

## WOMEN, FAITH, AND CULTURE CONFERENCE

Italian Ministry of Foreign Affairs and International Cooperation

By Professor Azizah al-Hibri

T.C. Williams School of Law, University of Richmond

Founder: KARAMAH: Muslim Women Lawyers for Human Rights

November 14, 2018

*How much weight do cultural customs play in Islamic scriptural exegesis? Does Islamic scriptural exegesis vary across national boundaries?*

Thank you for inviting me to this important seminar. I am glad to share my experience and point of view with you.

Almost fifteen hundred years ago, the Holy Qur'an succinctly stated in verse 49:13 that God created us from a male and a female and made us into different nations and tribes so that we get to know each other. In the Qur'anic context of this verse, it is clear that "knowing each other" means to communicate, cooperate, and celebrate each other's differences. It does not mean to subordinate other cultures, or take a supremacist view of them.

This message was fully understood by ancient Muslim jurists, who belonged to a wide spectrum of nationalities, ethnicities, and cultures. This understanding had many ramifications. In the legal field, it meant that jurists encouraged various civilizations to incorporate their customs into the law, so long as these customs did not violate Islamic principles and Qur'anic injunctions. Furthermore, jurists' exegeses of Islamic texts also took into account local culture in developing their views about local social practices.

Indeed, there was a dialectical relationship between Islamic jurisprudence and local culture throughout Islamic history. This dialectic relationship was rooted in the fact that the jurists themselves were the product of their culture. Thus their own understanding of Islamic principles, even their understanding of verses and words in the Qur'an, were subconsciously colored by their cultural worldviews and presumptions. As a result, they often missed the fact that their implicit cultural assumptions and exegeses sometimes contradicted the Islamic worldview.

This issue has acquired renewed urgency in light of the current state of the Muslim World. The global politics of the last century have resulted in a fragmented and weakened Muslim World both geographically and culturally. Most significantly due to colonialist policies, as well as some local ones, Muslims were distanced from the Arabic language, the language of the Qur'an. This is incidentally true of both Arab and non-Arab countries. These policies seemed to have

been designed in order to ultimately distance Muslims from the Qur'an itself, and subsequently from Islam. In other words, these policies were aimed at secularizing the Muslim World.

Unfortunately, these policies have backfired to haunt not only the Muslim World, but the Western World as well. As recent events made amply clear, these policies resulted in generations of Muslims who have demonstrably superficial or erroneous understanding of Islam. Yet, angered by the continued plundering of Muslim lands by war, economic pressures, and direct interference in the sovereignty of Muslim countries, many Muslims decided to cling to their religion as their best hope for salvation.

However, two problems complicated this approach. First, there is an established Islamic juristic rule which states that "laws change with time and place." I shall refer to this rule as "the Dynamic Rule." This rule does not refer to primary Islamic principles or Qur'anic injunctions, but to secondary laws. From the early days of Islam, Muslim jurists across the world accepted the need for *ijtihad* (engaging in jurisprudential activity) that suited the cultures, times, and needs of the people. Unfortunately, however, many Muslim jurists were prevented throughout history from expressing their *ijtihad* freely due to the political systems in their countries. For example, instead of developing legal systems of governance based on the *shuratic* (consultative) democratic principles articulated in the Qur'an itself and applied by Prophet Muhammad in Madinah, rulers pressured jurists to develop *ijtihad* suitable to their political systems which were mostly authoritarian. Those who dared to disagree suffered severe consequences. This state of affairs has not changed significantly in our times.

There are ample historic examples of this Dynamic Rule, which was included in the Ottoman *Majallah*.<sup>1</sup> For example, after the famous grand Imam al-Shafi'i (9<sup>th</sup> century) moved to Egypt, he decided to revise his school of thought that he had established in Iraq. He did so because he realized that Egyptian culture and customs differed significantly from the Iraqi ones. Without revisions of his earlier jurisprudence to suit the new culture, that earlier jurisprudence could have had adverse effects on the Egyptian society.

Second, with the weakening of the Arabic language and the tradition of *ijtihad*, primarily in *sunni* countries, Muslim populations became less capable of distinguishing between laws based on Islamic sources, and those based on local practices or customs. The blurring of this distinction confused the average person. So, most people ended up regarding the whole body of laws, including those parts of it based in social practices and customs, as religiously mandated, and hence sacrosanct. Any attempts by Western-oriented parties to critique these laws was viewed with suspicion, and vehemently resisted.

A major example of this state of affairs is that of female circumcision or *khifadh*, a practice which is known in only some Muslim countries, and yet it is regarded erroneously as a required Muslim practice. As I will discuss later, the practice does not have a solid jurisprudential foundation either in the Qur'an or the *hadith*. This fact may surprise many, but members of the audience can examine this fact on their own by referring to our paper entitled *Debunking the Myth that Islam Requires Female Circumcision*, at <https://mailchi.mp/a2cc860ab2dd/karamahfgmpaperdownload>

Let me briefly describe our research in that paper in which Ms. Ghazal and Ms. Alassaf were junior authors. It is based on the following facts: In April of 2017, federal charges were brought in the U.S. by the FBI in the state of Michigan accusing a Muslim doctor of performing female genital mutilation (FGM), an act prohibited by law.<sup>2</sup> The charges were brought against Dr. Jumana Nagarwala alleging that she had performed FGM on two seven-year-old girls at a medical clinic in Detroit.<sup>3</sup>

Dr. Nagarwala is the first Muslim doctor to face federal FGM prosecution in the U.S. The criminal complaint against her states that members of her community are known to practice FGM on young girls “as part of their religious and cultural practice.”<sup>4</sup> The practice itself is concentrated geographically in the African continent. Historians place the origins of these practices within two non-Muslim locales, Pharaonic Egypt and ancient Ethiopia.<sup>5</sup> In the case of Egypt, the practice of female circumcision was attributed to the aristocracy of the time. There is evidence, however, to support the view that all segments of society upheld this practice. The Islamic scholar Ibn Hajar Al-‘Asqalani [d. 1449] mentions in his book, *Fath Al-Bari*, that this practice came to the Arabian Peninsula from its origins in Egypt, through Nile river migration.<sup>6</sup>

There is no explicit statement in the Qur’an or *hadith* that establishes *khifadh* as a mandatory practice. Nevertheless, proponents of the view that female *khifadh* is religiously mandated support their position by citing certain Qur’anic verses and *hadiths*. In our white paper, *Debunking the Myth that Islam Requires Female Circumcision*, we go through all these arguments and show their invalidity. For example, the Qur’anic citation turns out to be unwarranted because it actually does not address *khifadh*. Our detailed treatment of the *hadiths* as to their *matn* (content), as well as to their *isnad* (chain of narration), shows that the *sunnah* of the Prophet actually discouraged *khifadh*. But such conclusions are hard to reach except by jurists deeply familiar with the language of the Qur’an and the proper analysis of *hadiths*. When we revealed our study to Muslim women and the community at large, our audience was stunned, and pleased. Some who were victims of female circumcision had tears in their eyes.

Extra-religious arguments offered in favor of this practice are enlightening. Major among them is the argument that female circumcision preserves the woman’s chastity. Looking at it from a womanist perspective, this practice is clearly designed to diminish forever the woman’s ability to enjoy her sexuality, even after marriage. Thus, female circumcision can be viewed as a tool to control women’s desires. Indeed, men in some countries refuse to marry women who have not been circumcised.

The fear of a robust female sexuality is clearly a patriarchal one that has permeated all cultures for millennia. Islam rejects this fear, and celebrates women’s capabilities, including their sexuality, as made amply clear by Prophetic *hadiths*. Significantly, women in the House of the Prophet were not circumcised. The only major limit Islam places on sexuality is that it be expressed in marital relationships, and this requirement applies to both males and females.

In my book *The Islamic Worldview*, I studied verse 4:34 of the Qur’an. Many women had come to me asking about it, and its apparent subordination of women to men. I understood their concerns. I also grew up hearing that the verse states that men are superior to women. It took me two advanced academic degrees before I could muster the courage to tackle this issue. In the end,

the solution was staring me in the face. The Qur’anic words did not have the meaning assigned to them by the jurists. The assigned meanings were the product of an authoritarian culture and patriarchal fancy, not divine decree. Indeed, properly understood, the verse was a limitation on men’s interference in women’s lives. Instead, it became a club used to subjugate them. For more on this matter, you can see my article entitled *Islam, Law and Custom* at <http://karamah.org/wp-content/uploads/2011/10/Islam-Law-and-Custom-Redefining-Muslim-Womens-Rights.pdf>

In the next few minutes, I would like to share with you two more myths about Islam that are in reality the result of patriarchal *ijtihad*, i.e. the result of patriarchal culture infecting religious exegesis. While there have been outstanding insights by some Muslim jurists about women’s issues, it was hard for them to do so consistently when the world was awash with universal patriarchal thinking. This patriarchal thinking remains with us in modified forms until this day, in the U.S. and Europe, as well as in the rest of the globe. However, we are now more aware of it. It is no longer invisible. While it may vary in its expression from one culture to another, it is nevertheless universal in its scope. Patriarchal thinking, rooted in power and not in justice and equity, is inimical to Islam. It is perhaps the most damaging aspect of cultures that have invaded juristic exegesis. This is especially true since the core of all Islamic principles is that of *‘Adalah* or Compassionate/Restorative Justice.

In our forthcoming third white paper, entitled “*Debunking the Myth about the Patriarchal Nature of Paradise*,” Ms. Ghazal and I address the claim that martyrs are rewarded 72 virgins in paradise. More generally, another form of this claim asserts that men that go to heaven will be rewarded with ethereal virgins that have large lustrous eyes. This claim has upset many Muslim women who wondered about their own rewards in heaven and the state of their relationship with their husbands there.

Unfortunately, this claim has been used to recruit gullible Muslim men to participate in armed conflicts scattered all over the Middle East. In fact, the Qur’an does not mention virgins; rather it speaks of *hoor ‘ein*. The Qur’an tells us very little about these paradisiacal entities. Yet, most male jurists have interpreted the term “*hoor ‘ein*” as referring to ethereal virginal maidens. In reaching this interpretation, jurists were influenced by their patriarchal fancy deeply rooted in their patriarchal cultures. This cultural bias led them to ignore an important grammatical feature of the term “*hoor ‘ein*”, namely that it was not assigned a feminine gender in the Qur’an. It is either gender inclusive or gender neutral. However, once jurists assigned a female gender to these entities, they tended to interpret any Qur’anic reference to “pairing” these entities with humans as a reference to marriage. Subsequently, the myth of the 72 virgins took a life of its own in popular culture.

Our third example comes from our white paper entitled “*Debunking the Myth that Angels Curse the Woman Who Rejects Her Husband’s Sexual Demands*.” From the Philippines to the U.S. we were asked by concerned women whether it is true that if a woman refuses her husband’s request to come to the marital bed, she will be cursed by angels till the morning. The *hadith* was being used by husbands to make women feel guilty about refusing to engage in sexual activity after a long day of hard work and childcare.

Our analysis of this *hadith* again shows the role patriarchal culture has played in its interpretation of Islamic religious texts. The correct import of the *hadith* was not one of pressuring women to become subservient to their husband's whims. Rather, it was about spouses being kind to each other and not engaging in sexual power games. Again, jurists with patriarchal bias missed this fact.

Of course, I can go on and provide additional examples, but our time is limited. Indeed, there are numerous examples of patriarchal cultural influences that have seeped into the worldviews and psyches of jurists, politicians, parents, and even the average citizen, male and female, in various patriarchal societies around the world. This presentation focuses on only Islamic cultures. But reversing the entrenched and pervasive influence of patriarchy in Islam and other religions requires a great deal of hard work, coupled with deep faith, thoughtful insights, and a systematic womanist critique of the accumulated work of religious scholars.

I would like now to make a few recommendations that would help Muslims in the West lay the foundation to become equal partners in juristic exegesis with other Muslims, and to help them bring their unique Western Muslim point of view to the Muslim World:

1. Include in the education of Muslim children the study of Arabic, the language of the Qur'an. Incidentally, France has already proposed such an approach. This can be done through public or private efforts, but it should not be made beyond the reach of the poor who need it most since they are often the target of quasi-religious manipulation. This education will arm these children against misrepresentation or misinterpretation of their religion, and it would also help protect them against false and manipulative claims about their religion.
2. Provide these children with the same education received by children of the dominant culture and have them share classrooms. This approach will help them build friendships, and teach them how to interact with culturally different children. Ultimately, this experience will reduce any feelings of cultural isolation the Muslim children may have, and open them to new experiences. Furthermore, if any of them grow to be jurists, they can utilize their social experience to apply intelligently the rule that "laws change with time and place" in their community. They would also be sufficiently knowledgeable to make valuable contributions to the jurisprudence of their own country.
3. Patriarchy is a serious disease that afflicts at least half the world population, and sickens the other half. Let us raise children who are immune to it. The best immunization is education. Islamic gender equitable education would be a great step in this regard, and it will encourage Western Muslim women to take leadership roles in their societies, as is already happening in the U.S. This education, however, must be led by credible Muslim women, and not by women from outside the community, except in supportive roles.

4. Support Muslims in Muslim and non-Muslim cultures that are addressing internally their own challenges, especially in the area of religion, without trying to lead or interfere with that process. In our experience, unless invited, such attempts can be counterproductive.
5. Teach about successful models of intercultural cooperation, instead of focusing on clashes of civilizations. An understudied example of such cooperation comes from Sicily, here in Italy. According to Professor John Makdisi,

“The Muslims, who ruled Sicily for over two hundred years before the arrival of the Normans, were enlightened rulers who had made the island "the centre of an Arab civilisation as splendid as that of Cordova itself.” Fortunately, the advent of the Normans did not destroy this culture; with a genius for adaptation, the Normans integrated it with their own. The Muslims continued to practice their religion freely and to be governed by their own judges and laws. This characteristic differentiated Sicily from Spain...”<sup>7</sup>

As we know, Spain’s policy was based on the Inquisition and the exclusion of Muslims and Jews. This policy adversely affected Spain in the long run. However, in Sicily, the result of the Normans’ policies was nothing less than spectacular. According to Charles Norman Haskins:

"Nowhere else did Latin, Greek, and Arabic civilization live side by side in peace and toleration, and nowhere else was the spirit of the renaissance more clearly expressed in the policy of the rulers."<sup>8</sup>

Today, we can aspire to improve on this Sicilian model by executing it on a global level, basing it on established principles of mutual respect and cooperation, and not on domination, interference or subjugation.

As a Muslim, I believe these recommendations are all desirable and achievable, after all the Qur’an enjoins us to spread peace and good will on this earth.

Thank you.

## FOOTNOTES

---

<sup>1</sup> Ali Haidar, *Dur al-Hukkam: Sharh Majallat al-Ahkam (Jurists Pearls in Explaining the Majallah of Rules)*, vol. 1, p. 43 (Beirut: Dar al-Kutub al-‘Ilmiyyah n.d.) In the *Majallah* the rule is stated as “it cannot be denied that rules change with time and place.”

<sup>2</sup> *United States v. Nagarwala*, 2017 WL 1361324 (E.D. Mich.).

<sup>3</sup> *Id.* The charges against Dr. Nagarwala involved FGM acts of Type 2, often referred to as excision. It consists of partial removal of the clitoris. See Criminal Complaint, *United States v. Nagarwala*, 2017 WL 1361324 \*3 (E.D. Mich.) (Hereinafter “Criminal Complaint”).

<sup>4</sup> Criminal Complaint, *supra* note 2, at 4. The community referred to is the Dawoodi Bohra community, a small Shi’i sect.

<sup>5</sup> Gerry Mackie has suggested that infibulation began with the Meroite civilization (800 BC – 350 AD) before the rise of Islam, to increase confidence in paternity. DeMeo, James. *The Geography of Genital Mutilations*. (Presented at the Fourth Symposium on Sexual Mutilations, University of Lausanne, Lausanne, Switzerland. August 9-11, 1996.) Published in: *Sexual Mutilations, A Human Tragedy*, (New York: Plenum Press, 1997), 37-45.

<sup>6</sup> Ibn Hajar Al-‘Asqalani, *Fath al-Bari: Sharh Sahih al-Bukhari* [The Authentic *Hadiths* of (i.e., compiled by) Muhammad al-Bukhari, with Exegesis by al-‘Asqalani] Reprint. (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1989), vol. 1, 430- 436.

<sup>7</sup> John Makdisi, *The Islamic Origins of the Common Law*, North Carolina Law Review, vol. 77, no. 5 (1999), pp. 1720-21.

<sup>8</sup> *Id.*, at 1727.