literally mean to absolve a person from a responsibility (i.e., the obligations of marriage). Initiating this type of divorce is limited to the husband and can lead to immediate dissolution of the marriage.⁵⁹ Although a woman does not have the unilateral right to divorce, the four main Sunnī schools of law recognized the possibility for a husband to delegate the power of initiating divorce to his wife, in what is known as *ṭalāq al-tafwīḍ*.⁶⁰ For example, the Hanafī school of law maintains that a woman can

⁵⁶ John L. Esposito, *Women in Muslim Family Law* (Syracuse, N.Y.: Syracuse University Press, 2001), p. 29.

⁵⁷ *Sunan Abi Dawud*, 2178. Declared weak (*da‘īf*) by al-Albani.

⁵⁸ Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), p. 109.

⁵⁹ Esposito, p. 30.

⁶⁰ Judith Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), p. 91.

stipulate in her marriage contract the right to divorce (*anna amrahā bi-yadihā*).⁶¹ Similarly, the Mālikis allow the wife to condition a right to divorce in the event that her husband harms her, marries another wife, or engages in a specific action that the wife stipulated against.⁶²

Talāq, despite it being the right of the husband, is not always his easiest option. In fact, it often entails extensive financial burdens, ironically revealing the deeper rights intended for women. Upon divorce, for example, women are not only entitled to financial maintenance until the end of their waiting period (which can last up to a few years if they are pregnant and/or breastfeeding), but also their stipulated deferred dowry as well as a suitable gift (*mut'ah*). Furthermore, a husband who is also a father is required to pay the expenses of his children, no matter who receives custody.⁶³

Another category of divorce is that of *tafrīq* or *faskh*: dissolution of the marriage through a judicial process.⁶⁴ In other words, the wife, or her blood relatives, could complain of her situation to a judge, who could then grant her a divorce without the consent of her husband. There are a number of valid reasons for a wife to seek a judicial annulment of her marriage. The Malikis, for example, categorized a handful of causes such as “her husband's cruelty, refusal or inability to maintain her, desertion, or serious disease or ailment that would make a continuance of the marriage harmful to the wife.”⁶⁵ If any of these reasons were met, the judge could issue a divorce and preserve the rights of the wife in the process (i.e., she could keep her dower and the husband was required to maintain her living expenses until her waiting period ended).⁶⁶

In the event that the wife desires to leave her husband for reasons not deemed extenuating circumstances by the schools of law, she has the right to a *khul'*

⁶¹ Wahba al-Zuhaylī, *al-Fiqh al-islāmī wa-adillatuhu*, 8 vols. (Damascus: Dār al-Fikr, 1985), 7:54.

⁶² al-Zuhaylī, 7:56.

⁶³ The exception is in the Maliki school, which does not obligate husbands to pay for their children's expenses in the custody of a wealthy mother.

⁶⁴ Esposito, 34.

⁶⁵ Esposito, 35.

⁶⁶ Tucker, *Women*, 95.

divorce, defined by jurists as the wife's ability to leave the marriage in exchange for compensation to her husband—often equal to the dower her husband paid her at the commencement of or throughout their marriage.⁶⁷ This is based on a *hadith* of the Prophet ﷺ in which Jamilah bint Abdallah, the wife of Thabit ibn Qays, approached the Messenger seeking to be divorced from her husband on grounds not related to his morality or religiosity; on the contrary, she was concerned for her own morality if she remained in her marriage, perhaps since she may not have found her husband attractive and would therefore be tempted by impermissible means to fulfill her desires.⁶⁸ The Prophet ﷺ then suggested to Jamilah to return her "garden" (i.e., dower) in exchange for her divorce, which he then told Thabit to accept.

Although many jurists contended that a judge was not required for this form of separation, scholars like the Mālikī Ibn Ishaq warned judges to be wary of false *khul'* proceedings in which a wife was coerced into *khul'* so the husband did not have to complete his payments in maintaining her and would demand she repay the dower he had formerly given her.⁶⁹ On such occasions, if a woman took her case to court and demonstrated her husband's coercion and harm in the process, the judge could force the husband to give back everything he took from her.⁷⁰ Despite these occasional stratagems, women throughout the Ottoman Empire⁷¹ were well aware of the workings of the law and knew precisely the measures needed when seeking a divorce or obtaining their rights. *Khul'* divorces were very commonplace, constituting the majority form of divorce throughout the Mamluk Empire and continuing on throughout Ottoman society.⁷²

⁶⁷ Ibid.

⁶⁸ Ibid., 96.

⁶⁹ Ibid., p. 100.

⁷⁰ Muḥammad al-Dasūqī, Aḥmad al-Dardīr, and al-Khalīl b. Ishāq al-Jundī, *Hāshiyat al-Dasūqī 'alā al-Sharḥ al-kabīr*, ed. Muḥammad 'Illīsh, 4 vols. (Cairo: Dār Iḥyā' al-Kutub al-'Arabīya, n.d.), 2:355-6; Muḥammad b. Aḥmad b. Muḥammad Ibn Rusḥd al-Ḥafīd, *Bidāyat al-mujtahid*, ed. Muḥammad Ṣubḥī Ḥasan Ḥallāq, 4 vols. (Cairo: Maktabat Ibn Taymīya, 1995), 3:133.

⁷¹ This does not mean that women throughout other empires or eras were not active in asserting their rights; rather, the Ottoman Empire was among the first in instituting official measures for notaries and recordings of court proceedings.

⁷² Tucker, *Women*, p. 109. The author here notes that this is the apparent trend only, since *talāq* divorces were not required to be recorded in court, and thus, cannot be measured against the number of *khul'* divorces recorded.

Given all of this, it would be naive to ignore the fact that *ṭalāq* grants husbands the unquestionable authority to divorce their wives at will and has hence largely been considered to privilege men. Yet, Islamic courts and the judges and *muftis* who headed them were not blind to this; in fact, they regulated this unlimited authority by increasing responsibilities for the husband to fulfill and consequently more ways for women to seek recourse.⁷³ Mālikī scholars, for example, argued that it is the wife's right that her husband treat her kindly. Thus, if he intentionally ignores her or "turns his head away from her in bed" for no reason and she feels harmed by his treatment, then she can request a divorce.⁷⁴ Moreover, in the case of annulling a marriage on the basis of genital defects (e.g., impotency, castration) or a serious ailment like insanity or leprosy, Ḥanafī scholars limited this right to wives alone by explicitly acknowledging that husbands have recourse to *ṭalāq*.⁷⁵ Put differently, since the husband has unilateral authority to *ṭalāq*, he is not given the right to annul the marriage and hence must pay the full dower if he desires to end the marriage. In this way, jurists afforded the wife unique opportunities to withdraw from the marriage.⁷⁶

In other words, judges proactively sought to protect the rights of women in their practice and interpretation of the jurisprudential texts. Of course, the way the texts are applied by judges in day-to-day life is not typically apparent to the average reader. During the early 20th century, the laws of various Muslim-majority lands underwent waves of reform, especially in areas of family law. For instance, in both the Ottoman Empire and later in nation-states like Egypt, reform in legislation entailed expanding the list of reasons for women to seek a judicial divorce to include other situations such as injury or imprisonment of the husband.⁷⁷

⁷³ Tucker, *In the House of Family Law*, p. 80.

⁷⁴ Al-Dasūqī in al-Dasūqī, et al., *Ḥāshiyat al-Dasūqī*, 2:345.

⁷⁵ Abū Bakr b. Mas'ūd al-Kāsānī, *Badā' i ' al-ṣanā' i ' fī tartīb al-sharā' i'*, ed. 'Alī Muḥammad Mu'awwaḍ and 'Ādil Aḥmad 'Abd al-Mawjūd, 10 vols. (Beirut: Dār al-Kutub al-'Ilmīya, 2003), 3:597.

⁷⁶ Based on her analysis of various court records throughout the Ottoman Empire, historian Judith Tucker was able to conclude, "Legal discourse did not reverse the strongly gendered character and male bias of Islamic legal precedent on divorce, but it did work to soften this bias by defining female rights and strictly regulating divorce procedures." Tucker, *In the House of Family Law*, p. 81. This illustrates that even those who may perceive a male bias in the letter of the law concede that this was mitigated in practice by the way Islamic legal discourse guided judicial proceedings.

⁷⁷ Esposito, 53; Azizah al-Hibri and Hadia Mubarak, "Marriage and Divorce," *The Oxford Encyclopedia of the Islamic World*.

Furthermore, a number of countries, such as Algeria, Malaysia, and Somalia not only obligated a man to certify his pronouncement of divorce through notarization but also required the couple to undergo arbitration before finalizing the divorce, thereby biasing the process towards reconciliation.⁷⁸ In many ways, these developments ended up attempting to capture in the form of legislation some of the ideals that had always been a practiced reality in the way that judges historically enacted the law.

Myth 3: A woman’s testimony is worth only half a man’s

One of the most common criticisms of Islam’s treatment of women stems from a verse in the Qur'an that requires two female witnesses to testify in the place of one male witness:

You who believe, when you contract a debt for a stated term, put it down in writing...Call in two men as witnesses. If two men are not there, then call one man and two women out of those you approve as witnesses, so that if one of the two women should forget [or err]⁷⁹ the other can remind her.⁸⁰

A literal reading of this verse can lead one to assume that women are generally more likely to err than men; accordingly, the testimony of a woman would be *de facto* half of a man's.⁸¹ Some premodern Qur'anic exegetes like Fakhr al-Din al-Razi (d. 606 H) explained this verse by asserting the biological or psychological inferiority of women. It is crucial to note, however, that the exegetes who made such assertions about the inherent deficiencies in women’s biology drew upon Ancient Greek physiology to substantiate their argument, rather than any scriptural quotes from Qur'an or *hadith* that speak on the physiological constitutions of women versus men. Thus, Al-Rāzī states, concerning 2: 282, “And the meaning is that forgetfulness predominates in the physiology of women due to the abundance

⁷⁸ al-Hibri and Mubarak, "Marriage and Divorce."

⁷⁹ “*an taḍillāh*” is often translated as forget or err depending on the English text.

⁸⁰ Verse 2: 282. Translation based on M.A.S. Abdel Haleem, *The Qur'an* (Oxford: Oxford University Press, 2008).

⁸¹ Mohammad Fadel, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought," *International Journal of Middle East Studies* 29, 2 (1997), 187.

of moisture and coldness in their physical constitutions.”⁸² But it was Hippocrates (d. 377 BC) who concocted this notion, arguing that the female body contains excessive moisture and coldness (and menses being the time that excess moisture was expelled), while the male body is relatively healthier and superior due to heat and dryness.⁸³

Other scholars have cast aside Hellenistic physiology as a suitable backdrop to Qur’anic exegesis and have argued that the requirement of two women to one man was not a result of an ontological difference between genders. Rather, it was the fact that in most societies, women were not involved in the conventional economic sphere; thus, since a woman was most likely unfamiliar with contracts, another woman should testify as well to reinforce her statement.⁸⁴ Others have noted that this also protected women from being pressured or coerced by wealthy male relatives to testify in their favor, and provided a source of support and reinforcement so that a woman’s testimony would not make her a target of either party in a financial dispute.⁸⁵ Scholars determined that the substitution of two women for a man is not universal, but was only intended to be applied in certain areas of law, while in other areas of law female testimony may even be deemed superior to male testimony, in matters familiar to women (*fi ma la yaṭṭali ‘u ‘alayhi illa al-nisā*).⁸⁶ And the requirement for two women in testimony was not applied universally in financial matters either; Mu’awiyah passed a judgment concerning

⁸²Fakhr al-Din al-Razi. *Mafatih al-Ghayb* verse 2:282. The Arabic reads:

أَنْ تَضِلَّ إِخْدَاهُمَا فَتُذَكَّرَ إِخْدَاهُمَا □ لِأَخْرَى { والمعنى أن النسيان غالب طباع النساء لكثرة البرد والرطوبة في أمزجتهن. The invocation of such Hellenistic physiology in deliberations about women’s nature is widespread in the classical tradition of Muslim scholars, encountered for instance from Abu’l-Layth al-Samarqandi (d. 375 H) in Transoxania (*Bahr al-‘Ulum* exegesis of 4:34) to Abu Abdullah al-Qurtubi (d. 671 H) in Cordova (*Jami’ li-Ahkam al-Qur’an* exegesis of 4:34). Muslims seeking to ground Islamic orthodoxy in the tradition must distinguish between a commitment to those elements of the tradition that emerged from Hellenistic thought versus a commitment to those fundamentals of their tradition that are derived unequivocally from the sacred texts of the Qur’an and the *Sunnah*.

⁸³ Jean-Baptiste Bonnard, *Male and Female Bodies according to Ancient Greek Physicians*, translated by Lillian E. Doherty and Violaine Sebillotte Cuchet. *Clio* 1, n. 37 (2013): 21-39.

⁸⁴ Ahlam Muhammad Ighbariyah. *Shahadat al-Nisa: Dirasah Fiqhiyyah, Qanuniyah Muqaarinah*, Masters Dissertation, Hebron University 2010. pp. 210-211. See also Ahmad M. al-Maraghi, *Tafsir al-Maraghi*, (Egypt 1946), vol. 3, p. 71.

⁸⁵ Saleha Fatima and Muhammad H. Lakhmi. “The Authenticity of Women’s Witness in Islam: A Study in the Light of al-Qur’an.” University of the Punjab. *Al-Qalam* vol 20, issue 2. December, 2015. p.13.

⁸⁶ Ighbariyah, A. *Shahadat al-Nisa* (2010). Op cit. pp. 94-95.

housing based on the sole testimony of Umm Salamah, without requiring any corroboration.⁸⁷

Moreover, when it came to narrating the words of the Prophet ﷺ and contributing to the *hadith* corpus that would become the second major source of Islamic law after the Qur'an, there was no distinction whatsoever between men and women. There were simply two qualifications—not necessarily easy to fulfill—that were required for any narrator to be a transmitter of *hadith*: *'adālah*, integrity, and *ḍabt*, reliability in memory.⁸⁸ This fact has gone undisputed within Islamic scholarship from its inception, so it comes as no surprise that the wife of the Prophet ﷺ, Aisha, was among the top five narrators of *hadith*. Or the fact that Akram al-Nadwī has recorded the names and stories of over eight thousand women who not only studied and transmitted *hadith*, but were the teachers of some of the most influential male scholars in Muslim history.⁸⁹

This all being said, nevertheless, it must be taken into consideration that scholars made a distinction between testimony (*shahāda*) and narration (*riwāya*), thereby justifying the need for two women to one man in cases of testimony but not narration.⁹⁰ Although both categories are reports, for example, Imām al-Qarāfi distinguished testimony as impacting the rights of other individuals, whereas a narration refers to a general matter or statement that would only affect the person narrating.⁹¹ In other words, witnessing a transaction of a debt will directly affect the debtor and debtee while reporting a *hadith* does not have a direct effect on the rights of other individuals.

⁸⁷ Ibn al-Qayyim, *Al-Turuq al-Hukmiyyah* (Makkah: Dar 'Alam al-Fawa'id, 2007), p. 415.

⁸⁸ Mohammad Akram Nadwi, *al-Muhaddithat: The Women Scholars in Islam* (Oxford: Interface Publications, 2007), p. 18.

⁸⁹ Men like Urwah ibn al-Zubayr testified that Aisha was the most knowledgeable scholar amongst all the companions, and in many cases she contradicted and corrected the *hadith* of other companions like Abu Hurayrah or Ibn Umar, and no jurist in the history of Islam ever claimed that her testimony was less than theirs because she was a woman. Imam al-Shawkani (d. 1250 H) attests to this in his writings.

⁹⁰ Nadwi, p. 20.

⁹¹ Nadwi, p. 21; Fadel, p. 189.

Mohammed Fadel explains this binary as “political” and “normative” discourse.⁹² The former usually takes place in a courtroom and results in immediate consequences for the plaintiff or defendant, and is hence political. “Normative discourse, on the other hand, if admitted, establishes a universal norm or fact, but only *potentially* affects tangible interests.”⁹³ These are important distinctions made by scholars because they generated different criteria for determining who was eligible to be a witness versus a narrator.⁹⁴ As discussed above, in *hadith* transmission, the normative discourse was unanimously gender-neutral as long as the narrator met the requirements for integrity and soundness. Included in this sphere was also interpreting revelation (e.g., Qur'anic exegesis) and issuing *fatwas* (legal opinions), activities in which both men and women engaged.⁹⁵ Thus, the various debates on female witnesses are limited to the political (judicial) realm.

Although a number of historical scholars claimed “that women were inherently less reliable than men,” it was very difficult to make this claim on epistemological grounds. Al-Qarāfī, for example, attempted to argue that two women were required in lieu of one man because they were “deficient in reason and intellect.”⁹⁶ Ibn al-Shatt, the commentator on al-Qarāfī's text, however, pointed out that this could not hold true because if this premise was accepted, then women could not be reliable narrators of *hadith*. Fadel demonstrates that many scholars, including the likes of the Maliki jurist al-Qarāfī and the Hanafī jurist al-Ṭarābulṣī, (d. 844 H) could not argue the need for two women on the basis of an inherent deficiency; rather, they fell back on sociological arguments, such as the difficulty of women attending court proceedings to testify or their lack of involvement in social and political affairs that would preclude them serving as reliable witnesses.⁹⁷ On the other hand, when it came to legal testimony that was relegated to the private domain (e.g., birth), the testimony of one woman was equal to, and often more worthy than, the testimony of one man since there was no doubt that a woman was

⁹² Fadel, p. 188.

⁹³ Ibid.

⁹⁴ Fadel, p. 189.

⁹⁵ Fadel, p. 190.

⁹⁶ Fadel, 192. For a more detailed discussion on the *hadith* that this phrase is referring to, see Abu Amina Elias, [“Are women deficient in intelligence and religion in Islam?”](#)

⁹⁷ Fadel, pp. 193-6.

more experienced in that arena.⁹⁸ Ibn Qudamah (d. 620 H), in his most famous compendium on Islamic jurisprudence *al-Mughnī*, explained that in matters of nursing, childbirth, menstruation, chastity, and physical defects a single female witness is accepted.

Not all scholars, however, insisted on the political and normative dichotomy, nor the public versus private realms. Hanbalite scholars Ibn Taymiyyah and Ibn al-Qayyim rejected these categorizations and argued that if either (testimony or narration) were to be more important, narrating a *hadith* would require more care because it deals with the words and actions of our beloved Prophet ﷺ.⁹⁹ Thus, since a woman's transmission of *hadith* is to be accepted, if a woman could prove herself to be credible in testifying in other areas—deemed political and impenetrable to women by other scholars—then her testimony should be accepted. The verse requiring two women for contracts, on the other hand, was referring to specific testimonies dealing with future disputes and had no effect on former disputes or on serving as a witness before a judge.¹⁰⁰ For this reason, Ibn al-Qayyim comments on the verse as follows:

There is no doubt that the reason for a plurality [of women in the Qur'anic verse] is [only] in recording testimony. However, when a woman is intelligent and remembers and is trustworthy in her religion, then the purpose [of testimony] is attained through her statement just as it is in her transmissions [in] religious [contexts].¹⁰¹

Ibn al-Qayyim also notes that the degree of certainty that would be attained through the legal testimony of eminent Muslim women, such as Umm Attiyah and Umm Salamah and their likes, if they were to serve as witnesses in a dispute,

⁹⁸ Fadel, p. 194.

⁹⁹ Fadel, p. 197.

¹⁰⁰ There is a distinction in Islamic law between becoming a witness (*taḥammul al-shahādah*) versus testifying as a witness (*adā' al-shahādah*). Verse 2:282 describes the former (i.e., calling on people to bear witness to a financial transaction), but does not focus on how the judge deals with their testimonies later when they actually testify in court.

¹⁰¹ Fadel, p. 197; Ibn al-Qayyim, *I'lām al-muwaqqā'īn*, 3 vols., ed. Ṭāhā 'Abd al-Ra'ūf Sa'd (Beirut: Dār al-Jīl, n.d.), 1:95.

would be greater than any ordinary man.¹⁰² It should also be noted that Islam encourages taking into consideration empirical evidence,¹⁰³ and data in the field of memory studies have demonstrated that neither gender is categorically superior in memory, but rather there are subtle differences in the way men and women remember information. Elizabeth Loftus writes in her seminal paper on the subject of gender differences in memory,

*The results were clear-cut. Males were more accurate and less suggestible about the male-oriented items while females were more accurate and less suggestible about the female-oriented items. This finding provided clear support for the hypothesis that females and males tend to be accurate on different types of items, perhaps indicating their differential interest in particular items and corresponding differential amounts of attention paid to those items.*¹⁰⁴

Interestingly, this is precisely what is observed in the Qur’anic exegesis *Tafsīr al-Manar* on the subject of the Qur’anic verse in question: “It is from the nature of the human being (*tab‘ al-bashar*), whether male or female, that their memory will be stronger for matters that are of importance to them and with which they are more abundantly involved.”¹⁰⁵ Thus, the author explains that in light of the prevailing norms of men being involved in financial transactions and women in domestic affairs, the Qur’an delineated its recommendations accordingly, based on differences in the habitual activities of each gender.

¹⁰² Ibn al-Qayyim, *Al-Turuq al-Hukmiyyah* (Makkah: Dar ‘Ālam al-Fawā’id, 2007), p. 430.

¹⁰³ See for instance, Ja’far Sheikh Idris. *Haqa’iq ‘Ulum al-Tajribiyyah...Haqa’iq Shar’iyyah*. November 12, 2012. Majallah al-Bayan no. 149. [Available online](#). Among the evidences the author cites is the *hadith* in which Prophet Muhammad ﷺ did not prohibit intercourse with breastfeeding women (*al-Ghīlah*) after noting that it was practiced by Romans and Persians without any ill effects to infants conceived as a result (*Jami’ al-Tirmidhi* 2221). The author precedes this with the comment, “There is a *hadith* which demonstrates the Prophet utilised as evidence empirical matters (*haqa’iq al-waqi’iyah*) in ascertaining religious rulings (*al-masa’il al-shar’iyyah*).”

¹⁰⁴ Loftus, E. F., Banaji, M. R., Schooler, J. W., & Foster, R. (1987). Who remembers what? Gender differences in memory. *Michigan Quarterly Review*, 26, p. 79. Other research has noted that women generally have advantages in short term memory, working memory, facial memory, while men excel in visuospatial memory. *Encyclopedia of Human Memory*. Ed. Annette Kujawski Taylor. (Greenwood 2013). p. 509.

¹⁰⁵ Rashid Rida. *Tafsir al-Manar*. 12 vols. (Beirut: Dar al-Ma’rifah), vol. 3, p. 124-5.

Some contemporary scholars have argued that when sociocultural circumstances differ and a woman's daily activities and practices change, her testimony would be equivalent to a man in all legal proceedings.¹⁰⁶ This argument goes back to the question of what is the underlying *ratio legis* (*'illah*) of the gender distinction in verse 2:282? Does the verse mention having two women because there is a universal ontological or biological difference in the capacity of men and women that significantly disadvantages the latter? Such a view is not empirically tenable and is refuted by the gender equality in *riwayah*. Or is the *ratio legis* a sociological distinction based on prevailing economic circumstances which may or may not be effective in various societies today? It is claimed by some contemporary scholars that jurists like Ibn Taymiyyah and Ibn al-Qayyim understood that the *ratio legis* was, in fact, the prevailing customs.¹⁰⁷ Accordingly, the verse was making a pragmatic distinction for the community and the explicit objective of the verse is the establishment of justice. Of course, part of this debate is a moot point since, as Mahmud Shaltūt (d. 1383 H) observes, the verse does not stipulate a judicial requirement but merely a recommended personal practice for individuals seeking to document their financial transactions more reliably.¹⁰⁸ Indeed, this very verse is cited as a textbook example of a scenario in which the imperative verb is meant simply as a recommended advice for worldly affairs (*irshād*).¹⁰⁹ The precise manner in which such recommendations are best enacted in diverse scenarios today with digital receipts for every transaction is an ongoing discussion for contemporary jurists and scholars and not the aim of this paper. Nonetheless, given

¹⁰⁶ Gomaa, Ali. *Al-Musawiya al-Insaniya fi'l Islam bayna Nadhariyya wal-Tatbeeq*. (Cairo: Dar al-Ma'arif, nd), 57. Arabic: (لكن إذا تطورت خبراتها وممارساتها وعاداتها، كانت شهادتها حتى في الإشهاد على حفظ الحقوق والديون مساوية لشهادة الرجل). [Available Online](#).

¹⁰⁷ Ibid. Gomaa writes, "The legal basis (*'illah*) that Ibn Taymiyyah provided for the wisdom of why the testimony of two women equals the testimony of one man is that a woman is not one who normally undertakes meetings relates to these types of transactions, but if her experiences, practices and customs changed, her testimony would equal that of a man even in matters of preserving legal rights and [matters of] financial debts." The source of Gomaa's argument appears to be the following passage in which Ibn al-Qayyim cites Ibn Taymiyyah as saying "So that which is from testimonies [of women] in which there is no fear of erring in routine practice (*fi'l-'ādah*), they are not considered as half of a man." See Ibn al-Qayyim, *al-Turuq al-hukmiyyah*, (Mecca: Dar 'Ālam al-Fawā'id 1428H), 400. However, one should note that Ibn Taymiyyah says this in the context of explaining why the witness of a sole woman is sufficient in matters like testifying about childbirth, breastfeeding, menstruation, etc. Hence Gomaa's argument should be seen as his own derivation and not the position of Ibn Taymiyyah himself.

¹⁰⁸ Gomaa, 58. In his exegesis, *Maḥāṭib al-Ghayb*, Al-Rāzī notes that in practice this is the *ijmā'* of the Muslims despite isolated viewpoints from Ibrahim al-Nakha'ī and Ibn Jarīr al-Ṭabarī to the contrary.

¹⁰⁹ Al-Zarkashī, Badr al-Dīn Muḥammad b. 'Abd Allah, al-Baḥr al-Muḥīṭ. 'Abd al-Qādir 'Abd Allah al-'Ānī (ed.), (Kuwait: Ministry of Endowments and Islamic Affairs 1992), 2:357.

the foregoing discussion clarifying the intent of the verse and the abundance of information on women's testimony in *hadith*, the aforementioned points make clear that regardless of what scholars have deemed to be the proper application of those rulings in our times, they have nothing to do with women being less trustworthy than men.

Myth 4: Inheritance laws favor men over women

The Qu'ran, in Surah 4 Verse 7, states: "Men shall have a share of what their parents and closest relatives leave, and women shall have a share of what their parents and closest relatives leave, whether the legacy be small or large: this is ordained by God." Al-Wāhidī (d. 468 H), in his Qur'anic exegesis, explains that this verse was revealed to address the situation of a widow whose daughters were left destitute by her husband's male heirs.¹¹⁰ The verse thus establishes the legal entitlement of both men and women to inheritance since material maintenance is a legally protected right in Islam. It is notable that Islam's declaration of inheritance for women preceded the Western world by a millenium, where "until the end of the sixteenth century, women were basically denied the right to inherit property."¹¹¹

A few verses later, in Surah 4 Verse 11, the apportioning of the inheritance is laid out whereby male children are stipulated to receive more of their parents' estate than daughters, which may on first read seem unfair and discriminatory. However, crucial to understanding the application of inheritance law in Islam is the system in which it occurs; i.e., within the larger system of Islamic finance. The piecemeal application of certain practices without an understanding of the larger picture and/or context and application may give the impression that Islamic inheritance law is unfair towards women. This, however, would be a hasty conclusion. Men receive greater shares of the inheritance in a system in which they function as the provider for the family, and in which a wife is entitled to the entirety of both her own wealth and husband's wealth and a husband is entitled only to his own. This was the opinion of scholars such as Ibn Kathīr, who justified the discrepancy of

¹¹⁰ Al-Wāhidī, *Asbāb Nuzūl al-Qur'ān* (Beirut: Dar Al-Kutub al-Ilmiyyah 1991), p.150.

¹¹¹ Mary F. Radford, *The Inheritance Rights of Women Under Jewish and Islamic Law*, 23 B.C. *Int'l & Comp. L. Rev.* 135 (2000), p. 135.

inheritance between daughters and sons by this larger context of financial responsibilities.¹¹²

Moreover, a careful reading of the full breadth of Islamic inheritance rulings rebuts the notion that the rulings privilege men. While women inherit less than men in four situations, they inherit more than men in 16 situations, and equal to men in 10 situations.¹¹³ Situations in which a woman receives more inheritance than a man include the case of a woman who dies leaving behind only a husband—in this case, the sisters of the mother of the deceased receive portions of the inheritance whereas the brothers of her father do not.¹¹⁴ In other instances, such as some cases of a mother and father inheriting the wealth of their deceased child who has few siblings, both male and female receive equal shares. The same applies to instances of *kalalatan*, when one dies without any parents or children. In this case, siblings of the same mother are entitled to a share of a third of their deceased sibling's estate, divided equally irrespective of gender.¹¹⁵

All instances in which there is a discrepancy between male and female heirs arise either due to a difference in proximity or rank of one's relationship to the deceased, or based on one's responsibility to financially provide for another.¹¹⁶ Given the larger system of financial responsibilities, the distribution of wealth was intended to equalize all recipients amongst the deceased's family. All of Islam's rulings must be understood as interconnected, where a woman has the legal right to be provided for.

A frequent objection to the son-daughter inheritance discrepancy in 4:11 would be that this “one-size-fits-all” approach does not cater to circumstances in which women do not have the benefit of a male breadwinner, or have more dependents, or extenuating financial circumstances that would warrant a greater portion of

¹¹² Ibid., p. 193.

¹¹³ Salah Soltan, *Woman's Inheritance in Islam: Discrimination or Justice?*, trans. Gihan ElGindy (Hilliard: Sultan Publisher, 2004), p. 39.

¹¹⁴ International Islamic Fiqh Academy. Jurisprudential leaflet on the divine justice on women and men's inheritance in Islamic Sharia. Prepared by Rashid Al Baloushi & Mohamed Albashir. Available online: http://www.oic-iphrc.org/en/data/docs/articles_studies/jurisprudential_leaflet_divine_justice_women_inheritance_islam_en.pdf

¹¹⁵ Nasr, Seyyid Hossein (ed.), *The Study Qur'an* (NY: HarperOne, 2015), p. 194.

¹¹⁶ International Islamic Fiqh Academy, Op. Cit. p .65.

inheritance. It is important to recognize that Islamic law has the capacity to account for unique financial circumstances as well, through a variety of other mechanisms. One topic that has received considerable discussion in Islamic jurisprudence is the concept of the *wasiyya* (bequest). Prior to the regulations of Islamic inheritance being revealed, a person had the option to designate their inheritance to any family member based on verse 2:180. However following the revelation of the fixed shares in verse 4:11, a person was only allowed to designate up to one-third of the total estate as a bequest to be given to anyone whom they chose—except if that person is already designated a share in the Qur’an. This sole condition is expressed by the Prophet Muhammad ﷺ, “There is to be no *waṣīyya* given to an heir, except if the other heirs agree to it.”¹¹⁷ Thus, according to the vast majority of scholars (including Mālik, Shāfi‘ī, Abū Ḥanifah, Aḥmad ibn Ḥanbal, Sufyān al-Thawrī, al-Awza‘ī, Abū Thawr, and Ishāq ibn Rāhawayh) it would be acceptable for the deceased to designate up to one-third of the entire estate for a female heir in addition to her fixed share, provided the remaining heirs consent.¹¹⁸ If some of them consent but not all, the bequest would only be taken from those who consented.

Moreover, it is entirely acceptable for up to one-third of the entire estate to be designated to non-heirs (such as one’s grandchildren) irrespective of whether the heirs approve or not.¹¹⁹ Thus, an individual whose son may not need as much money as his daughter (let’s say she is a single mother with many children while he is well off) has the ability to designate a portion of his estate to the children of his daughter. This provides ample room within the framework of normative Islamic law to accommodate unique and exceptional cases without the need for any revision or reinterpretation.

Discussions about Islamic laws of inheritance in the public arena and in major media outlets are often based on false caricatures and outright factual errors. For

¹¹⁷ *Sunan al-Dāraquṭnī* (4/97) and *Sunan al-Kubrā of al-Bayḥaqī* (6/263).

¹¹⁸ Ibn ‘Abd al-Barr, *Al-Tamhīd* (14/307). There is a minority of dissenting views with some scholars (from the four schools as well as the Dhahiris) unconditionally prohibiting any bequest to heirs (regardless of whether the other heirs consent) and others unconditionally permitting it. See *Kitab al-Farā’id wal-Mawarīth wal-Waṣāyā* of Dr. Muhammad al-Zuhayli (Damascus: Dar al-Kalim al-Tayyib 2001), pp. 440-5.

¹¹⁹ Ibn al-Mundhir (d. 318 H) notes an early consensus on this point (*al-Awsat fi al-Sunan wa-l-Ikhtilaf, Dar al-Kutub al-Ilmiyah*, vol. 4, p. 378).

instance, following the protests in Tunisia against Islamic inheritance, a recent *New York Times* article contained the following statement:

*In Muslim countries, laws governing inheritance are derived from verses in the Quran; men generally receive larger, sometimes double, the shares that women get. Distant male relatives can supersede wives, sisters and daughters, leaving women not just bereaved but also destitute.*¹²⁰

Unfortunately, this statement is patently false. By unanimous consensus of Muslim scholars and the explicit text of the Qur'an, wives and daughters always inherit and can never be superseded by anyone, let alone a distant relative, while siblings (male and female alike) are only superseded by the deceased's descendants or father, but never a distant relative.

The rules around Islamic inheritance are deep and nuanced. In fact, the field of algebra was largely developed to address matters of inheritance in Islam given the complexity of the topic, as seen in the case of the work *Tanbīh al-Albāb* by the great mathematician Ibn al-Banna' al-Marrakūshī (d. 721 H). How and to whom inheritance is allocated is a complicated science, involving complex linear equations and laws of recompense. The blanket belief that women are inherently entitled to less inheritance than men is a superficial understanding of both larger Islamic law and its application to socio-economic realities.

Professor Almaric Rumsey, a 19th-century professor of law at King's College in London who studied the Islamic inheritance system extensively, wrote:

The Moohummudan [sic] law of inheritance comprises, beyond question, the most refined and elaborate system of rules for the devolution of property that is known to the civilized world, and its beauty and symmetry are such that it is worthy to be studied, not only by lawyers with a view to its practical

¹²⁰ Lindsey, Ursula. Can Muslim Feminism Find a Third Way? The New York Times. April 11, 2018. <https://www.nytimes.com/2018/04/11/opinion/islam-feminism-third-way.html>

*application, but for its own sake, and by those who have no other object in view than their intellectual culture and gratification.*¹²¹

Myth 5: Muslim men oppress women through polygamy

Polygamy is a practice that predates Islam and was prevalent in pre-Islamic Arabia. The practice of men taking more than one wife, or polygyny, was a widespread cultural norm of early Arab societies which Islam was first to regulate. The Qur'an's mention of this occurs once, in Surah 4, Verse 3: "And if you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; But if you fear that you shall not be able to deal justly (with them), then only one, or that which your right hands possess. That will be more suitable, to prevent you from doing injustice."¹²²

In this verse, the Qur'an neither establishes new permissions for polygyny nor encourages it, rather it sets limitations on its practice. In a society where there were no prior limits on how many women a man could simultaneously marry, the Qur'an's restriction to four wives was a means of regulating a societally entrenched practice in order to restore justice. Hence, it could be argued that by setting four as the maximum, the Qur'an imposed a restriction on men that was principally aimed at upholding the rights of women.¹²³ It is for this reason that premodern jurists did not consider the permission for polygyny to be in men's favor or about servicing male desires.¹²⁴

¹²¹ Almaric Rumsey, *Moohummudan Law of Inheritance and right and relations affecting it: Sunni Doctrine*, 3rd ed. (London: W.H. Allen, 1880) as cited in Alshankiti, Asma. A Doctrinal and Law and Economics Justification of the Treatment of Women in Islamic Inheritance Laws. Masters Thesis. 2012. University of Alberta, Edmonton, Canada.

¹²² Translation of Abdullah Yusuf Ali.

¹²³ Mashhour, Amira, "Islamic Law and Gender Equality: Could There be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt," *Human Rights Quarterly* (Volume 27: 2, May 2005), 568.

¹²⁴ Indeed, Ibn al-Qayyim argued that if one were to compare between what the Qur'an requires polygamous men to endure in terms of the toil, hardship, and consistency in simultaneously caring for all their wives and ensuring they are all equally content, and on the other hand compare what co-wives have to endure in terms of jealousy, one would find that polygamy—when practiced correctly—is actually a greater burden on men than women. See Ibn

Further, the Qur’anic exhortation to ‘marry only one’ is grounded in it being the most fair option to women and the preferred option as mentioned by classical jurists like Imam al-Shāfi‘ī (d. 204 H).¹²⁵ The jurists held that the verse restricted polygynous marriages, largely due to the difficulty of maintaining equal treatment towards all wives,¹²⁶ which is later mentioned in verse 129 of Surah 4. Here, the Qur’an states, “You will never be able to treat your wives with equal fairness, however much you may desire to do so, but do not ignore one wife altogether, leaving her suspended...” which is often understood to be in conjunction with verse 3. The argument goes: if the requirement of polygyny is equal and fair treatment between wives, and this cannot be perfectly achieved, then indirectly the Qur’an is stating that monogamy is preferred.¹²⁷

The Qur’anic verse furthermore makes a connection between justice towards wives and justice towards orphans. The Qur’an is replete with various mentions of duties towards orphans and commentary from classical jurists such as al-Ṭabarī, Ibn Kathīr, and al-Qurṭubī suggest this verse was meant to establish the rights of orphan girls at risk of abuse by their male guardians. This is grounded in a narration of ‘Ā’isha who, upon being asked to explain Surah 4 Verse 3, stated that “it was the custom of the Arabs who had under their custody beautiful and rich orphan girls to marry them without offering them their fair dower.”¹²⁸ By instructing men to marry women not in their custody, the verse was revealed to terminate the practice of taking advantage of orphans, making it compulsory that they have access to their fair dower or be left alone.¹²⁹ It did so as a concession in a society where polygyny was an accepted norm.

Al-Qayyim, *I’lām al-Muwaqqi’in*, (Riyadh: Dar Ibn al-Jawziyyah, 2003) vol. 3, p. 326. Of course, the comparative burden of men versus women is not measurable and for many women it could be far greater; the point of this quotation is solely to demonstrate that this ruling was not considered to favor men.

¹²⁵ Al-‘Imrani, Yahya Ibn Abi Khayr. *Al-Bayan fi Fiqh al-Imam Shafi’i*. (Jeddah: Dar al-Minhaj 2000) vol. 11, p. 189.

¹²⁶ Mushir Hosain Kidwai, *Women Under Different Social and Religious Laws: Buddhism, Judaism, Christianity, Islam*, 103 (1976).

¹²⁷ Rashid Rida. *Tafsir al-Manar*. 12 vols. (Beirut: Dar al-Ma’rifah), vol. 4, p. 349; Mashhour, Amira, “Islamic Law and Gender Equality,” 568.

¹²⁸ Souaiaia, Ahmed E, *From Transitory Status to Perpetual Sententiae: Rethinking polygamy in Islamic Traditions. Hawwa* (Volume 2: 3, 2004), 294.

¹²⁹ *Ibid.*, and Nasr, Seyyid Hossein (ed.), *The Study Qur’an* (NY: HarperOne, 2015), p. 190.

Other commentary has suggested that this verse was revealed in the context of war, after the Battle of Uhud, which saw many male casualties and thus many widows and orphans.¹³⁰ This provides an allusion to an initial *hikmah* (wisdom) behind the practice. The provision to allow polygyny may be viewed as a way to ensure that all women are capable of marrying, even in instances where women outnumber men. This was especially necessary in social situations where marriage was a means of both physical and material protection for women.¹³¹

Thus, by first placing restrictions on the number of wives a man could have and further establishing rules around their treatment, the Qur’anic verse regarding polygamy instituted rules intended to maintain fairness and equity towards women. Moreover, the Prophet Muhammad ﷺ clearly set a precedent in this regard. When asked why he did not marry a woman from the Ansar despite their beauty, the Prophet replied, “The women of the Ansar have a strong sense of jealousy and would not endure co-wives, while I am a man with multiple wives, so I would hate to do wrong to her people (the Ansar) by mistreating her.”¹³² In this narration, the Prophet demonstrated his concern for the feelings of women and his dislike for polygyny in situations where women would find such an arrangement intolerable. It is for this reason that a woman may stipulate in a marriage contract that her husband cannot take another wife, as Ibn Qudamah al-Maqdisi (d. 620 H) notes in *al-Mughni*, and it would then become binding upon him to comply with this condition (*fa-hadha yalzimuhu al-wafa’ laha bihi*), otherwise annulling the marriage.¹³³ In this sense, monogamy becomes a woman’s choice.

The inconsistencies in Western liberalism’s historic objections to polygamy have become evident with the emergence of increased advocates for ‘polyamorous relationships.’¹³⁴ According to a 2014 *Psychology Today* article, some estimate the number involved in polyamorous relationships in the United States to be as high as

¹³⁰ Mashhour, Amira, “Islamic Law and Gender Equality,” p. 569.

¹³¹ Ibid., p. 1793.

¹³² Ibn Sa’d, *Tabaqat Ibn Sa’d* (Cairo: Maktabat Khānjī, 2001), vol. 10, p. 195.

¹³³ Ibn Qudamah al-Maqdisi. *Al-Mughni*. (Cairo: Maktabah al-Qahirah 1968). Vol 7, pp. 92-93.

¹³⁴ Khazan, Olga. Multiple lovers without jealousy. July 21, 2014. *The Atlantic*.

<https://www.theatlantic.com/health/archive/2014/07/multiple-lovers-no-jealousy/374697/>

9.8 million.¹³⁵ Moreover, it is worth noting that polygyny remains statistically uncommon amongst Muslims; indeed, it is not strongly associated with any particular religion but rather varies considerably depending on the culture. For instance, in India, the percentage of Muslims who practice polygamy (5.7%) was less than Hindus (5.8%), Jains (6.9%), Buddhists (7.9%), and Adivasis (15.25%).¹³⁶ In Iran, less than one percent of men have more than one wife, and in Jordan the percentage is 3.8%; meanwhile, predominantly Christian nations where polygamy is legally recognized and widely practiced include Uganda (15.8%), Republic of the Congo (31.9%), Central African Republic (13.3%),¹³⁷ and Zambia (16%).¹³⁸ The predominance of polygyny in certain regions of Sub-Saharan Africa has been linked to the historical transatlantic slave trade leading to prolonged periods of abnormal sex ratios.¹³⁹ The idea that polygamy is a predominantly Muslim practice is therefore simply incorrect.

Presently, the legal allowance of polygyny differs significantly among Muslim-majority countries. Some countries such as Turkey and Tunisia prohibit it, other countries restrict it significantly such as Malaysia and Morocco, and a few countries like Kuwait place no restrictions on the practice. Islamically, countries have the legal authority to restrict permissible matters when it is determined that the socioeconomic context leads to those matters resulting in greater harm (*mafsadah*). Despite the fundamental premise of justice laid out in the Qur'an, the manner by which polygamy occurs may not always reflect this. Though Islamic law may be used to justify such practices, the historical jurisprudence is clear on the initial intent to ensure fairness. Where this does not occur, polygamy is discouraged and/or forbidden entirely.

¹³⁵ Sheff, Elisabeth. How Many Polyamorists Are There in the U.S.?. *Psychology Today*. May 10, 2014. <https://www.psychologytoday.com/us/blog/the-polyamorists-next-door/201405/how-many-polyamorists-are-there-in-the-us>

¹³⁶ <https://scroll.in/article/669083/muslim-women-and-the-surprising-facts-about-polygamy-in-india>
<https://timesofindia.indiatimes.com/Bigamy-An-issue-of-one-too-many/articleshow/5004493.cms>

¹³⁷ Mich'ele Tertilt. Polygyny and Poverty. Job Market Paper 2003. University of Minnesota. <http://piketty.pse.ens.fr/files/Tertilt2003.pdf>

¹³⁸ 2003 Health and Demographic Survey. Atlas of Gender Development. OECD. p.276.

¹³⁹ Dalton and Leung. Why Is Polygyny More Prevalent in Western Africa? An African Slave Trade Perspective. Volume 62, Number 4 | July 2014. Economic Development and Cultural Change.

Conclusion

The best remedy to misinformation, propaganda, and ignorant stereotypes is knowledge. Islam's position on women has been one of its most frequently misrepresented aspects, and the five myths discussed above can be readily debunked with reference to abundant evidences from the Qur'an, the Prophetic teachings, and reputable scholars of the Islamic tradition.

In evaluating the best avenues for the advancement of women's rights, one must take into account the cultural and sociopolitical histories, including colonization, that color our assumptions. We should also recognize the paradigm and premises that formed classical Islamic scholarship. By being better informed about our own faith, we can empower ourselves with the knowledge and conviction vital to the cultivation of good in society, while also acting to eradicate gender-biased practices that contradict Islam's teachings.

Author's post-publication notice: This article was updated to include more evidence and additional information in support of several of the main points raised. Additionally, language has been adjusted to provide greater clarity and improve accuracy. The original 2018 version of the paper remains accessible [here](#).