

## UNDERSTANDING THE CLASSICAL TRADITION IN MUSLIM FAMILY LAW

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Assalamu alaykum,

I would like to thank my hosts for giving me the opportunity to share my thoughts with you on a topic critical for the future of our Ummah. After all, the family unit is the foundation on which nations are built. This is why it is important to focus our attention on family law, especially since the Muslim family unit has been recently the subject to unprecedented challenges across the Muslim World.

To address these challenges, we have to diagnose insightfully our social, economic, and political maladies, as well as our developing civilizational circumstances. Our most important guide in facing these challenges is the Qur'an, followed by the *hadith*. Yet most of us are at a serious disadvantage, being unable to access them directly. Colonialists of past centuries succeeded in making it very hard for millions of Muslim to have a direct relationship with, and in some instances access to, these fundamental sources of our spiritual strength and guidance. This goal was achieved in some countries by altering the educational system. The language of the Qur'an was eliminated from the curriculum, or its instruction was substantially weakened. Today, most Muslims whose grandparents could read the Qur'an fluently are unable to read it themselves. This is true of India, Pakistan, the republics of Central Asia, and even Arabic countries in North Africa and the Middle East. As a result, our sacred book is available to most Muslims only through "translations." This situation made it easier to manipulate Muslims politically and socially, resulting in the great era of instability we experience today.

The word "translation" is misleading, because it usually incorporates "interpretation." Furthermore, as any jurist will tell us, the Qur'an is rich with meanings, and so is the Arabic language. As a result, an *ayah* could be properly interpreted in more than one way even after considering relevant *hadiths*. However, learning the language of the Qur'an will allow us to develop a personal relationship with it, and empower us to seek its guidance directly in our daily lives, bypassing intermediaries.

Once we reclaim our relationship with the Qur'an and the *hadith*, it becomes easier for us to judge attempts at *ijtihad* and to differentiate between legitimate and illegitimate ones. This is especially important these days, given the plethora of *ijtihad* by unqualified individuals. We can also better assess ancient jurisprudence and feel much more comfortable at revising it properly to suit our current needs.

Let me give you an example. Recently, a very interesting interpretation of the second part of the Qur'anic verse 4:34, was widely circulated on the internet. Western commentators had levied serious critiques against Islam, based on this passage. The interpretation rested in great part on identifying a new meaning of the word "*daraba*." This new meaning eliminated the Western critique of this Qur'anic passage. This was great for young Muslim readers who have been puzzling about the correct interpretation of the passage. The author bolstered his position by noting that he had found this newly proposed meaning in a specific Arabic lexicon. Further, he added, that the word occurs with this same proposed meaning in various passages in the Qur'an.

Somehow, none of the classical interpretations throughout the centuries took note of this meaning. As it turns out, I was working on interpreting this same passage last year (and many years before then as well). I had spent long nights examining all Arabic lexicons in my library searching for an alternative

linguistically proper meaning of the word. I was unable to find it. The meaning of the word was very clear and linguistically basic. The only time I could find alternative meanings for the word was when one preposition or another modified it. After reading the article, I went back and checked the very source identified by the author. The meaning he proposed was still not there. Instead, he had taken a derivative meaning of the word when followed by a preposition, and imposed that meaning on the root word.

For English language readers, think about the difference in the meaning of the word “to knock” in the following two sentences: “to knock on the door” and “to knock down the tray.” These two meanings of “knock” are in one sense related, but their meanings are quite different because of the presence of the preposition in the second sentence. Similarly, the author who interpreted the word “*daraba*” committed a basic linguistic mistake. He had adopted the meaning of a linguistically related expression “*daraba bi al-ardh.*” ‘The word “*bi*” in his example is a preposition. It changes the whole meaning of the root word “*daraba.*” In fact, there is no easy interpretation of this passage due to the approach taken in understanding it, which is based primarily on proof texting. To understand it, one must make an effort to read other passages in the Qur’an, because as we know Qur’anic *ayah*’s interpret each other, but not in the linguistically erroneous and simplistic way suggested by this author. I will return to verse 4:34 and illustrate the comprehensive/integrative approach to Qur’anic understanding later in this speech.

In short, this popular interpretation is based on a false representation or gross misunderstanding of how prepositions alter the meanings of words in Arabic (as they do in English, and possibly other languages). Unfortunately, readers happy with the author’s solution do not know that. Sadly, this is not an isolated incident. I have read interpretations based on much less evidence or confusion than this.

Another example, is the claim that the Qur’an and *sunnah* require female genital cutting. It turns out that the Qur’anic passage referred to mentions the circumcision of the Prophet Abraham. It is not clear to me how the requirement of male circumcision establishes the same requirement for women. Furthermore, the *hadith* attributed to the Prophet was also misinterpreted as encouraging this custom rather than discouraging it. Because of these misinterpretations, millions of women suffered sexual dysfunction unnecessarily. Yet this ancient practice that originated in Ethiopia and Pharaonic Egypt was deemed part of Islamic law by culturally biased interpreters. Recently, some Western human rights advocates used this interpretation as one more evidence of Islam’s oppression of women, despite the fact that the practice remains geographically centralized in its pre-Islamic areas, and that non-Muslim tribes practice it as well.

Clearly then, in this era of global conflict, Islamic jurisprudence has been politicized, and even weaponized. Thus as we talk about introducing new jurisprudence for our times and new interpretations, we need to be extremely cautious of the dangers facing us. We should not open the doors of *ijtihad* so widely that false, subjective, and at times malicious, interpretations are admitted. It is true that the Prophet encouraged Muslims to engage in *ijtihad*, and jurists understood the principle that laws change with time and place, but that does not mean that anyone can go through these doors unprepared and unqualified for the momentous task. Like every other discipline, this sacred one requires many levels of knowledge before one may enter it.

So, let us turn now to the urgent need for good *ijtihad*. Everyone talks about it, but few are actually doing it, or are even capable of doing it. One classical example in this area is the first part of verse 4:34. This verse involves the famous concept of *qiwaamah* and the notion that God gave men the right to beat women, or as some have stated it, “to chastise women.” So let me focus on this verse as an example of how modern jurisprudence can and has treated these matters. The classical interpretation is based on the assumption that men are superior to women. However, this assumption reflects the mores of a patriarchal society in which those jurists lived, but it is not rooted in the Qur’an. Rather it is the result of combining

custom with sacred text in the minds of these jurists, without noticing the conflict between the two. Clearly, when customs change, this jurisprudence becomes antiquated, and must be updated.

With this in mind, let us examine briefly verse 4:34. As I will show, there is a patriarchal assumption that underlies the traditional interpretations of this verse. This assumption is that women are inferior to men, both intellectually and physically. This assumption is not present in the Qur'an, and it violates the plain meaning of various Qur'anic verses and *hadith*. For this reason, the view of the inferiority of women is not Islamic. To the contrary, the Qur'an clearly states that we were all created from the same *nafs* (soul), that is from the same *jins* (kind, species, or substance).

One might object to my remarks by pointing out that Eve was created secondarily from Adam's rib. However, this is not a Qur'anic story, nor is it a *hadith*. However, we find it as a story in al-Tabari's book, among others. But as the scholar al-Alusi notes, al-Tabari's story is based on the biblical story, as al-Tabari himself noted. Other scholars, such as al-Nawawi seem to hold a similar view. In fact, there is no mention of this story in the Qur'an at all. The great thinker Al-Razi, commenting on a similar critique by Abu Muslim al-Asfahani, noted that if God created Adam from a *nafs*, then he is also capable of creating Eve from the same *nafs*. God does not need to create her from Adam's rib.

One might argue, "but what about the various *hadiths* about the creation of women from a rib"? Upon examination, these *hadiths* do not refer to Eve at all, they are classified by al-Bukhari under two Books: that of "Dealing with Women Gently" (*Bab al-Mudaraat ma' al-Nisaa'*) and the Book of Advocating for Women (*Bab al-Wasaat bi'l Nisaa'*). Al-Nawawi interpreted the rib *hadiths* as engaging in *tashbih*, i.e. analogy. The purpose of *tashbih* was to educate Muslim men on how to deal with differences with their wives. In this sense, the *hadiths* are quite insightful in advancing respect for equal rights and freedom of thought within the family.

Stories about the creation of Eve from Adam's rib are not mythological, abstract or theoretical. They are actually quite important. They have been embedded since our childhood in our subconscious as proof of the inferiority of women, not because God said so, but because all the verses relating to women in the Qur'an and authentic *hadith* were interpreted from the patriarchal perspective that women are inferior and subordinate to men, a view borrowed from other religions and cultures.

Even discussions about the afterlife were modeled along these lines. The paradisiacal entities described as *hoor 'ein* are viewed in popular culture as spectacular females in the service of men. This belief persists despite the fact that the *hoor 'ein* were promised to all believers, i.e., to both righteous men and women. Furthermore, the Qur'an does not refer to them at all in the feminine gender, and we know that the Qur'an is very precise with respect to its language.

I realize that there are various *hadiths* that appear to suggest a gender hierarchy. I have addressed some of them elsewhere. But I note briefly that it is an established juristic principle that a *hadith* may not contradict the Qur'an. If it does, we must either revisit our interpretation of the *hadith* or reject it, because the Qur'an is our supreme sacred text.

So now, let us focus on the *qiwaamah* concept in verse 4:34. In its explanation of this concept, the old Arabic lexicon Lisan al-'Arab defines the related word "*qiyam*" (verbal noun from which *qawwaamun* is derived). It states that the word *qiyam* has "the meaning of preservation and betterment." This is exactly right. Unfortunately, however, the *qiwaamah* verse was viewed by some ancient scholars as a clear and grand permission by God for males to rule over women. Al-Tabari put it this way: men are princes over women who must obey their orders. This statement reflects a different time and era when

the state was authoritarian, a fact that reflected itself in human relationships within society, especially the family.

Other scholars modernized this authoritarian interpretation to say that the male was an advisor. I think the issue is not settled this way. To begin with, all of these interpretations miss a major point, namely that the *ayah* is not about granting privileges to men over women. Rather, it is about imposing a limitation upon men by articulating specific conditions a man must satisfy to become *qawwam* over a woman, in the sense of the definition provided by the previously mentioned lexicon Lisan al-'Arab. Absent these conditions, there is no *qiwaamah*.

The verse states very clearly two conjunctive conditions for *qiwaamah*: (a) knowledge or ability superior to that of the woman, and (b) financial support. Neither of these conditions is genetic; rather they are circumstantial, and so the man's duty to exercise *qiwaamah* over a woman changes when these conditions change. Furthermore, the plain language of the full *ayah* makes clear that it is addressed to husbands. It imposes upon them a *duty* (not a privilege) to be *qawwamun* when the two conditions are satisfied. At the same time, the *ayah* excludes interference by intruding men in the lives of women. Nevertheless, some jurists interpreted the first part of the verse as addressed to all men about all women, and that it provided the men universally with privileges over women. Such interpreters are influenced by the gender bias of their times; otherwise, the precise language of the Qur'an would have corrected their conclusions. Their views led to a series of results that are contrary to the intent and spirit of the *ayah*. After all, the Qur'an clearly states that we were all created from the same *nafs*, and that those most honored of you before God are those who are most reverent.

Reading the *Qiwaamah* verse as permissive and not as restrictive has other serious repercussions within the family. For, the last part of the verse has been interpreted as permitting the Muslim husband to beat his wife. How is this interpretation consistent with the clear Qur'anic description of the healthy marital life as one based on affection, mercy and tranquility? How many women experience affection, mercy and tranquility after being beaten?

However, if we understand that this verse is about limitations and not privileges, then we can read the second part of verse 4:34 as providing lessons to husbands in anger management. Remember that discrepancies in gender relations appeared after the *hijra* to Madinah because the women of Madinah were more outspoken and empowered than the women of Makkah. In fact, Makkan men complained about this situation to the Prophet, but so did the Makkan women who could no longer tolerate the violent behavior of the men. At that juncture, the Prophet decreed that women could justly take *qisas* (punitive justice) from men. But that approach did not work very well, and a more suitable solution was revealed in the Qur'an. This Qur'anic solution described the first step, namely that of anger management, in a series of steps leading ultimately to the healthy spousal relationship defined by the Qur'an. The Qur'an described this ultimate spousal relationship as one of affection, mercy and tranquility.

It is not unusual for the Qur'anic *ayahs* to be part of a more encompassing escalating solution. This is especially true when the problem is deeply rooted in society. This approach is most visible in the prohibition of drinking alcohol. This prohibition was revealed in escalating steps, the first being not to approach prayer while drunk. Verse 4:34 has a similar approach. Fifteen hundred years ago, it instructed men in anger management. It advised them to go through a series of steps before even thinking of resorting to violence against their wives. The first step in the anger management process was for the man to communicate with his wife to clear the misunderstanding. If communication failed, the second step was to give one's wife (and one's self) physical and emotional space to think about the situation. Once some time had passed, it is hoped that the couple would settle down and that the man will never reach the

third stage. In the meantime, if either spouse determines that the conflict is truly serious, either one may seek divorce from the other. This was the *ijtihad* of jurists in early Islam. It was not the *ijtihad* of how to beat your wife without leaving traces on her body. People have distorted the Prophet's remarks. He had stated very clearly: "Do not beat the handmaidens of God." He also stated in the mosque: "I heard that some of you beat your wives (last) night, these are not the best men among you." He also said, "The best among you are the best to his family." Other *hadiths* must be interpreted in light of these *hadiths* and not in opposition to, or by ignoring, them.

So the idea that the verse gave men the right to beat their wives is nothing but a patriarchal distortion. We claim that we uphold the *sunnah*, and live by the example of the Prophet. Well the Prophet never raised his hand against any woman in his household. He was kind and gentle. In one clear instance when he was deeply hurt about Aishah, he went into seclusion, not a tirade. What part of this behavior or his statements on domestic violence do we not understand?

Let us continue our analysis of this verse. Even if the husband was unable to calm down and reached the third stage, namely that of wanting to hit his wife, some jurists (including myself) defined the act of hitting by referring to the Qur'an itself, and not to the culture. According to the Qur'an, Job took an oath to hit his blaspheming wife a hundred times, but hitting was not befitting a prophet, nor was violating an oath. So, God ordered Job to take a hundred stalks of basil (*dighth*) and "hit" his wife with them once. This act of "hitting" became a symbolic act that allowed Job to honor his oath and manage his anger without beating or harming his wife. Even as late as the twentieth century in the US, some counsellors encouraged upset spouses of both genders to express their frustration in similar symbolically expressive ways.

The anger management process described by the Qur'an was revealed fifteen hundred years ago, when domestic violence was the norm. It was an introductory first step in a series of escalating steps leading ultimately to the ideal of affectionate and peaceful spousal relationship. Today, domestic violence is not the norm, even though it is unfortunately still common even in the US. Therefore, it is time to implement other verses in the Qur'an and the *sunnah* of the Prophet. We need to move beyond the early steps suitable for the Jahiliyyah (pre-Islamic) society towards the ideal of spousal relationships in Muslim societies. Indeed, some Arabic family codes, based on Islamic jurisprudence, consider verbal as well as physical abuse as grounds for divorce. So, let us nurture today the Islamic ideal of spousal relationships based on affection, mercy and tranquility, rather than limit ourselves to the anger management process suitable for violent men of past patriarchal societies.

This is only one verse that required a reinterpretation in light of our better understanding of gender relationships. But, what about other verses on inheritance, witnessing, and adoption? What about the development of a *fiqh* for Muslims in non-Muslim countries? I have been asked all sorts of questions in the United States, especially in the area of family law. The situation is serious, especially since fewer Muslim men are marrying Muslim women, and the rate of divorce is alarming. We need a jurisprudence and parenting skills that encourage the young generation to embrace Islamic family life. We can do that by addressing the urgent questions on the minds of our youth. This will require the same careful analysis of stripping cultural assumptions from our interpretations of the religious text.

I will end by making what might be to some of you a surprising statement. We should not act as if men and women are the same in every respect. We all know that men and women are different, but we should not stereotype genders. Furthermore, differences do not make one gender better than the other. To organize genders in a hierarchy is reminiscent of Iblis's logic when he defied God's command. He arrogantly said about Adam: "I am better than he is." The Qur'an makes it very clear that arrogance was

the root cause of Iblis's sin. Bringing Iblis logic into gender relations will certainly produce a world of gender conflict and injustice, especially within the family.

The Qur'an does take gender differences into consideration, but it does so in a balanced manner that has been misunderstood as hierarchical by some jurists. Furthermore, gender equality in the Qur'an is not formal. It is substantive. The distinction between formal and substantive equality is an important distinction that the feminist scholar Catheryn MacKinnon emphasizes in her call for gender equality. Forcing formal equality upon genders can have a negative effect. While this is obvious, it has been fashionable to ignore this fact because difference was associated with hierarchy. The Qur'an does not do that. Women do need men to fulfil their duty to *qiwaamah*, among other duties, in cases of pregnancy, war, and insecurity, to mention a few. However, that does not make women inferior, just as the lack of ability to become pregnant and give birth to new life, does not make men deficient or inferior. Furthermore, neither difference gives one gender the right to control the life of the other. This is indeed true "due balance" that characterizes our Qur'an and our religion in every way. It also provides a key for interpreting many other gender-related verses in the Qur'an that we could not address today.

Wassalaamu alaykum.