

Women in Islamic Law: Examining Five Prevalent Myths	
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Maṣlaḥah (benefit) Al-Shāṭibī	The entire collective system of rulings and regulations that comprise Islamic Law are ultimately ordained for humanity's benefit - "The established principle is that the religious laws came solely in order to secure the best interests (maṣāliḥ) of the servants" أَنَّ الْقَاعِدَةَ الْمُقَرَّرَةَ أَنَّ الشَّرَائِعَ إِنَّمَا جِيءَ بِهَا لِمَصَالِحِ الْعِبَادِ
Equality بعضكم من بعض Ibn 'Āshūr Al-Sa'dī Hadith Hadith al-Khaṭṭābī	All human beings — regardless of gender or ethnicity — have an equal standing before God and attain distinction only through the pursuit of virtue - Verily, the noblest amongst you in the sight of God is the most pious "I will not lose sight of any who labors in My Way, whether male or female, you are of one another" لَا أَضِيعُ عَمَلَ عَمَلٍ مِنْكُمْ مَنْ ذَكَرَ أَوْ أَنْتَى بَعْضُكُمْ مِنْ بَعْضٍ - Indicates that men and women have an equal rank before God and receive the same reward for their deeds تَقُولُهَا الْعَرَبُ بِمَعْنَى أَنَّ شَأْنَهُمْ وَاحِدٌ وَأَمْرُهُمْ سَوَاءٌ كُلُّكُمْ عَلَى حَدِّ سَوَاءٍ فِي الثَّوَابِ وَالْعِقَابِ "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" "Women are the equal partners of men" - "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. 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" وَقَوْلُهُ النِّسَاءُ شَفَائِقُ الرِّجَالِ أَيُّ نِظَائِرِهِمْ وَأَمْثَالِهِمْ فِي الْخَلْقِ وَالطَّبَاعِ فَكَأَنَّهُنَّ شَقَقْنَ مِنَ الرِّجَالِ وَفِيهِ مِنَ الْفَقْهِ إِثْبَاتُ الْقِيَاسِ وَالْحَاقُّ حُكْمَ النَّظِيرِ بِالنَّظِيرِ وَأَنَّ الْخُطَابَ إِذَا وَرَدَ بِلَفْظِ الذَّكَورِ كَانَ

	خطاباً بالنساء إلا مواضع الخصوص التي قامت أدلة التخصيص فيها
Gender differences	There are indisputable biological and psychological differences between men and women - Biological differences include size and growth disparities, average life expectancy (greater for women), relative risk of disease, and physical capabilities - Women generally rank higher in traits of Agreeableness than men, and in emotion recognition, empathy, and perspective-taking Due to these differences some rulings will differ between men and women - Fairness is not necessarily sameness - Modesty in clothing is prescribed for both genders but what constitutes modest dress differs between the genders due to physical differences and differences in the psychology of attraction
Kindness to women	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 to you is to treat women with kindness" أَلَا وَاسْتَوْصُوا بِالنِّسَاءِ خَيْرًا Throughout his life he ﷺ emphasized, "The best of you are those who are best to your women" خَيْرُكُمْ خَيْرُكُمْ لِنِسَائِهِمْ
Contradictions in Western values	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
Myth 1: Islam instructs men to beat their wives Qur'an (4:34) Ḍarb	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" 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 (hitting) - Some modern scholars have argued that the word should actually be translated here as 'to leave' (al-mufāraqah wa al-tark) - However, this is not the way the verse was understood traditionally - Muslim jurists and exegetes understood the word to indicate that in limited circumstances men could physically discipline their wives just as they would physically discipline their children

Male authority	The presumption of male disciplinary authority in the household was common in most pre-modern cultures
Injurious hitting	Classical Muslim scholars maintained a strong aversion to violence, universally condemning injurious hitting or beating (ḍarb mubārriḥ)
al-Buhūtī (Hanbalī)	- “It is better to avoid hitting altogether in order to preserve marital love”
al-Munāwī (Shāfi‘ī)	- “Hitting one’s wife is harām except for nushūz (rebellious conduct), so when she commits it he may hit without hitting severely 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-Haytamī (Shāfi‘ī)	وفيه أنه يحرم ضرب الزوجة إلا النشوز فإذا تحققه فله ضربها ضربا غير مبرح ولا مدم فإن لم تنزجر به حرم المبرح وغيره وترك الضرب مطلقا أولى - “If it is known to be ineffective then it is prohibited” أما إذا علم أنه لا يُفيدُ فيجزمُ لأنه عُقوبةٌ بلا فائدة
Ibn al-Jawzī (Hanbalī)	If someone did not heed verbal admonition, they were unlikely to benefit from physical discipline, and hitting only increases the feelings of aversion in the heart, and therefore is better off avoided وليعلم الإنسان أن من لا ينفع فيه الوعيد والتهديد لا يردعه السوط فإن الضرب يزيد قلب المعرض إعراضا فاللطف أولى إذا نفع
Holistic approach	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 - Selectively using parts of scripture to justify transgression is a disease of the heart - “The perverse at heart eagerly pursue the ambiguities in their attempt to make trouble and to pin down a specific meaning of their own” فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَبْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ
Conclusion	- There is nothing more authoritative in guiding how to implement the Qur’an than the Prophetic example - It follows that the Qur’anic verse cannot be understood to permit a man to physically abuse his wife or harm her in anyway, 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
Myth 2: Women cannot divorce	Islam seeks to avoid divorce - “The most hateful of lawful matters to Allah is divorce” أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ
Types of legal divorce	Ṭalāq - initiating this type of divorce is limited to the husband and leads to immediate dissolution of the marriage - Often entails extensive financial burdens on the husband such

	as financial maintenance of the wife until the end of the waiting period, payment of the stipulated deferred dowry, and expenses of any children - The four main Sunnī schools of law recognized the possibility for a husband to delegate the power of initiating divorce to his wife (Ṭalāq al-tafwīḍ) - The Hanafi school of law maintains that a woman can stipulate in her marriage contract the right to divorce Tafriq or faskh - dissolution of the marriage through a judicial process in which a judge could grant her a divorce without the consent of her husband - If the wife had valid reasons for seeking judicial annulment of her marriage she could keep her dower and the husband was required to maintain her living expenses until her waiting period ended - If not then she had the right to a khul' divorce Khul' - the wife's ability to leave the marriage in exchange for compensation to her husband — often equal to the dower
Myth 3: A woman's testimony is worth only half a man's Ibn Qudāmah	“O believers! When you contract a loan for a fixed period of time, commit it to writing ... Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her” Some premodern exegetes like Fakhr al-Dīn al-Rāzī explained this verse by asserting the biological or psychological inferiority of women - “And the meaning is that forgetfulness predominates in the physiology of women due to the abundance of moisture and coldness in their physical constitutions” وَالْمَعْنَى أَنَّ النِّسْيَانَ غَالِبُ طَبَاعِ النِّسَاءِ لِكَثْرَةِ الْبُرْدِ وَالرُّطُوبَةِ فِي أَمْرِجَتِهِنَّ - 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 Scholars have argued that the requirement of two women to one man was a result of the fact that in most societies women were not involved in the conventional economic sphere; thus, she was most likely unfamiliar with contracts - Also, 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 - Explained that in matters of nursing, childbirth, menstruation, chastity, and physical defects a single female witness is accepted

Ibn Taymiyyah	- “So that which is from testimonies of women in which there is no fear of erring in routine practice (fīl-‘ādah), they are not considered as half of a man” فَمَا كَانَ مِنَ الشَّهَادَاتِ لَا يُخَافُ فِيهِ الضَّلَالُ فِي الْعَادَةِ، لَمْ تَكُنْ فِيهِ عَلَى نِصْفِ رَجُلٍ
Hadith transmission by women	There was no distinction whatsoever between men and women when it came to narrating the words of the Prophet ﷺ - The wife of the Prophet ﷺ, Aishah, was among the top five narrators of hadith - In many cases she contradicted and corrected the hadith of other companions - Similarly there was no distinction between men and women when it came to Qur'anic exegesis and issuing fatwas
Islam recognizes empirical evidence	Data in the field of memory studies have demonstrated that neither gender is categorically superior in memory - There are subtle differences in the way men and women remember information
Elizabeth Loftus	- The finding provides 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
Rashīd Riḍā	- “Whether male or female, their memory will be stronger for matters that are of importance to them and with which they are more abundantly involved”
Wisdom	- 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
Recommendation not requirement	The verse does not stipulate a judicial requirement but merely a recommended personal practice for individuals seeking to document their financial transactions more reliably - The imperative verb is meant simply as a recommended advice وَتَرُدُّ صَبِغَةَ "افْعَلْ" لِمَعْنَى الْإِرْشَادِ، كَقَوْلِهِ تَعَالَى: {إِذَا تَدَانَيْتُمْ بِذَيْنِ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ} وَفَرَّقَ الْفَقَّاهُ الشَّاشِيَّ وَغَيْرُهُ بَيْنَهُ وَبَيْنَ النَّدْبِ بِأَنَّ الْمُنْدُوبَ مَطْلُوبٌ لِمَنَافِعِ الْآخِرَةِ، وَالْإِرْشَادُ لِمَنَافِعِ الدُّنْيَا
Myth 4: Inheritance laws favor men over women	“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” - This verse was revealed to address the situation of a widow whose daughters were left destitute by her husband's male heirs
Al-Wāḥidī	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”
لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ	Male children are stipulated to receive more of their parents' estate than daughters in inheritance

Myth debunked Women without a provider Waṣiyyah	- This may seem unfair but it crucial to understand the application of inheritance law in Islam within the larger system of Islamic finance - Scholars such as Ibn Kathīr justified the discrepancy of inheritance between daughters and sons by the larger context of financial responsibilities فجعل للذكر مثل حظ الأنثيين وذلك لاحتياج الرجل إلى مؤنة النفقة والكلفة ومعاناة التجارة والتكسب وتجشم المشقة فناسب أن يعطى ضعفي ما تأخذه الأنثى While women inherit less than men in four situations, they inherit more than men in 16 situations, and equal to men in 10 situations - A woman who dies leaving behind only a husband—the maternal aunts receive portions of the inheritance whereas the paternal uncles do not - When one dies without any parents or children (kalālatan)—siblings of the same mother are entitled to a share divided equally irrespective of gender There is room within the framework of normative Islamic law to accommodate unique and exceptional cases such as if the daughter is a single mother with children - A person is allowed to designate up to one-third of the total estate as a bequest - Cannot be given to an heir unless approved by the other heirs إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لَوَارِثٍ - Can be given to grandchildren since they are non-heirs
Myth 5: Muslim men oppress women through polygamy Monogamy al-Shāfi'ī Benefit Care for women's feelings Why he ﷺ did not marry from the Ansār	In a society where there were no prior limits on how many women a man could simultaneously marry, the Qur'an neither establishes new permissions for polygyny nor encourages it, rather it sets limitations on its practice - By setting four as the maximum, the Qur'an imposed a restriction on men that was principally aimed at upholding the rights of women 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 وأحب له أن يقتصر على واحدة وإن أبيح له أكثر لِقَوْلِهِ تَعَالَى : فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاجِدَةٌ 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 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 - "The women of the Ansār have a strong sense of jealousy and would not endure co-wives, while I am a man with multiple

Ibn Qudāmah Restricting the permissible	wives, so I would hate to do wrong to her people by mistreating her” قِيلَ لِرَسُولِ اللَّهِ ﷺ أَلَا تَتَزَوَّجُ بِأَرْسُولِ اللَّهِ فِي نِسَاءِ الْأَنْصَارِ فَإِنَّ فِيهِنَّ جَمَالًا؟ فَقَالَ رَسُولُ اللَّهِ ﷺ : هُنَّ نِسَاءٌ فِيهِنَّ غَيْرَةٌ شَدِيدَةٌ وَلَا يَصْبِرَنَّ عَلَى الضَّرَائِرِ وَأَنَا صَاحِبُ ضَرَائِرٍ وَأَكْرَهُ أَنْ أَسُوءَ قَوْمَهَا فِيهَا A woman may stipulate in a marriage contract that her husband cannot take another wife أَنْ يَشْتَرِطَ لَهَا أَنْ لَا يَتَزَوَّجَ عَلَيْهَا فَهَذَا يُلْزِمُهُ الْوَفَاءُ لَهَا بِهِ فَإِنْ لَمْ يَفْعَلْ فَلَهَا فَسْخُ النُّكَاحِ 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)
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