



# Women, Faith & Justice: Framing an Islamic Approach to Gender & Development

A Preliminary Discussion

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## Foreword

In the context of a highly politicised framework that casts Islam in binary to Western liberal philosophy and its Christian roots, the subjects of gender justice, gender relations and the role of women in Islam are controversial and sensitive. A combination of ignorance in relation to theology and its complex praxis over Muslim history and geography, and the impact of social, economic, political and cultural factors on gender relations amongst Muslim populations have resulted in a perceived clash between a 'Western feminism' and a 'patriarchal Islamic framework'.

For activists and NGOs engaging in the field of development, human rights and justice, the role of religion - Islam and others - in transforming the beliefs and lived realities of people at the grassroots is often viewed as obstructive and limiting. Religion is considered from the outside, and indeed often used by believers, as a reference and framework with which to resist notions of gender equality and female emancipation. Activists, practitioners and academics have articulated many examples, especially in relation to Muslim populations, where Islam is often used as an explanation – or a justification – for violence and discrimination against women (Hopkins and Patel 2011). For those working towards justice in these contexts, such simplistic and essentialised narratives are unhelpful; as Bartelink and Buitelaar note, there is an *inadequate understanding of the role of religion in society and... failure to analyse the ways in which different discourses on Islam are socio- economically and politically embedded...* (2011:20). In other words, for progress in many contexts, reductionist assumptions such as 'Islam is patriarchy', or 'Islam is emancipation' are not helpful. Rather, a deep, nuanced and honest analysis of the diversity of Islamic interpretation and Muslim practice is necessary to fully engage and satisfy communities and practitioners both in policy and practice.

To engage fully with this complex discourse, this study engages with several types of source: the key Islamic texts of *Qur'an* and Prophetic sayings (*Ahadith*), the associated higher objectives of Islamic law (*Maqasid al-Shari'a*); the body of scholarship associated with independent scholarly reasoning in Islamic law (*ijtihad*) and the development of Islamic jurisprudence (*fiqh*); Muslim practice and the intersecting factors that create such diversity including culture, social change and politics; the critiques and questions of scholars and activists consulted during the research process; and the intersection of theology with national and international law, especially the conventions of equality and justice as defined through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the UN General Assembly in 1979.

For Islamic Relief Worldwide (IRW), understanding the intersection of these perspectives is of fundamental import, operating as it does in the most challenging of circumstances, while satisfying the scrutiny of governments, international human rights organisations and the populations that it serves. By synthesizing the discussions, this study thus aims to draw out an Islamic-inspired framework through which key issues of gender justice and development may be addressed in the diverse contexts in which IRW serves.

**Dr Kasim Randeree (December 2012)**

## Introduction: gender and the work of Islamic Relief Worldwide

*"And those in whose wealth is a recognised right; for the needy who asks and those who are deprived"*

**Qur'an, Surat Al-Ma`arij 70:24-25**

As an international organisation specialising in development and aid in over 25 countries, Islamic Relief Worldwide (IRW) mobilises resources, builds partnerships, and develops local capacity to:

*Enable communities to mitigate the effect of disasters, prepare for their occurrence and respond by providing relief, protection and recovery;*

*Promote integrated development and environmental custodianship with a focus on sustainable livelihoods;*

*Support the marginalised and vulnerable to voice their needs and address root causes of poverty.*

(<http://www.islamic-relief.com/Whoweare/Default.aspx?depID=2>)

To this end, Islamic Relief Worldwide (IRW) aims to conduct its operations and its approach within a framework informed and inspired by an Islamic ethos and set of explicitly identified core values:

- **Social Justice (Adl):** Our work is founded on enabling people and institutions to fulfill the rights of the poor and vulnerable. We work to empower the dispossessed towards realising their God-given human potential and developing their capabilities and resources.
- **Sincerity (Ikhlas):** In responding to poverty and suffering our efforts are driven by sincerity to God and the need to fulfill our obligations to humanity.
- **Excellence (Ihsan):** Our actions in tackling poverty are marked by excellence in our operations and conduct which are deserving of the people we serve.
- **Compassion (Rahma):** We believe the protection and well-being of every life is of paramount importance and we shall join with other humanitarian actors to act as one in responding to suffering brought on by disasters, poverty and injustice.
- **Custodianship (Amana):** We uphold our duty of custodianship over the earth, its resources and the trust people place in us as humanitarian and development practitioners to be transparent and accountable.

This Islamic ethos leads to a defining of development in a holistic way, beyond the traditional focus on economics to include the 'spiritual, social and moral' (Ahmed 2011).

As part of such a values-driven approach, the subject of gender justice – particularly in relation to the attitudes towards and treatment of women – may be viewed as fundamental to the upholding of both social justice and compassion. As this paper investigates, the issue of injustice towards

women frequently arises in the multitude of contexts in which IRW works: to fulfil the stated values of the organisation it has become increasingly clear that practical solutions informed by a principled, ethical Islamic framework can only come about through a gender conscious engagement with Islamic theology and praxis. This is the challenge laid down by Turabi: *the question is not whether to oppose or endorse women's liberation. It is, rather, do we want women's liberation within the framework of Islam or outside it?* (Turabi 1993:2 in Adamu 2006:4).

The following discussion may be understood as the initial groundwork for bridging these discussions with the challenges of IRW's fieldwork. By exploring the intersections of Islamic theology, faith, Muslim practice and development work this paper is intended to support gender-conscious approaches to development, aid and social justice by IRW.

## Structure and Methodology

The research within this paper has been consultative and in-depth, and its development is reflected in the structure: Part I is an introduction to gender and the development work of IRW; Part II explores definitions and possible articulations of an Islamic framework suited to approaching gender and development issues; and Part III addresses the specific issues of gender justice which IRW faces, alongside the challenges and ways forward presented within the Islamic tradition. The methodology was itself tripartite – after an initial review of the large body of literature relating to the issues highlighted by IRW at the start of the project, a consultation phase with key IRW staff, gender and development experts, grassroots activists and a scholar of Islam highlighted significant challenges. These challenges not only focused on the numerous issues of gender justice and the social context discussed in Part III of this paper, but also to the complex and crucial task of defining the Islamic framework, taking into account the rich and varied Muslim scholarly tradition. The discussion in Part II of the paper therefore engages with the scholarly literature pertaining to the development of the *shariah* of the Qur'an and Sunnah in practical terms through the science of *usool ul fiqh*. Specific issues - for example different interpretations within the body of *fiqh* – are highlighted in Part III alongside a discussion of the wider development literature for each issue of gender justice. Through the progression of the discussion and its literary engagement, the paper aims to understand and articulate ways in which gender justice may be located within an Islamic framework, highlighting both the challenges and possible ways in which IRW may harness and connect the theological and the theoretical to facilitate change on the ground. It is envisaged that the paper will act as a foundation for further consultation and engagement of Islamic scholars and development experts as IRW develops its policy and practice relating to gender and human rights.

# Part I: Gender justice and an Islamic approach to development

## 1.1 Faith, gender & development

Perhaps one of the most interesting and challenging aspects of IRW's remit relates to the very foundation on which the organisation operates – the notion of an Islamic approach to development. This is a challenge embedded in perceptions of Islam and development that construct the two in binary opposition. On the one hand, development is viewed as deriving from and promoting a Western, neo-liberal, secular agenda. From this perspective, the Global North is understood as a 'civilising force', with development promoting an economic and social agenda conforming to the dominant norms of that framework. In contrast, such perspectives have tended to view faith – especially Islam – with suspicion: a retrograde barrier to development and the economic and social betterment of societies, particularly those of the Global South (Tomalin 2011:1; Selinger 2004:526). Dichotomous to these narratives is the view that development has been constructed as a vehicle for neo-colonialism and Islamophobic, anti-Muslim action, against which Islam may act as a form of resistance and solution (Bugaje 1997:9).

Within both of these discourses, gender is a central and problematizing factor. Addressing questions relating to the role and treatment of women within Islam and Muslim societies is viewed as crucial to the development agenda, whether used as an example of religiously mandated oppression<sup>1</sup> to be tackled through reform and secularisation (Adida et al 2012), or a pernicious tool for the promotion of Western cultural and political hegemony through the 'empowerment of women' (Adamu 2011). Faced with such a binary, the scope for change can only be seen as limited: to find a way to 'reconcile' development with religion, through compromise.

Yet the constraints of such counter-positioning are increasingly challenged by the intellectual and practical realities of our contemporary globalised world. As Naher asserts, it is clear that religion continues to serve as *one of the primary sources of ideas regarding gender roles and relations in society* (Naher 2005:28). And while some studies identify religiosity in Muslim men as a factor in preventing the social, political and economic participation of Muslim women (Abouchdid & Nasser 2007), the debate on the role of Islam as a vehicle for empowerment or oppression has become more nuanced, with feminist scholars highlighting the importance of acknowledging the differing needs and situations of women across time and place. As Adamu explains, *women's experiences*

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<sup>1</sup> For example Carroll asserts:

*The ossification of religions and their original tenets, established to accommodate the conditions of bygone times, has had a particularly detrimental effect on women worldwide. Religion--or more specifically, religiosity, folk religion, or popular religion--has been used to excuse the prejudicial treatment of women, to degrade them, and to restrict them to endless childbearing and drudgery* (1993:1-2 in Naher 2005:33).

*are not separated and divided between sex and religion as the Islamist-feminist divide wants to make it. This would be an artificial division and separation (2006:8).* By moving beyond the 'Islam versus feminism' debate, we can better appreciate the power of the religious paradigm to believers as individuals, and within the social and political structures of Muslim societies. An Islamic framework not only has the power to shape the experiences of individual women, but the relationships between men and women more generally, and the lens through which these gender relations are articulated within communities and societies. From this understanding, Islam has the potential to support and promote, rather than prevent gender-justice and development.

An increasingly recognized alternative (Abramson 2008) thus positions Islam as not only compatible with development, but intimately tied through the articulation of core values and aims. In this context, IRW as an organisation that constructs and practises this model, is compelled to develop an approach towards gender justice that is not just dovetailed, but deeply embedded within its notion of Islamic development. This is not important for the sake of theory or experimental practice, but an issue of impact: without an effective method for approaching gender related challenges in the field, IRW cannot fulfil its mandate either as a development agency, or an organisation operating within an Islamic framework. Tackling poverty, disaster and injustice requires an understanding of people's contexts, their beliefs and their needs. While the provision of basic needs is always paramount to aid and development, to make lasting change, IRW is committed to understanding issues in which gender plays a role. The aim therefore involves finding solutions which are acceptable not only to IRW's own ethos, but to the requirements of populations and their situations, to the laws of the countries within which it operates, and to the legal and communal obligations of international law and human rights.

## 1.2 Theology, law and culture

While this vision of gender-consciousness and commitment to gender justice speaks to overarching ethics and principles, the details – both theoretical and practical – are more complex. The increased recognition of faith perspectives within the development sector is indicative of the influence religious law and belief can have on the ideas and actions of individuals and communities. Engaging with Islamic theology and law, and in the case of IRW from within a value-based framework, therefore carries the possibility of harnessing the power of people's religious commitment for the benefit of social justice and development. It is important however, that this power is recognized in its entirety and complexity: as a way or resisting Orientalist stereotyping, Muslim discourse can fall into polemics and reductionism. Most common is the maxim 'Islam liberates women' – a statement that fails to fully expound the depth and breadth of the Islamic tradition, the variance of interpretation, and the intersections with Muslim culture, social processes and political contexts. Furthermore, despite the powerful imperative and potential transformation

that an Islamic inspired or framed approach may bring, finding solutions or ways to address the numerous gender-related problems IRW deals with at the grassroots is further challenged in three key ways:

1. The plurality of Islamic thought and its legal framework in relation to *mu'amalat* (dealings among people) which allows for flexibility but also potential ambiguity in supporting or undermining harmful practices or situations;
2. The potential compatibility or incompatibility of such Islamic perspectives with local custom, national legislation or international law;
3. The relation between theory and practice, i.e. how theoretical frameworks and solutions, whether notions of rights, or ethics, or laws, may or may not be implemented in the lived realities of individuals and communities, especially when not actively enforceable.

These challenges are set against the clear position of IRW, whose role is to benefit and engage its diverse client base with sensitivity, while desisting from asserting a specific Islamic school of thought or set of rulings, which could undermine its overarching remit. It is also clear that the Islamic framework, while engaging with secular discourse, must be confident in remaining independent and connected to its historical contexts and processes, to not 'superficially and selectively 'Islamize' externally derived knowledge systems' (Sharify-Funk 2008:49).

Issues relating to gender and women's rights tend to be drawn towards a debate over interpretation of primary religious texts – the Qur'an and Sunnah, and the development of *fiqh* as legislation governing the practical aspects of lived Islam. The debates define two depictions of Islam in relation to gender, a body of classical consensus-orientated scholarship versus contemporary feminist analyses which, accusing classical scholarship of inherent patriarchy and ossification, seek to draw out and eliminate gender discrimination through reinterpretation or abrogation of primary texts to create a new Islamic framework/s in both the ontological and epistemological sense. Yet each position connects itself to the power of sacred law, and its capacity to bring about social change or stability through religious edict: this paper seeks to circumvent such divisions by presenting the diversity of approaches in relation to gender, and raising the possibility of bridging difference by honouring scholarship while addressing the concerns of the feminist critique. It becomes clear then, that several elements must be balanced: to develop approaches to gender justice and development which are firmly rooted in the Islamic tradition, and which can encompass the diversity of Muslim thought, the plurality of local contexts, and the heterogeneity of women and their lives. In suggesting ways to define such a framework it is also vital that the local, national and international laws within which IRW operates



are upheld. In practical terms this requires an approach that is also in accordance with fundamental principles of the *shariah*, to:

- uphold the laws of the land within the boundaries of the halal<sup>2</sup>
- understand all is permissible in Islamic law except that which is prohibited<sup>3</sup>;
- promote, as a stated aim of IRW, the ideal over the minimal standards in the spirit of excellence - *ihsan*.

These principles highlight the flexibility accorded within the Islamic tradition, which allows for the differing contexts and situations of human society over time and place, and the ability to engage with other legal frameworks. For example, a key benchmark in relation to gender and international law is the Convention for the Elimination of Discrimination Against Women (CEDAW), based on principles of equality and non-discrimination for which there are 30 articles<sup>1</sup>. These articles successfully correspond to issues presented by IRW as gender related challenges at the field level, which form the basis of the analysis section of this paper. They also clearly correspond to the *shariah*-defined elements of human life used by IRW (Amino-Kano 2012): spirituality; humanity & life; marriage & family law; the body: health, reproduction & rights; social & public life; education; economics; and political participation. These issues are therefore understood as crucial at 3 levels: the lived experience of people at the grassroots, international human rights, and the Islamic conception of sociality.

Finally, the intersection of culture must be addressed – as the WDR highlights, *social norms define and constrain the space for women to exercise their agency by imposing penalties both on those who deviate and on those who do not enforce the norms* (WDR 2012:169). The Islamic perspective pertaining to this challenge is clear: '*urf* - culture and social norms - is permissible providing it does not contradict the *shariah*, in principle or in practice (Kamali 249<sup>4</sup>). Through this approach, culture is shaped and modified, supporting the differing needs and customs of different populations within the ethical and legal boundaries of the Islamic faith. In relation to gender the challenge is to differentiate between religion and culture (al Hibri 1997). Where culture is misogynist, the Islamic approach is clear, yet too often culture appropriates faith as a way of legitimizing anti-woman attitudes and behaviours. The framework and methodology of this paper thus seeks to challenge such practice through a re-assertion of Islamic principle.

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<sup>2</sup> See for example, the discussion of S. Abdal Hakim Murad 2003b

<sup>3</sup> Described as the first *asl* for a lengthy discussion see S. Yusuf Qaradawi 1960

<sup>4</sup> The importance of permissible '*urf*' may be highlighted through reference to classical jurists such as al-Suyuti in *al-Ashbah wa al-Nazai'r* and al-Sarakhsi, who viewed '*urf*' as enforceable by court law.

## Part II: Defining an Islamic framework

*...the “stunning beauty of the truth . . .lies beyond the veil of habits”...*

Barlas 2010:210 ref. Soroush 2000:112

### 2.1 The articulation of *Shariah*, its principles and historical methodologies

To better understand the contextual, dynamic and plural body of Islamic perspectives relating to gender issues, it is important to highlight both ontology and epistemology within the Islamic tradition, and the history of jurisprudential development. While the detail of this process and history is vast, complex and continuing, the following discussion aims to bring out the key elements that explore the diversity of opinion and how this diversity may relate to a framework suited to the work of IRW.

The fundamental root of Islamic knowledge lays in the Muslim belief of God, Allah, the Creator and Sustainer of everything known and unknown, seen and unseen. The connection and understanding of Him<sup>5</sup> has been manifested through revelation and guidance of Prophets and Messengers over the course of time and place, the last Book – al-Qur’an – revealed to the Prophet Muhammad. The primary texts for understanding Allah, and the human relationship with Him and the world are thus the revelation itself, the Qur’an, and its practice through the life and sayings of the Prophet Muhammad, the Sunnah, as recorded in the ahadith. The *shariah* is literally the *way* for humans to live in accordance to the Qur’an and Sunnah or as elaborated by Ramadan, the ‘path towards faithfulness to the message’ (Ramadan, 2005:3). The articulation of the shariah is therefore the point at which humans engage with sacred text, from the companions of the Prophet to the present day, first and foremost the Qur’an through analysis, commentary and interpretation – *tafsir* and *ta’wil* – and secondly the Sunnah, with the ahadith transmitted, analysed and categorised by detailed scholarship (Setiawan 2006:201). Human endeavour to understand, identify and apply both the spirit and the letter of the revelation as an act of submission and worship to God, has therefore resulted in the development of the Islamic sciences – methodologies and tools of analysis that seek to deduce principles and rulings pertaining to all aspects of human life, as encompassed by the concept of *deen* and the Muslim reference to Islam as a way of life. These methodologies and principles derived from a deep concern that human interpretation of sacred text must be evidenced directly or through forms of careful deduction, applicable to the spectrum of human experience and situation, yet guarded from the whims and assumptions inherent in human effort. This sophisticated scholarship and the highest standards applied to it are reflective of the risk felt by the people taking on the task of human engagement with the divine (Ali 2006:xx-xxi). As

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<sup>5</sup> NB The use of “Him” is permissible with the categorical understanding that God is not subject to likeness of any part of the creation including gender, as understood through verses of the Qur’an, as well as ahadith. Surah al-Shura, ayah 11: *Laysa Kamithlihi Shay’* ‘There is nothing like Him’.

a consequence, there are numerous sub-divisions of this deduction and generation of knowledge that include the identification of the principles - *usul ad-deen*, the ideals and purpose – *maqasid ash-shariah*, and the science of understanding and implementing in practical terms through the *usul al-fiqh* to produce the rich body of jurisprudence, this *fiqh* based on scholarly reasoning, *ijtihad*. (See Kamali 1991; Abou El Fadl 2001: 32-34; , al-Alim 1991; Mahmasani 1961; Setiawan 2006:204; Zayd 1964). The tools, principles and methods used within *usul ul-fiqh* have been used or rejected to varying extents by Muslim jurists and include *Naskh* (Abrogation), *Aql* (rationality), *Ijma'* (Consensus of Opinion); *Qiyas* (Analogical Deduction), *Istihsan*, (discretion), *Maslahah Mursalah* (Considerations of Public Interest), and *'Urf* (Custom) amongst others (Kamali 1991; Mahmasani 1961; Zayd 1964, al-Alim 1991). These methods have resulted in various levels of self-regulation, intended to limit fragmentation and hyper-heterogeneity over time: a balance of plurality and flexibility within a boundary, ensuring a sense of Islam and not that which would be described in post-modernist terms as multiple subjectivist Islams. In particular, the application of *ijma'*, in which matters agreed upon by consensus are considered 'closed', while interpretation on matters without such consensus continues (Ali 2001:3; Hallaq 1997). Through methodological differences, classical scholarship developed schools of thought *madhahib*, with each mujtahid continuing the process of *ijtihad*, and muqallid scholars affiliating through methodological preference and training to four main schools within the Sunni tradition, named after the eponymic mujtahid scholars around whom they evolved: Shafi'i, Hanafi, Maliki, and Hanbali (Setiawan 2006:205).

This rich articulation, exploration and application of knowledge since the death of the Prophet Muhammad explains the plurality of the classical approach, and the variety of juristic opinion in relation to the personal and social practice of Islam. Furthermore, the social and political milieu of Muslim societies not only shapes the perspectives of scholars, but intersects with personal choice and agency of, so that Muslims as individual believers have accepted, contested, ignored or rejected the authority of scholars, choosing to follow particular jurists and schools of thought in line with their preference, education, the local/communal tendency, state preferences, and national laws. This intersection has created further diversity. The translation of juristic opinion into praxis traditionally involved the interaction of jurists with court judges – *qudah* – who, appointed to implement law in Muslim lands, were, and in some cases still are, able to implement the law for the community (Tucker 1998). This translation from scholastic effort and opinion to law in practical terms impacts upon populations depending on the affiliation and abilities of the judiciary and in some cases the will of the state (Abdo 2001). It also necessarily results in greater levels of codification and thus restriction within the boundaries of a particular realm of jurisdiction. Furthermore, the social, political and intellectual interaction of the Muslim world has continued the production of both convergent and divergent ideas and methodologies to that of the classical tradition. This has happened amongst Muslims as part of intellectual, political and social discussion

relating to the conditions of each time, and includes the response to interaction with other standpoints and frameworks, including with the Christian and secular ‘Western’ perspective (Wadud 2006:187). At times this has been reactive as well as responsive, particularly in moments of crisis, such as colonial occupation, but also where Muslims are faced with new situations as both majorities and minorities. For example, reformist, revivalist and feminist movements calling for a ‘return’ to Qur’an and Sunnah or a modernizing in line with rapid social change or new social contexts, have in their own very different ways sought to reinterpret the primary texts directly, or utilize methodologies such as *takhayyur*, selection, and *talfiq*, patching together, of classical fiqh, to create combinations of opinion applicable to a particular issue or circumstance. Finally, the birth of the modern states of the 19<sup>th</sup> and 20<sup>th</sup> Century CE saw and continue to see, the hybridization of secular law with elements taken – and usually decontextualized – from the *shariah*. A potent example is that of the ‘Anglo-Muhammadan’ legal framework created in British occupied India and now used as a legal framework in Pakistan, resulting in laws claiming legitimacy, but little resemblance to a contextualized framework for *shariah* in principle, aim or effect (Sonbol 1996:11; Ali 2001).

There is then, a continuing and complex history of divine revelation, human intellectual and spiritual effort, and diverse social and political intersections, impacting in very different ways on the lives of people. As mentioned in Part I of this paper, defining an Islamic framework in theory and practice must therefore take into account variety in Muslim thought as well as sociality. Furthermore, the Muslim axiom, that Islam is for all people, times and places, underscores the wisdom in divergent perspectives. Before discussing gender and its specificities, it is therefore useful to consider key questions arising from the discussion so far:

- Must an Islamic framework for approaching particular social issues or aim, such as human development, draw upon or reference a specific scholastic stance and methodology?
- Can the classical and more recent trends in the interpretation of *shariah* be bridged?
- Is it possible to utilize particular Islamic methodologies to allow for inclusivity and general principle, without degenerating into whim, compromise or bad innovation?

That is, anything claiming to be ‘Islamic’ in ontology and epistemology must be rooted in the Qur’an and Sunnah, and recognized as sound by Muslims in their diversity: permissible, acceptable and legitimate. The challenge in a context of plurality where consensus on all issues is by definition neither possible *nor desirable* may therefore lead to the question,

- Might an inclusive approach – crucial to the work of IRW – be better framed as *Islamic inspired and rooted* in principle and method?

This notion goes beyond semantics, and underscores the philosophical and practical nature of the issues at hand, allowing for a God-conscious, spiritually literate and informed approach to development. Underscoring rootedness and inspiration from Islam and its traditions also

circumvents the adoption of a specific school of thought or methodology or assertion of views and practices as 'of' or 'from' an/the Islamic framework that would inevitably risk the alienation of clients, institutions and populations with whom IRW works.

To further understand the relevance of this history of knowledge and its application, and how engagement with it may lead to a suitable approach to gender and development, a discussion of gender and its intersection with Islamic knowledge, and its application to the lived realities of contemporary communities is required.

## 2.2 Gender within the *Shariah*

Before addressing specific issues of gender injustice, it is useful to explore the Islamic conceptualisations of gender that shape Muslim practice and understandings of gender relations. While culture and circumstance dictate social norms to a great extent, especially in the ways in which communities consider certain social roles or characteristics as gendered, the religious framework can either confirm or challenge notions of 'ideal' gender relations.

*“O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of God is the most righteous of you. Indeed, God is Knowing and Acquainted”*

### **Qur'an, Surah Al Hujurat 49:13**

Crucially, yet often overlooked, the Qur'an conceptualises humans as fundamentally spiritual beings, whose lives are created for and constructed around the relationship between each person and God. The social realm is directly functional to this profound spiritual purpose. Deriving explicitly from the Qur'an humans are equal before God (al-Nisa', 4.1; al-Dhariyat, 51.56). Creation in its diversity is confirmed, including gender, but differences are erased at this most fundamental level (Abu Shucka 1995; Araki 2005:69; Hill Abdulaalam 1998:71). A direct example is narrated regarding the revelation of Surah al-Ahzab, 33.35, as explicated by Shaykh Akram Nadwi (2007:4-5):

*The duties owed to God, and the virtues that ensue from the effort to do them, are the same for men and women. This is affirmed in a well-known Qur'anic verse. The verse, and the occasion of its revelation are recorded in this hadith, narrated by 'Abd al-Rahman ibn Shaybah:*

*“I heard Umm Salamah, the wife of the Prophet – *salla l-lahu 'alay-hi wa sallam* – say: I asked the Prophet - *salla l-lahu 'alay-hi wa sallam* – Why are we [women] not*

*mentioned in the Qur'an as the men are mentioned? [,,] Then I was alerted that day by his call on the pulpit. [...] At that moment I was combing my hair. I gathered up my hair and went to one of the rooms of my house; I listened hard. I heard him saying on the pulpit: O people, God says in His Book: The muslim men and muslim women; the believing men and believing women; the men who are obedient [to God] and women who are obedient [to God]; the men who are truthful and the women who are truthful; the men who are persevering and patient and the women who are persevering and patient; the men who give alms and the women who give alms; the men who are humble and the women who are humble; the men who fast and the women who fast; the men who guard their chastity and the women who guard their chastity, and the men who remember God much and the women who remember God much – God has prepared for them forgiveness and a great reward.”*

Al-Hakim, *al-Mustadrak ala l-Sahihayn*, ii:416'

Each conscious and responsible adult person – irrespective of gender or any other social or biological construct – is in a state of duty and servitude to the divine, through which hierarchy can only be expressed in relation to piety. This is a radical notion of equality, and cuts down the discourse of female inferiority in the most profound sense (Nadwi 2007:3-10; Kadioglu 1994).

Secondary to this core human reality are the human relations with each other and the environment: in this, the daily lives of each individual, each community, and each society, people are expected to act on and express the ideals made incumbent through their connection with and servitude to God. The Qur'an therefore bridges the social and the divine, recognising the realities of human life across time and place, while expecting each person and community to strive for excellence in all interactions. At the same time, the fallibility of humans is accounted for, and a number of specific commands to ensure justice. These Qur'anic injunctions relate to core social processes, from economic transaction to familial relations. As Ali (2001:3) points out, much of the fiqh is gender-blind, in that it relates to issues unaffected by sex; rather it is the area of personal and familial relations in which the biological differences in men and women impact on the social, and in doing so, are addressed by the shariah in a gendered manner. Of paramount import to this paper are the ways in which these differences – specified in relation to certain activities and contexts – are intended, interpreted, and experienced either as power differentials and hierarchy, or as complementarity and practicality between the sexes (Sharify-Funk 2008:41; Stowaser 1994:6). The analysis in Part III focuses on specific issues of gender justice and the varying interpretations pertaining to them; it is therefore useful at this juncture to focus on *why* these variations exist.

Returning to the discussion relating to the epistemological development of the shariah, it becomes clear that the plurality of interpretation applies to gender issues through human intellectual and spiritual engagement with primary religious texts intersecting the social, cultural and political. We

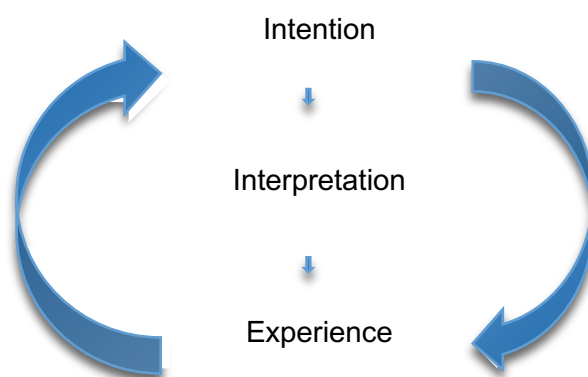
have then, a spectrum of perspectives on gender that must be understood as situated contextually. The classical framework and methodologies employed within the usool-ul-fiqh reflect and recognize this situational nature, as illustrated by the divergence of opinion on women conducting her own marriage without a *wali*, which is considered permissible by the Hanafi school, but not by others (Al-San’ani *Subul al-Salam*, part I:118-119 ref Setiawan 2007:208). As Setiawan explains, the social context of Kufah the birthplace of Abu Hanifa provided a context, example and set of social norms that recognized and supported women’s independence (*ibid.*). The notion that challenging elements of the fiqh are intentionally anti-woman does not recognize the plurality of views, the intentions of the interpretations, nor the influence of women themselves as scholars and active participants in the articulation of the shariah (Sonbol 1996: 7). Similarly, the standpoints of feminists critiquing elements of fiqh as reflective of the patriarchal contexts of scholars are themselves situated in their own milieu, experiences and academic frameworks. ‘Ideal’ gender roles and relations are therefore created by the intersection of Islamic epistemology with the social and cultural constructions of a given geography and sociality. Where there are examples of misogyny – implicit or explicit – they result from the outcomes i.e. the deductions of people, not the methodologies, and the refutations lay within the Islamic tradition itself (Barlas 2002).

### 2.3 What might an Islamic inspired and rooted framework for gender justice in development look like?

In order to outline possible responses to this question, it is helpful to return to the core elements of the epistemology itself:

- Intention – relating to the *maqasid al-shariah*
- Interpretation of rulings through the methods of usool-ul-fiqh – who, why, when, what
- Experience of people in practice – context specific and changing

These elements are deeply interconnected, in that the process of articulating the shariah through human interpretation seeks to realise the intention of the shariah in the lives of people:



While this paper does not aim to construct or assert a single standpoint or approach, it may be helpful to highlight the current use of particular concepts and principles used to articulate the aims of IRW in other areas of its work through a focus on the *maqasid al-shariah* – the underlying aims and objectives, which the *fiqh* and its application in law is intended to bring into practice.

The concept, first given explicit attention by al-Juwayni<sup>6</sup> and his student al-Ghazali<sup>7</sup>, and later elaborated upon by figures including Ibn Abd-al-Salaam<sup>8</sup>, Ibn Taymiyya and in the paradigmatic work of as-Shatibi<sup>9</sup> (al-Nishar 1978:82), relates closely (and amongst some commentators interchangeably) with *maslaha*, goodness / public interest (Kamali 1991; Setiawan 2006:206). This is explained with great clarity by al-Ghazali himself,

*“what we mean by goodness here is to protect the original objective of the law maker, and that the objective of law makers are five, that: is to protect the religion (belief) of human beings, the life of human beings, human reason, the generation of human beings, and the property of human beings. Everything that maintains the protection of these five foundations is categorised as maslaha, and everything that rejects the protection of the five foundations is categorised as mafsada (badness); to avoid the mafsada is maslaha (goodness).”*<sup>10</sup>

Imam al-Gazali, *Al-Mustashfa min 'Ilm Al-Usul'*, Vol. I. p. 286 trans. Hasyim 2009:6<sup>11</sup>

Within the borders of the permissible there is much precedence and scope for differing views, the discernment between which must be in line with the imperatives of *maqasid* and *maslaha*. As discussed, the development of different schools of thought and method through the process of scholarly interpretation and intellectual engagement have over time, given rise to a structure and set of processes that allowed for plurality within the boundaries of Islam. Traditionally, this included social-political-religious structures with which to implement principle into praxis. This included a system of leadership and judges whose discretion and power to influence Muslim communities could provide a powerful framework with which to promote social justice. However, the lived reality of the contemporary Muslim world, and of Muslim communities living within secular legal frameworks – is that no such system exists in its original form. National laws combine secular and religious law within varying forms of governance, and populations practice Islam alongside cultural traditions. Furthermore, the plurality and fundamental agency of individuals and communities to

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<sup>6</sup> al-Juwaini, *Al-Burhān fī Usūl al-Fiqh*

<sup>7</sup> Al-Ghazali, *Al-Mustashfa min 'Ilm al-Usūl*

<sup>8</sup> Ibn Abd al-Salam, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*

<sup>9</sup> As-Shatibi, *al-Muwaqat fi Usul al-Shari'a*

<sup>10</sup> “*lakinnana na'ni bi al-maslaha al-muhafaza ala a' maqsudi al-shaari' wa maqsudu al-shari' khamsatun wa huwa an yuhfiza alaihim dinuhum, wa nafsuhum, wa 'aqluhum, wa nasluhum, wa maluhum, fakullun ma yatadammanu hifza hadihi al-usul al-khamsa, fahuwa maslahatun, wa kullu ma yafutu hazihi al-usul fahuwa mafsadatun wa daf'uha maslahatun,*”

<sup>11</sup> For full English translation see Hammad 1987



believe, practice and choose to follow particular scholarly or legal perspectives renders this traditional system further challenged in a globalised, diverse and often fractured world. This contemporary situation, alongside the challenges discussed above therefore demands a framework suited to diverse and difficult circumstances: one which highlights and reminds us of first principles. In line with IRW's stated core values, this paper therefore proposes addressing gender issues through an approach that seeks to find rulings within the traditions that respond most closely to the maqasid. This is not to suggest that all other rulings were/are not derived with the maqasid in mind –respect, status and love to those who dedicate their lives to benefit humanity through the shariah must be justly accorded - but that each context and the instances of gender justice at the epistemic and practical levels require engagement and analysis of the most suitable Islamic approach. Auda's approach, highlighting the shariah and maqasid as an ethical as well as legal framework is pertinent to this understanding (Auda 2008; ).

The following principles (Amino-Kano 2012). have been identified as particularly relevant to gender justice:

- social justice (*adl*),
- compassion (*rahma*)
- positive change<sup>12</sup> and the striving for excellence (*ihsan*):
- spiritual honour and duty: humans as equal in all but individual piety
- desistance from doing harm *la darar wa la dirar fil Islam*
- alignment of social norms and culture with shariah ('urf)
- what is not impermissible may be permissible (primary 'asl)
- promoting the good, forbidding evil
- reciprocity: gender justice as part of a holistic system of rights and responsibilities<sup>13</sup>

Part III of the paper therefore sets of to define key challenges relating to each issue, and presents alternative faith-based options clearly underpinned by the fundamental Islamic principles. By defining alternative interpretations and practices through a return to first principle, the power of an Islamic framework may inspire change, and pave the way for practical transformation and social

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<sup>12</sup> See al Hibri 1997

<sup>13</sup> As explained by Sada et al 2005:8 *Reciprocity is the key to understanding how the system is framed and, we are convinced, is also the key to formulating a robust framework for protecting women's rights in Muslim society. From this perspective women's rights should not be seen as stand-alone claims made by women, but as claims arising from a system of mutual rights and obligations guaranteed by both religion and law.*

justice. Through this approach IRW may choose to address the gendered challenges it faces at a policy and practical level, while remaining firmly rooted in the Islamic tradition.

## Part III: Gender Justice and Social Issues

*“The noblest of you in the sight of God, is the best in conduct.”*

**Qur’an Surah al Hujurat 49:13**

The following analysis present the challenges encountered by IRW in the field, arranged under the maqasid elements of human life. These elements correspond to and are interlinked to each challenge and principle for transformation. To avoid repetition throughout the analysis it is assumed that the connections are clearly discernable, for example the impact of restricting women’s education on social and political participation, or the assumption of male superiority and power as a legitimising factor for physical and epistemic forms violence. The paper therefore outlines salient examples of the challenges presented by each issue, followed by the corresponding possibilities for change articulated by the fundamental principles of shariah. The intention is not to promote one school of thought over another, but find spaces to promote gender justice within an Islamic inspired and rooted framework.

### 3.1 Spiritual

*“Verily for all men and women who have surrendered themselves unto God, and all believing men and believing women, and all truly devout men and truly devout women, and all men and women who are true to their word, and all men and women who are patient in adversity, and all men and women who humble themselves before God, and all men and women who give in charity, and all self-denying men and self-denying women, and all men and women who are mindful of their chastity, and all men and women who remember God unceasingly: for all of them has God readied forgiveness of sins and a mighty reward.”*

**Qur’an, Surah al Ahzab 33:35**

As discussed in Section 2.3, the spiritual position of humans as servants to God informs the conduct and relationships we have with each other at the most fundamental level. This is underpinned by spiritual equality (Lemu 1978:14 which explicitly places women and men as equal in honour and duty. However, there remain challenges to the translation of this spiritual equality in the daily lives of men and women.

## Challenges

- **Access and participation in mosques:** the cultural context alongside some interpretations encouraging women to pray at home, as well as those limiting women's movement beyond the domestic sphere have resulted in total or restricted access to mosques within some communities. A hadith attributed to the narration of Ibn 'Umar is often quoted in support of this view, in meaning: "Do not forbid your women from going to the mosque, but praying at home is better for them" and attributed to 'Abd-Allah bin 'Umar, "The prayer of a woman in her room is better than her prayer house, and her prayer in a dark closet is better than her prayer in her room"<sup>14</sup>. That is, the smallest, darkest, most secluded space is contrasted to a private area of the home – a woman's own room – which is further compared to the public area of a house in which an extended family might pray together: the more secluded or separate space is praised over the communal, despite the numerous narrations of communal worship in mosques and public spaces amongst the female companions. Subsequently, discouragement and structural barriers such as limited space have resulted in the exclusion of women from mosques and the formal communal religious life of many communities (Cantone, K. 2005). This not only limits women's participation in communal worship and the social connectivity inherent in participation, but indicates spiritual inequality contrary to the explicit edicts within Qur'an and Sunnah.
- **Spiritual leadership:** the majority opinion of classical Islamic scholars, that leading men in prayer should be conducted by a male imam, is often used as a way of undermining female spiritual leadership. The idea of female authority is also an anathema to cultural constructs of male superiority.
- **Religious authority:** the consequence of restricting women's access to the formalised spiritual space of the mosque and limiting religious education has resulted in the gendering of religious authority. Furthermore, a majority of classical scholars, from both the Sunni and Shia traditions, consider the role of prayer leader, Imam, to be restricted at the very most, to leading other women in prayer (Al Tahawiy *Mukhtasar Ikhtilaaf Al `Ulama*; Al-Shaybani *Kitab Al Aathar*, see Subedar 2010), and rule as unlawful for women leading men. In practical and symbolic terms, this has in some cases contributed to negative attitudes to women as able to wield religious authority, although for many Muslims merely indicates issues of practicality and modesty. More crucial however, is the concomitant history of women's religious leadership, scholarship and teaching that has undergone deletion in the

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<sup>14</sup> Ibn Qayyim Al Jawziyyah, *'Awn al-Ma'bud*, 2:227; Ibn Hajar al Asqalani, *Fath al-Bari*, 2:350; al-Hindi, *Kannz al-Ummal*, 16:413-414; Ref. Abou El Fadl 2001:261

communal memory, allowing for dismissal and denial for contemporary women's participation.

### *Key principles and precedents for change*

- **Access and participation in mosques:** the two most holy mosques in the Islamic world, in Mecca and Medina, have provide unquestioned access to women since their founding, in Mecca as the site of the Ka'ba and Medina as the site of the Prophet' Muhammad's own mosque. Throughout history, mosques have been built by wealthy women in cities of key Muslim importance, and since the earliest community of Muslims women have not only accessed mosques but taught in them as respected scholars and transmitters of Islamic knowledge. This includes the example of the wife of the Prophet, Aisha bint Abu Bakr al-Siddiq, through which a great portion of the *ahadith* the recorded sayings and actions of the Prophet were transmitted, and who was actively engaged in spiritual leadership. There are many narrations relating the active participation of women in mosques from the early community (Abou El Fadl 2001:242), including for the night prayers, and on the Eids, with jurists including Malik ibn Anas ruling that it is preferable for a woman to perform l'tikaf in the mosque and not the home<sup>15</sup>. It has been narrated that at the mosque of the Prophet, women would pray in rows behind the men: men who were late are narrated as having prayed behind the women at the back, and their prayers were considered valid, leading to classical rulings of the undesirability but validity of women prayer in the midst of men and men praying behind the rows of women<sup>16</sup>.
- **Spiritual leadership:** the Qur'an relates a number of historical female figures, whose spiritual and worldly leadership marks them as roles models to all Muslims, including Mary bint 'Imran mother of Jesus, Asiyah bint Muzahim the wife of Pharaoh who saved the Prophet Moses as a baby, and the Queen of Sheba who embraced the teachings of the Prophet Suleiman despite her vast wealth and political power. Within the earliest community, numerous women stand out, including Fatimah al-Zahra daughter of the Prophet Muhammad who is revered for her spirituality, while her daughter Zaynab bint Ali demonstrated profound leadership in the face of oppression. Similarly, the names of women such as Rabi'ah al-Adawiyah remain well known as outstanding examples of spiritual devotion and knowledge. The spiritual leadership of women is woven into the very fabric of Muslim history (Akari 2005; Iravani 2005; Stowasser 1994; Zakaria, Qisho & Dowe. 2008).

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<sup>15</sup> Ibn Hajar al-Asqalani, Fath al-Bari 2:101-102; Abu Shuqqah, Tahrir al Mar'ah 2"181-194 Abou El Fadl 2001:261

<sup>16</sup> Sahun, al-Mudawwanah 1:195; al-Qayrawani, al-Nawadir wa al-Ziyadat, 1:296; Ibn Qudmah, al-Mughni 2:44; Abu Shuqqah, Tahrir al-Mar'ah 2:195-202 ref. Abou El Fadl 2001:261

- **Religious authority:** the religious authority of the women discussed above is undisputed, as is the right to religious learning and scholarship to the highest levels. Throughout Muslim history, the equality of women as able to hold authority in religious matters is clear. Recent studies including the seminal work of Nadwi (2007) challenge collective amnesia to reveal thousands of women scholars, judges, and religious leaders over time and place, who have each contributed to the dynamic body of Islamic knowledge as important figures in their own right. Furthermore, in the controversies over women imams, the majority view of classical scholars has eclipsed the rulings of their equal contemporaries who considered it permissible, either wholly, such as al-Muzanni, ibn Arabi, and Abu Thawr (240H/874CE) or with restrictions to non-obligatory prayers excluding the tarawih or when there is no man of ability as in the case of al-Tabari (Setiawan 2006:207 ref. al-San'ani, *Subul al-Salam*, Part I, 8-9).

The symbolic and social importance of spiritual equality should not be underestimated nor considered peripheral. History not only contains precedence, but illustrates the normative nature of women as equal to men in matters most important to the Islamic framework: by looking into the past, we may see possibilities for the future of Muslim women's spiritual and religious authority.

### 3.2 Humanity and life

While stating equality for women in relation to humanity and right to life may seem given, the challenges presented by war, natural disaster and violence against women require explicit reference to this fundamental point. In pre-Islamic times, as is the case in contemporary times in many locations worldwide, the birth of daughters was considered unfortunate and in some cases so detestable as to warrant infanticide. The Qur'an refers directly to this mentality as an evil:

*“When if one of them receives tidings of the birth of a female, his face remains darkened and he is wroth inwardly.”*

*“He hides himself from the folk because of the evil of that whereof he has had tidings, (asking himself): shall he keep ‘it’ in contempt, or bury her beneath the dust! Verily evil is their judgment.”*

**Qur'an, Surah al-Nahl, 16:58-59**

The Islamic position on equal right to life is clear, uncontested and ungendered:

*“And whoever saves a life, it is as if they had saved humankind entirely”*

**Qur'an, Surah al-Ma'idah, 5:32**

### 3.3 Economics & Finance

One of the key elements of IRW's holistic development agenda is the alleviation of poverty through a sustainable approach to the economic wellbeing of the people it serves. Economics is interwoven with social welfare, and of crucial interest to gender justice is the guidance concerning economics and familial relations especially marriage, which are directly involved in the freedom and well-being of women, and intrinsically linked to power, especially between men and women.

#### *Challenges*

As discussed throughout this paper, forms of injustice based on gender relate to women's perceived inability to operate with agency or ability, combined with limitation to the physical and conceptual boundaries of the family (Ali 2006:4). Economic independence is often associated with public participation, and therefore considered 'unfeminine' or even impermissible. For example, the CLRO fatwa on 'The Dangers of Women in the Workplace of Men', limits the permissibility of employment to women only workplaces or with mahram, opining a woman's physique as most suited to housework (ibn Baz 1987:422-431). The cultural construction of financial control and economic power as 'male' is thus used to deny women their rights, and as such sustains poverty, limiting women's ability to support themselves, gain economic independence, or contribute to family and communal wealth and welfare. As explored below, religious interpretations of gendered 'responsibility' and 'authority' in relation to economics is often used to justify the financial abuse of women, including the misapplication and abuse of Islamic law to create injustice, such as the denial of nafaqa whilst claiming double inheritance.

#### *Key principles and precedent for change*

Gender dynamics and the patriarchal default are recognized and dealt with through the assertion of explicit agency, independent personhood and human rights accorded to women, including freedom of religious practice, the pursuit of knowledge, economic independence and wealth accumulation (McDonald 2006). While theological interpretation and the body of scholarly engagement with religious texts is by its nature dynamic and contestable, those explicit rights and responsibilities from the primary, divine source of knowledge, the Qur'an, complemented by the Sunnah of the Prophet Muhammad provides a unique approach to gender and gender relations. The situation of women as potentially reliant on male dominated social structures is specifically addressed, with relations between a woman and husband governed by particular institutions, including:

- **Nafaqa**, or family support, from the Quranic assertion that it is a man's duty to provide for and support his wife and children (and other members of the household) includes food, clothing and shelter. This is a specifically male duty (unless there is no man to carry out the duty or is not contextually applicable) and a woman, even if she is far wealthier than her husband, is not obligated to contribute to the family's financial security, spending her own

money as she wishes (Esposito & DelongBas 2002:25). A woman can claim remuneration for the work that she does in the home, but that work is not gendered by obligation or expectation. All money, including that earned outside the home is hers and she has no duty to spend it other than on that which she wishes to<sup>17</sup>. The recognition that domestic work is of equal significance to work outside the home, if not more, is an important point: payment signifies that the 'domestic' is not inferior or in opposition to 'public', nor 'women's work' - domestic work is important and respected but there is no assumption that women will or must do it. Interestingly, contemporary Muslim 'marriage manuals' often construct a gendered framework in which a wife is considered responsible for the home and housework, a viewpoint in direct contradiction to the obligations outlined in classical fiqh (Ali 2003).

- **Mahr** If a woman chooses to marry, and it is her right to choose, she has the right to a significant pre-arranged contribution of wealth from her husband called the mahr. The mahr is an agreed amount of money, gold or knowledge presented at the contracting of marriage or at a mutually specified time after (Khadduri 1978:213). Owned independently and without obligation by a woman along with her other wealth, the mahr may be seen as both of practical use and symbolizing a woman's independence, itself indicative of her financial and intellectual autonomy. The Qur'an also specifies that the mahr is for the woman and is controlled by her - it is not a dower where a man 'buys' a wife from her father. The verse may be translated / interpreted in its most basic sense as:

*"Give women on marriage their mahr as a free gift; but if they, of their own pleasure, give any part of it to you, you may accept and enjoy it."*

#### **Qur'an, Surat an-Nisa' 4:4**

- **Inheritance** Economic freedom and independence is reinforced by a woman's right to inherit and own property separately from that of her family, demonstrated in which can be translated / interpreted in its most basic sense as:

*"From what is left by parents and those nearest related there is a share for men and a share for women, whether the property is small or large, a specified share"*

#### **Qur'an, Surat an-Nisa' 4:7**

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<sup>17</sup> See Al-Shafi'i, Kitab Ikhtilaf Malik wa'l-Shafi'i in Al-Umm vol 7 pp.376, K.al-Sadaq vol.5 pp92; Al-Muzani, Mukhtasar al-Muzani, K. al-Nikah ref Ali 2003:161;194

According to the Qur'an and the examples provided by the Sunnah, men and women inherit, but in different proportions: male heirs receiving twice that of female heirs. Although this appears to be a form of gender inequity, the institution of *nafaqa* must be taken into account: the wealth going to male heirs is for sharing with men, women and children – all those within the family and those in its care. The portion specified directly to a woman is part of her independent wealth to spend or save without obligation. The details of inheritance are further explained in Surat an-Nisa' verse 11, a part of which may be translated / interpreted in its most basic sense as:

*“God directs you with regards to your children’s inheritance: for the male, a portion equal to that of two females: If there are only daughters, two or more, their share is two-thirds of the inheritance; if there is only one, her share is a half. For parents, a share of one sixth of the inheritance goes to each, if the deceased left children; if there are no children, and the parents are the sole heirs, the mother receives a third; if the deceased left brothers or sisters the mother receives a sixth. The distribution in all cases comes after the payment of legacies and debts...”*

#### **Qur'an, Surat an-Nisa' 4:11**

In practical terms, this division requires a total implementation of *nafaqa*, so that the protection of women – whose empowerment is often limited by economics in the context of poverty and patriarchy – is supported by a religiously sanctioned economic safety net. In contexts where the *nafaqa* is not provided, or in families and marriages where such an arrangement is not applicable the corresponding scholars such as Ramadan (2009) have highlighted the injustices wherein men continue to take a larger share of inheritance without implementing the duties with which it is conditionally applied.

- **Qawwamiyya and wilayah** The partnership and complementarity of gender relations is also referred to within the Qur'an by the term *wilayah*, which constructs men as protectors and supporters of each other:

*“Men and women are protectors of one another: They enjoin what is just, and forbid what is evil, they observe regular prayers, practice regular charity and obey Allah and his messenger on them will Allah pour his mercy for Allah is exalted in power, wise.”*

#### **Qur'an, Surat at-Tawbah 9:71**

In light of this term, the economic duty of men set out in the Qur'an may be understood as protecting women in all circumstances including the social barriers that women often struggle to overcome:



*“Men are Qawwamun over women, because God has given one more (strength) than the other, and because of the sustenance they provide from their own means...”*

#### **Qur’an Surah an-Nisa’ 4:34**

Each spouse, as part of the mutually agreed terms of marriage has certain rights over the other, the nafaqa being a duty of a husband towards his wife and part of his *qawwamiyyah*, which may be translated as ‘responsibility’, ‘protection’, and ‘maintenance’ (Abou El Fadl 2001:210; Alwani 2012). Thus in the normative social context men have a responsibility towards women, including the *qawwamiyyah* of a wife’s support and maintenance. It must be noted however, that the concept of *qawwamiyyah* is both complex and contested (McDonald 2006:50). The notion of gendered responsibility is rejected by some completely, while others consider it an indication of male superiority, an indication of power imbalance within the Islamic framework, and as such a barrier to egalitarian principles. These debates underscore the issue of gender justice in relation to all other issues, and as such must be considered within the construction of the principles of a gender conscious framework for Islamic development practices. Returning to the maqasid, *qawwamiyyah* cannot be understood without the defining principles, as Mir-Hosseini and Anwar (2012) point out, marriage and spousal relations are defined by the concepts of *ma’ruf* (good way, decent) and *rahmah wa muwadah*, (compassion and love) mentioned in the Qur’an over twenty times. Similarly, the term *wilayah* is used in the sense of friendship and mutual support (Mir-Hosseini and Anwar 2012).

To what extent Muslims view gender difference in terms of power and hierarchy, or as mutually beneficial companionship in the service of God, depends on the social, political and cultural contexts as much as it does on the interpretations of the Qur’an and Sunnah by Islamic scholars and laypeople. For IRW and its duty to promote justice, supporting harmonious and just relations – personal and communal – is fundamental to the spiritually informed, holistic definition of development.

### **3.4 Marriage and Family Law**

As discussed in Section 2.2, a pivotal social institution in the conceptualization and practice of gender justice and injustice is marriage. Marriage, as a vehicle for the formal recognition and governance of relationships between spouses, is normatively viewed as providing a blueprint for heterosexual male-female relations (Ali 2006). As such, marriage and related family law impact on the needs of populations, and an understanding of it helps to better address the challenges facing IRW in different contexts.

*"Among His signs is (the fact) that He has created spouses for you from among yourselves so that you may console yourselves with them. He has planted love and mercy between you; in that are signs for people who reflect"*

**Qur'an, Surah al-Anbiya' , 30:21**

## *Challenges*

- **Mis/understanding *qawamiyyah***: as explored in Section 2.2, the understanding of gendered roles and responsibilities within marriage impact on the equality of men and women more generally. The Islamic framework recognizes gender difference, through which men are considered normatively responsible for the economic maintenance of the family and provision and protection for the role of motherhood. This economic 'qawamun' is as Alwani explains, "not an unconditional statement of male authority and superiority over all women for all time" (Alwani 2012) . A combination of some religious interpretations with cultural patriarchy has resulted in marriage constructed within some communities as a relationship of fixed hierarchy and inherent male superiority, effectively denying women mutual partnership and agency. From these perspectives, husbands are able and expected to assert control over women, promoting an imbalance in the spousal relationship. A number of pertinent examples may be found in the rulings of the Permanent Council for Scientific Research and Legal Opinions (CRLO) whose rulings assert that 'a woman will not be free of [a certain degree of] crookedness in her moral character'<sup>18</sup>, are 'intellectually deficient'<sup>19</sup> and in light of such inferiority, 'is obligated to obey her husband and not leave the house except with his permission'<sup>20</sup>.
- **Constructing the 'feminine'**: in constructing the institution of marriage as one of power and control, a number of discourses, again informed by the various cultural perspectives of different geographies, promote specific and fixed narratives about the 'nature of women'. Like any reductionist process, the idea of whole groups of people having a particular 'nature', in this case women, is a dangerous one. Ideas of 'femininity', across many cultures including those of Western European, have over centuries combined ideas of female weakness, irrationality, vulnerability, and sexual voracity. A particular challenge for the Muslim context is the notion of 'fitna' a concept used to cast women as simultaneously in need of protection and requiring control for their ability to engender uncontrolled sexual desire in men. While the concept may be dismissed as a case of psychological projection by those imagining personal issues as communal, this form of victim-blaming has resulted

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<sup>18</sup> CRLO Fatawa al-Lajnah 4:319-320 trans. Abou El Fadl 22001:276

<sup>19</sup> CRLO Ibn Baz 1990. Majmu Fatawa wa Maqalat Mutanawwia'ah 4:292-294 trans. Abou El Fadl 22001:277

<sup>20</sup> CRLO Salih bin Fawaz al-Muntaqa 5:263 trans. Abou El Fadl 22001:283

in the justification of gendered oppression in the name of Islam. For example, Maududi (Lemu and Heeran 2003:37; Nasr 1966:110) asserts,

*The husband and father: "according to the patriarchal nature of Islam, is an Imam for the family on whose shoulders rests the religious responsibility of the family. ..He must, "uphold the tenets of faith and his authority symbolizes that of Allah in the world. The man is in fact respected in the family precisely because of the sacred total function he fulfils. The rebellion of Muslim women in certain quarters of Islamic society came when men themselves ceased to fulfil their religious function and lost their virile and patriarchal character".*

- **Betrothal, choice & consent:** closely connected to the idea that women are biologically and socially unequal to men, is the phenomenon of forced marriage and betrothal. Both of these injustices are legitimized by the idea that a parent or guardian is better placed, or has the right over the woman or girl, to marry her to a man of their choice, without consent, a ruling<sup>21</sup>. While the many different contexts and reasons are complex and variable, ranging from contexts in which women rely on guardianship; a misplaced belief in doing 'best' for the individual, to the use of women as objects of political, economic or social capital, the consequences of non-consensual marriage are profound, both within the spousal relationship, the family, and the wider communities in which the practice is common. A related issue is the restriction of marriage between Muslim women only to Muslim men, a gendered difference drawn from verse 10 of Surah al Mumtahanah (2) urging the Muslims not to send back refugee Muslim women fleeing persecution from their non-Muslim tribes and husbands (Ali 2006:14). Yet the explanation has often been articulated as a woman's inability to negotiate the religious upbringing of her children in a mixed-faith marriage – perhaps a practical protection assuming the patriarchal nature of human societies, but also in some discourse that women are in some way 'owed' to Muslim men (Ali 2006:13-21).
- **The *mahr* as bride-price:** while the Islamic institution of the *mahr* is clearly beneficial to women, the misuse of the concept has been used to exploit marriage. Most commonly is its co-option into cultural and pre-Islamic traditions, in which a 'bride-price' is given by a man's family to that of the woman, reducing the bride to a chattel. Alternatively, some cultures view the *mahr* as a token, paid back through the bride's family who are expected to gift the groom for honouring a woman by marriage. The epistemic violence of these acts has other ramifications, with a woman's wealth – should she have any – seen as belonging to her family and then that of her husband. The greed residing in such transactions has also

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<sup>21</sup> See al-Juwayni's discussion of a case in which a Shafi'i father does not recognize the marriage of a Hanafi daughter *Kitab al-Ijtihad*: 36-38 trans. Abou El Fadl 2001:166

resulted in extremely high 'prices' in some areas, including the mahr gifted correctly to the wife, wherein marriage has become difficult to afford. This situation results in debt and high numbers of unmarried young people, thus impacting upon the dynamics of families and communities (Mir Hosseini 2003b).

- **Early marriage:** early marriage, a common practice in a number of contexts is informed by culture, (perceived) economic necessity and in some cases is either promoted or legitimized by religious interpretations. From a Muslim perspective, the issue is controversial: a normative position considers a person as having agency and religious accountability from 15 lunar years of age, or at puberty, and examples of important Islamic figures – men and women – who prospered and who had early marriages are often presented as justification. The most prominent example given is that of the marriage between Aisha bint Abu Bakr and the Prophet Muhammad, with Muslim sources suggesting a range of ages when betrothal took place, the earliest being six years old, to marriage from the age of 9 years, all the way up to 21 years (Liepert 2011). Those intent on using this example cite early marriage as a Sunnah, a powerful way of shutting down discussions on this issue. The contemporary reality is that young women and especially girls under the age of 15 who marry, whether out of choice, circumstance or without consent are at high risk from negative impact on health and social welfare (Ali & Minui 20010). Poverty connected to reduced access to education is often exacerbated and continued, while early sexual activity and pregnancy greatly increases ill-health. In particular, *the risk of death in pregnancy and delivery for girls under the age 15 is five times higher than for women in their twenties* (<http://www.care.org/campaigns/childmarriage/index.asp>). The ramifications for the development work of IRW are far-reaching.
- **Polygamy:** an issue often associated with gender inequality amongst a range of cultural and religious groups, including Muslims, is the provision of polygyny as a marital option. The secular and Christian-Western perspective in which monogamy is normative, has tended to view polygyny as inherently sexist or ungodly, which has informed much of the debate (McDonald 2006). Relating to these views, the lack of polyandry, where women marry more than one husband, is held up as an example of inequity (Ahmed 1992:87; Moghissi 1999:23). Within the Muslim context, in which men are conditionally permitted to marry up to four wives (Waud 2006:193), questions relating to injustice tend to focus on women's lack of consent or knowledge in relation to co-wives, and that the lack of similar polygamous choice for women might symbolise male superiority. At a practical level, polygyny can lead to the effective abandonment of women by men whose attentions, resources and time are divided, numerous restrictions for women relying on the male guardianship expected within particular cultural contexts, and families suffering from father-deficit. These issues are greatly compounded by the preceding issues: where women

experience the impact of being considered and treated as unequal, and in family and community structures that accordingly limit women's agency, social participation and economic resources, the reliance on a husband becomes paramount. Further inequity caused by neglect, abandonment and inequality between co-wives magnifies the levels of suffering experienced by women (Nurmila 2009; Phillips & Jones 2005).

- **Divorce and custody:** while divorce and issues of custody are challenging in any context, critics view gendered elements of the divorce process within normative Islamic perspectives as further evidence of gendered injustice. While interpretations differ, the main challenge rests with a husband's right to pronounce the divorce, *talaq*, with fewer restrictions or formal processes than a wife. The result is the phenomenon of quick and unmediated divorces that leave women with social stigma and sudden removal of the protection and support that the husband was at least in theory meant to provide. On the other hand, women wishing to obtain a divorce must either rely on a husband consenting to grant divorce by admitting fault, or through *khul*, divorce through the return of the *mahr* or contractually agreed sum, or if necessary pursue the divorce through a court of law (Esposito & DelongBas 2002:28-34). To divorce, a lack of religious/legal knowledge of her rights and access to courts are barriers which are further increased by cultural taboos which view divorced women as shameful, or culturally outlaw female-instigated divorce altogether, leaving women to suffer within abusive or unhappy marriages<sup>22</sup>. Furthermore, the automatic custody by mothers of young children normatively considered appropriate within the Islamic legal framework may not be granted in practice, with vulnerable women held hostage by a husband, extended family or community as leverage to either accept or cease divorce proceedings. The power imbalance of broader gender inequality is directly experienced in the event of marriage breakdown.

### *Key principles and precedent for change*

*"From among the believers are those who have the kindest disposition and are kindest to their families, such are those who show most perfect faith"*

#### **Hadith of the Prophet Muhammad : Bukhari and Muslim**

The complex and interconnected issues relating to injustice in marriage and divorce present a range of social ills that can block the Islamic development agenda at a very deep level.

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<sup>22</sup> See for example, the CRLO, Ibn Baz *Fataawa*:193-195 trans Abou El Fadl 2001:280-281

Furthermore, the remit of IRW cannot extend to the personal conduct of individuals. However, it is crucial that the concept of justice, and the mechanisms available to promote it within an Islamic framework are fully understood so that potential developments in policy and practice are informed and able to support social and structural change locally, nationally and internationally. The maqasid approach is particularly useful in this context not only as a reminder that fiqh is based on core principles, but that in the contemporary realities, the power or even existence of truly Islamic courts means that traditional recourse to gender based oppression and injustice is unavailable. Transformation of people's lives is not in the hands of judges and law-makers – which all too often contribute to structural barriers – but in the efforts made at and by the grassroots. The following are principles and precedents for change that may contribute to this vision:

- **Qawwamiyya** as a male duty understood as part of a flexible, contextual and dynamic arrangement between spouses relating to mutually agreed economic, social and emotional support.
- **Constructing the 'feminine'**: desisting from viewing personhood through a gendered cultural lens, to focus upon gendered rights and responsibilities that recognize equitable difference in the context of radical spiritual equality. The Islamic framework provides flexibility within the boundaries of lawful and unlawful, and does not fix narrow definitions of gendered 'roles' (see Section II). This is beautifully illustrated by the diversity of the women and men held in esteem, especially those from the earliest community, which was vibrant and successful through the incredible diversity of women and men working alongside each other for the communal good from the battlefields to home life (Zakaria, Qisho & Dowe. 2008).
- **Betrothal, choice & consent**: promoting the clear Qur'anic rulings and examples from the Sunnah that require consent for any form of contractual agreement, especially marriage (Siddiqui 2008), alongside the assertion of women's humanity as independent and equal partners to men. As Lemu reminds us, there is ample precedent: *the Prophet protected a woman's right to choose her own spouse and even nullified the agreement if forced against her will. Ibn Abbas reported that a girl came to the Messenger of God, Muhammad, and she reported that her father had forced her to marry without her consent.* (Lemu 1978:21). Furthermore, there is clear permissibility according to classical usool-ul-fiqh especially the Hanafi tradition (al-San'ani, *Subul al-Salam*, part I, 118-119 ref. Setiawan 2006:208)
- A reassertion of the rights of women and men in relation to mutual agreement regarding the **mahr**

- **Early marriage:** to move beyond contesting the age of Aisha bint Abu Bakr to understanding the contemporary norms and needs of each community, and the fundamental principles relating to the eradication of harm *la darar wa la dirar* and promotion of health and welfare, which early marriage explicitly undermines. A pertinent example is the change in Yemini law to prevent early marriage, underpinned and guided by the research of Islamic scholars and jurists.
- **Polygamy:** to promote mutual respect, consent and a better understanding of polygyny as a marital arrangement which is conditionally permissible and informed by the principles of justice. In some contexts polygynous marriage can greatly benefit all spouses, when the fulfilment of the conditions are met, as the Qur'an asserts:

*“marry women of your choice, two, three, or four; but if you shall not be able to deal justly (with them), then marry only one”*

**Qur'an, Surah an-Nisa', 4:3**

- **Divorce and custody:** the permissibility of divorce within Islam enable the dissolution of irreconcilable marriages, and its abuse directly contradicts the Qur'anic command to:

*“...live together in kindness or leave each other charitably...”*

**Qur'an, Surah al-Baqarah 2:231**

Furthermore, the legal opinions regarding divorce laws have a degree of flexibility, which is not always known, for example the right to divorce can be agreed within the marriage contract. Better knowledge and use of contractual obligation within the Islamic framework promotes informed partnership between spouses, which has the potential to transform gender relations more broadly. It also makes use of the variance in legal systems locally and nationally, allowing Muslims to agree to terms that can then be legally enforced where there has been a deficit of recognized and well informed Islamic courts.

These points related directly to the core values of justice, knowledge and eradication of harm.

### 3.5 Domestic violence

Domestic violence (DV) is an internationally recognized human rights crisis, acknowledged by the UN as crossing all boundaries of nation, ethnicity, religion and class, and a key issue within CEDAW.

*Violence against women continues to persist as one of the most heinous, systematic and prevalent human rights abuses in the world. It is a threat to all women, and an obstacle to all our efforts for development, peace, and gender equality in all societies.*

Ban Ki moon, United Nations Secretary General, 2007

Globally, 1 in 3 women experience domestic violence in at least one form: physical, sexual, emotional, social or economic (Unifem 2003). The pandemic abuse of women – the overwhelming majority of homicides where a woman is the victim are directly associated with DV (UNODC) – is also closely related to the abuse of children directly or as secondary victims and witnesses. Men are also abused, a phenomenon less easily measured due to under-reporting. Perpetrators are often spouses, but may be other family members, in-laws or members of extended family networks, and while the majority of cases are men against women, abusers and victims can be any combination of gender. Abusers are most commonly men, but female abusers are also common.

### *Challenges*

Developing a response to this crisis within an Islamic framework requires an analysis of a number of challenges. In particular, the legitimization of DV within personal and cultural discourses is often bound up with attempts to co-opt Islam as either promoting or permitting forms of violence. These issues require careful consideration of religious interpretation and intent:

- **Control and restriction of movement:** cross-connections may be located between abusive patterns of behaviour and physical violence, which are both linked to the binary of masculinity/ femininity, and to inherent male superiority. Aforementioned gender constructions (Section 3.6) promote power of men over women within marriage, parenting and wider family relations. This can effectively normalise the male dominance found to be a causal or aggravating factor in abuse. This relates closely with the issue of freedom of movement, on which some jurists have placed restrictions conditional on the permission of husbands and fathers (ibn Fawzan 5:263) suggesting women are by nature prone to 'crookedness', and thus requiring 'direction' of mahram men (CRLO a:1:457-458). Such rulings result in the legitimisation of abusive behaviours and customs that cannot be divorced from the issue of violence against women.
- **Respect and subservience:** similarly, a familial environment in which spousal respect is not mutual, and in which subservience of women is expected, sets the scene for DV.



- **‘Honour’**: These gendered and oppressive constructions of the male-female relationship, contributes to a culturally specific notion of ‘honour’ and ‘saving face’, variants of which may be found globally. This includes examples of rape-victim murder by members of the victim’s own family (Krug 2002). The use of ‘honour’ to justify and explain abusive relations and practices is particularly pernicious, the very use of the term providing an ‘explanation’ that removes responsibility from perpetrators to wider social structures and communities – which may well be complicit – and to the victims themselves as ‘transgressors’ (Ahmetbeyzade 2008; Mitu & Mirza 2007).
- **Theological interpretations**: crucial to defining the Islamic approach to tackling DV is the use of Qur’anic verses to legitimize ‘wife beating’. Qur’anic Arabic is multi-layered and rich in meaning, and as such the defining of terms have been discussed and contested over history. The very act of interpretation and translation can alter meaning and connotation, which can at one time appear normative, and at another questionable. In verse 34 of Surah an-Nisa’, following the reference to male responsibility *qawamiyyah* for maintenance *nafaqa*, guidance is given relating to the handling of *nushuz*. The meaning of *nushuz*, like *qawamiyyah*, is contested, with scholars lending it differing meanings including ‘disloyalty’ ‘desertion’ and ‘disobedience’. Others have used the sense given in other verses<sup>23</sup> as a guide, specifying disloyalty as ‘to leave marriage’ (The Global Muslim Women's Shura Council 2012). The verse provides guidance to men in response to this *nushuz* – as a final resort after reproach, and followed by leaving the marital bed, the term *daraba* is used. The majority of traditional interpretations of *daraba* have fixed its meaning as ‘hit’, ‘lightly hit or ‘admonish’. As such, despite juristic discussions highlighting that that this *daraba* is ‘ritual’ or ‘light’ to maintain coherence with explicit verses of love and mercy, it is used as an excuse or legitimization for abuse (Meetoo & Mirza 2007). Other interpretations derive a different meaning from *daraba*, ‘to go away from’, ‘turn away’ and ‘separate from’, and argue that as a course of action intended to resolve marital conflict –separation – appears to be more in keeping with the prior steps, and more effective than ritual or light hitting (GMWSC 2012). Cultural perspectives that view men as entitled to the use of physical violence therefore appropriate the terms *nushuz* and *daraba* to justify the ‘beating of disobedient wives’, despite the alternative meanings of temporary separation in relation to marital disloyalty (Alwani & Abugideiri 2003).

### *Key principles and precedent for change*

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<sup>23</sup> For example Qur’an 58:11 and 2:259

In keeping with the coherent message of mercy and peaceful relations, the Islamic framework is clear in its stance against domestic violence, which contravenes the core principles of justice, eradication of harm, and promotion of health and welfare. While jurists debating the nature of *daraba* over a millennia have excluded any form of physical damage (al-Hibri 1997), a reminder from both Qur'an and Sunnah underscore the rejection of abuse in its entirety:

*"And among His signs are that He created for you spouses from among yourselves, that you rest in them. And He made affection and mercy among you. Truly, in that are certainly signs for a folk who reflect."*

**Qur'an, Surah ar-Rum, 30:21**

*"the most perfect of the believers in faith are the best of them in moral excellence, and the best of you are the kindest to their wives."*

**Hadith of the Prophet Muhammad, Tirmidhi**

### 3.6 The body: health, reproduction and rights

The foundations for a holistic development agenda include the health and welfare of women, who face the complications of pregnancy and childbirth alongside general ill health:

*1000 women die every day...from complications arising from pregnancy and childbirth, the vast majority in poor regions of sub-Saharan Africa and South Asia.*

Islamic Relief: <http://www.irusa.org/programs/womens-programs/>

#### *Challenges*

Inadequate healthcare stemming from poverty, war, resource hoarding and poor infrastructure is compounded by social and cultural attitudes towards sexual health and reproduction. Taboos surrounding these issues functions as a barrier to education and action, limiting women's access to medical care. As a result, women die from preventable and curable complications associated with childbirth, issues of sexual health including sexually transmitted diseases, and trauma associated with rape and abuse. Those who survive are often affected by continuing acute conditions such as traumatic and obstetric fistula, the debilitating physical effects worsened by humiliation, shame and stigma. There are also challenges stemming from religious discourse which impact on the health and wellbeing of women:

- **Modesty:** Islamic etiquette places great value on modest conduct. In combination with cultural norms this can contribute to reluctance towards consulting medical professionals,

particularly in relation to sexual and reproductive health both as a subject matter and in the potential for revealing the body, despite clear rulings prioritizing health (Azaiza & Cohen 2006). This is further compounded by the lack of female doctors in many contexts where their access to women as patients is potentially far higher than that of male medics (WISE 2013).

- **Reproductive rights:** a love of children and large families as part of the wider notion of community, as well as cultural taboos, a lack of knowledge and limited access has, in conjunction with some jurists viewing contraception as an exception – for use in life endangering circumstances – led to limited family planning in many parts of the world. Furthermore, in places where populations have been repressed or decimated by war, the focus on childbearing as resistance, in creating large and tight-knit families as a social safety net, and a sense of duty to expand communities, mean that for many people, the notion of ‘family planning’ and limiting numbers of children is an alienating concept (Sciortino et al 1996). In these contexts, ‘natural’ methods are much more likely to be practiced, such as coitus interruptus and lactational amenorrhea (Omran 2012:1). The use of contraception from a juristic perspective also highlights the importance of consent by both partners, and jurists have ruled against ‘cutting from the root’, i.e. forms of sterilization, or abortion, unless necessary to preserve life. This complex range of factors acts to limit contraception, and in combination with early marriages and the wider context of poverty and poor health care, high maternal and infant mortality rates remain high.
- **Female Genital Cutting & Mutilation:** female genital cutting involving cutting, piercing, grazing, and burning the genitals, partial or complete removal of the external parts and the sewing of the affected areas including the vagina, are practiced in many geographical areas amongst a range of cultural, ethnic and faith communities. Explanations offered by those practicing or supporting it include notions of ritual purity and a belief that it will contribute to cleanliness; sexual control of women by reduction of pleasure and actual access to the vagina; tradition; and social expectation. The impact of these procedures can be devastating to the health, welfare and rights of the women, babies and girls on whom it is inflicted, whether or not they give consent. Furthermore, the power wielded by tradition and social pressure is in itself good reason to question the notion of consent in this context. The short and long term impact can be profound: on an emotional and psychological level causing stress, trauma, anxiety and shame, and physical harm including pain, bleeding and possible haemorrhage, infection of the flesh and blood, problems relating to urination and menstruation, sexual dysfunction with associated pain and lack of pleasure, increased risk of sexually transmitted infection and disease, increased risk of infertility, complications

during pregnancy and labour, and difficulties with gynaecological health care, where normal procedures cannot be carried out due to scarring (WHO 2012). Opinions amongst Islamic scholars differ considerably, but all are based on a discourse of harm. Those who have condoned it do so using ahadith – although variously considered weak by classical and eminent ulema such as Abu Dawood and Bayhaqi – by urging ‘moderation’. This intention to minimise harm has been used to legitimise FGC practice amongst Muslim populations.

- **Breastfeeding:** the promotion of formula feeding for commercial interest, discourses of ‘modernization’, pressures on women’s time and resources, and a lack of knowledge and support from medical practitioners and wider social attitudes has led to a decrease in numbers of women breastfeeding and the length of time (Batterjee 2010). This impacts on the health of children but also mothers, for whom breastfeeding promotes health including protective as a factor in breast and ovarian cancers (WHO). Additionally, natural child spacing and associated benefits through lactational amenorrhea caused in many women by exclusive breastfeeding are lost.

### *Key principles and precedent for change*

While the issues raised above are complex and far reaching, an approach from within an Islamic framework may be viewed as powerfully simple. A clear and normative principle used by jurists is the preservation of life, health and welfare, which takes precedent over other issues. In the case of harm and endangerment, the shariah is clear (Khayat 2004). Contraception for example has been extensively discussed by jurists (Omran 2012), including al-Ghazali (*Ihya*) and Shawkani detailing the benefits of family planning (Omran 2012:7). On the issue of genital cutting and mutilation, recent fatawa have been issued in an attempt to both educate and promote desistance from the practice amongst contemporary Muslims<sup>24</sup>. Breastfeeding is also clearly supported both in the Qur’an 2. 233; 65.6; 31.14; 46.15 (see Batterjee 2010) and through discussions within the fiqh, which encourage feeding for the benefit of the child and the mother, citing from two<sup>25</sup> to seven lunar years<sup>26</sup> as the time period of nursing. The matters of health feature highly in Islamic discourse, a prerequisite for other benefits (Khasule 2004) and a foundation of the maqasid (see Section II).

### **3.7 Education**

The personal benefits of education, from increased agency and the ability to make informed choice, to direct positive impact on health and poverty, are unmistakable, as are the social benefits. As Bokova (2010) states, it *improves livelihoods, leads to better child and maternal health,*

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<sup>24</sup> Dr. Ali Gom’a, Al-Azhar/ Cairo (11.24.2006), Sheikh Yusuf Al-Qaradawi, Doha, Qatar on (2.3.2009) and Prof. Muhammad Said Ramadan Al-Buti, February 2010 see [http://www.target-human-rights.com/HP-08\\_fatwa/index.php](http://www.target-human-rights.com/HP-08_fatwa/index.php)

<sup>25</sup> Ibn Abidin *Radd al-Muhtar ala al-Durr*, 3/211 (Hanafi)

<sup>26</sup> al Qurtabi (Shafi’i)

and favors girls' access to education. In short, newly literate women have a positive ripple effect on all development indicators. A fundamental element to the holistic development agenda, education for women and girls faces a number of challenges.

### *Challenges*

As discussed in Section 3.1, a lack of knowledge of the Islamic texts, Muslim history and precedent has allowed cultural and political factors to limit the education of women and girls. For some, female education, both basic and higher, is intrinsically linked to other 'evils' – to 'Westernisation', to the participation of women in 'public life', and to the subsequent exposure to 'immoral' environments. The CRLO for example, suggests that education be limited to the benefit of foundational religious education, and in cases of necessity, such as the need for women medics<sup>27</sup>. The notion that there is no point in educating girls, whose social function is considered domestic also contributes to limiting schooling. These views are closely connected to the issues discussed in Section 3.3, where the process of education is seen as increasing the chances of women being exploited or tempted due to their perceived vulnerability and fitna: *When a woman leaves her home...she opposes that which her inherent disposition inclines toward as well as the natural proclivity that God created within her...*<sup>28</sup>

### *Key principles and precedent for change*

*"Whomever follows a path to seek knowledge, Allah will make easy the path to Paradise."*

#### **Hadith of the Prophet Muhammad, Sahih Muslim, Book 35 Number 651**

Knowledge in Islam is not divided into sacred and secular (Lemu 78:15) as the Islamic framework relates to and encompasses all aspects of life. Referring back to Section 3.1, not only have women been educated since the very first Muslim community, women have been responsible for the individual and institutional transmission and development of religious, social and scientific knowledge over time and place. An Islamic framework does not merely permit the education of women: it promotes it. Ibn al-Hajj<sup>29</sup> explicitly referred to the duty of the scholar to educate the male and female members of the community, and the example of this can be found from the Sunnah of the Prophet himself, and through the lives of the learned including Malik ibn Anas, Abu Hanifa & ibn Hanbal (Nadwi 2007:44-46). The examples of Aisha and Umm Salamah and the female inheritors of the Islamic tradition also testify to the *active* nature of women's pursuit of education, with agency and authority (Nadwi 2007:46-51).

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<sup>27</sup> CRLO al Uthaymin *Fatawa al-Uthaymin* 2:753-754 trans. Abou El Fadl 2001:274

<sup>28</sup> CRLO ibn Baz.1987. *Majmu Fatawa wa Maqalat Mutanawwiah*. 1:422-423 trans.Abou El Fadl 2001:289

<sup>29</sup> Ibn al-Hajj, *al-Madkhal*, ii.215 ref. Nadwi 227:44

### 3.8 Political participation life

Throughout this paper, the diverse challenges facing women and consequently Muslim communities in general, relate at a foundational level to social and political participation. Where a false gendered dichotomy is created between the 'domestic' and the 'public' i.e. inside and outside the home, women are discouraged and excluded from participating in a wide range of activities.

#### *Challenges*

**Political Participation and Leadership:** The political participation of both men and women remains a challenge in a number of nations, including some Muslim majority countries, with women's suffrage weaker than that of men. As well as restrictions on voting or participation in the ruling councils at a national level, women are often excluded from local political processes that can centre upon small numbers of male elite, again presenting challenges to grassroots participation and political voice more generally. Discouragement of women in the political life of their communities and societies promotes inequality in other social spheres, as well as its symbolic power. From a religious perspective, a taboo around women as political leaders is not only consistent with some social and cultural norms and attitudes, but is also echoed through narrations within the ahadith. One hadith in particular is used to assert a general rule, in which it is narrated that on the ascent to power of a woman in Persia, the Prophet was reported by Abu Bakrah to say in meaning, "No people will succeed who entrust their affairs to a woman"<sup>30</sup>. While the reliability of Abu Bakrah has been contested, and the meaning of the statement interrogated as a general rule or specific context, this hadith has been used to at least theoretically exclude women from political leadership (Abou El Fadl 2001:111; Zakaria, Qisho & Dowe. 2008:35-36)

**Judicial Status:** Returning to the theme of justice, an important symbolic and literal example of social and political participation is the role of the judiciary. For the majority of scholars working within the classical framework, the role and action of a judge includes the pre-requisite of masculinity *dzukurah* and thus excludes women from this appointment (Ibn Rushd, *Bidayatul Mujtahid*, part II, 344 ref. Setiawan 2007). This is reflected and reaffirmed by social and cultural norms.

#### *Key principles and precedent for change*

Despite the social, political and in some cases religious rhetoric against Muslim women's participation as leaders and change makers, historical and contemporary examples abound.

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<sup>30</sup> Sahih al-Bukhari, Ibn Hanbal, Musnad, 5:58 ref. Abou El Fadl 2001:111

- Political Participation and Leadership:** Women have participated politically throughout Muslim history and they have been active as successful political and military leaders, their names mentioned in the khutba, and on the coinage of their nations (Zakaria, Qisho & Dowe. 2008:34). From the political action of women from the Prophet Muhammad's own family such as S. Aisha bint Abu Bakr, S. Fatima al Zahra, and S. Zainab bint Ali, to powerful queens such as Queen Arwa (Yemen 1048 CE), Queen Amina Sarauniya of Zazzau (Nigeria 1553 CE), Kurmanjan Datka of Alay (Kyrgyzstan 1811 CE) and contemporary leaders such as Prime Minister Mame Madior Boye of Senegal (1975-1990 CE) and Prime Minister Begum Khaleda Zia of Bangladesh, to name but a few<sup>31</sup>. These Muslim women have not only participated but led, and illustrate the very real power and respect accorded to their positions in diverse societies and contexts. Contemporary participation of Muslim women in politics continues its historical precedent, with the power of the exception transforming to power and participation at the grassroots, from voting to participation in revolutionary action, as candidates standing as local councilors and as members of parliament in both Muslim minority and majority countries. These forms of participation have come at the social as well as the legislative level, underpinned by the notion that there is precedent and legitimacy for women's political participation and leadership within the Islamic tradition.
- Judicial Status:** The exclusion of women from the judiciary is not by consensus within the classical framework. Abu Hanifah himself, allowed for it in cases of property dispute, while al-Thabari ruled that a women could be a judge in the full sense on any category of case (Ibn Rushd, *Bidayatul Mujtahid*, part II, 344 ref. Setiawan 2007). As exemplified by Aisha herself, the issuing of fatawa has been considered conditional on knowledge not gender, with scholars explicating this point including Imam Nawawi<sup>32</sup>, Ibn Muslih<sup>33</sup>, Ibn al-Qayyim<sup>34</sup> and Ibn Hazm al Zahiri<sup>35</sup> (Nadwi 2007:281).

The fundamental challenges faced by development work thus address the very basic end of a huge spectrum of participation for which precedent is clear and inspiring.

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<sup>31</sup> See Zakaria et al 2008 for extensive and detailed examples

<sup>32</sup> Al-Nawawi, *Rawdat al-talibin*, xi:109

<sup>33</sup> Ibn al-Muslih, *al-Mubdi'*. X:25

<sup>34</sup> Ibn Qayyim al-Jawziyyah, *I'lam al-muwaqqi'in*, iv.169

<sup>35</sup> Ibn Hazm, *al-Ihkam fi usul al-ahkam*, iii.324

## Part IV: Conclusions & Recommendations

*We don't think, and thinking people do not think, that women's position is above or below that of men. However, we see how so many people exploit them, degrade them and violate their rights<sup>36</sup>*

**al-Jahzih, *Rasa-il Jahizh* (ref. Husein Muhammad 2009)**

While issues of gender and development are often discussed in relation to Muslims and Islam, this paper has attempted to discuss the challenges from *within* an Islamic framework, by consolidating and summarising a large body of literature and thought pertaining to each subject, at the point at which Islam, gender and development intersect. The diversity of perspectives from the Islamic scholarly tradition combined with the multiplicity of Muslim social, cultural and political contexts allows for a great degree of plurality and flexibility both in belief and practice. However, this also presents greater possibility for debate and contestation. By focussing on classical interpretations within the Islamic tradition and how they relate to the fundamental principles within the maqasid ash-shariah as well as explicit precedent in Muslim history and practice, possibilities for transforming gender relations and promoting gender justice have been suggested. However, it is intended that this work marks the beginning of a much larger body of work by IRW in the organisation's gender conscious approach to social justice and development, through which the practical implications of religious discourse may be better explored and understood. The following four recommendations are thus made with this in mind:

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<sup>36</sup> “*Lasna Naqul, wa La Yaqulu Ahad min man Ya'qil, Inna al Nisa fawqa al Rijal aw Dunahum Thabaqah aw Thabaqatain aw Aktsar. Wa Lakin Ra-ayna al Naas Yuzrun 'alaihinna Asyadd al Zirayah, wa Yahtaqirunahunna Asyadd al Ihtiqar wa yabkhasuna Aktsar min Huquqihinn*”



1. Engage Islamic scholars to discuss the questions arising throughout this paper, particularly in the development of Islamic rooted approaches that bridge or circumvent the plurality and contestations of Muslim thought and practices.
2. Develop further in-depth study of issues identified as most salient by IRW staff members.
3. Further engage Islamic scholars and development experts regarding practical ways forward, with special emphasis on the issue of 'hearts and minds', wherein change cannot be effected without the backing of the communities in which IRW operates. For those communities for whom Islam constitutes a way of life, the Islamic nature or at a minimum compatibility of this work will be important, if not paramount.
4. Understand how the theory of the approaches identified within this paper might be implemented in practice, at an operational level.
5. Explore ways in which practical implementation may differ in various local and national contexts.
6. Identify tensions facing the implementation of an Islamic rooted approach, in relation to local or national laws and normative cultural and social practices. In particular, in Muslim localities where courts are operating or claiming to operate a shariah-based system, how might negative practices upheld by such court be approached?

It is envisaged that this next phase will further strengthen the vision of Islamic Relief Worldwide:

***Inspired by our Islamic faith and guided by our values, we envisage a caring world where communities are empowered, social obligations are fulfilled and people respond as one to the suffering of others.***

## Part V: Appendices

### Appendix 1: Glossary<sup>37</sup>

Ayah: verse of the Quran

Fiqh: Islamic jurisprudence, process by which rules are derived

Faqih: A jurist learned in the science of fiqh

Fatwa, fatawa pl: non-binding legal opinion

Fitna: Corruption, dischord; seduction, enticement

Hadith, ahadith (pl): the recording of a saying or action of the Prophet Muhammad

Halal: permissible, lawful in Islam

Haram: forbidden

Hukm: Decree of God. Legally binding judgement; rule of law.

Ihsan: excellence, epitome of goodness, relating to a person's God-consciousness

Ijma<sup>^</sup>: consensus

Ijtihad: the deduction of rulings from Islamic sources

Illah: operative or effective cause of a legal ruling

Ilm: knowledge, learning, science

Imam: a community leader such as the head of a mosque, or religious leader of Muslims in general. Used by Shia<sup>^</sup> Muslims to refer to individuals in their lineage of leaders

Jahiliya: Pre-Islamic times; ignorance

Khalifah: calipg, successive authority; inheritor

Madhhab: a school of jurisprudence

Mahr: the portion of wealth given to a wife on marriage by a husband on agreed terms.

Mahram: a male relationship to a woman: husband or certain close blood relatives

Maqasid al-Shariah: purpose or goals of Islamic law

Maslahah: public interest , legal consideration of welfare

Mufti: scholar qualified to issue fatawa

Muhajiba, muhajibat (pl): a woman who wears hijab

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<sup>37</sup> Deriving from McDonald 2006 & Abou El Fadl 2001

Mujtahid: the scholar who performs *ijtihad*, i.e. deduces unprecedented rulings from Islamic sources

Muqallid: scholar bound to precedent in rulings usually within a school of thought

Nafaqah: financial support provided by a man to his wife and family

Nikah: the Islamic contractual marriage

Qur'an: The revelation from God, transmitted to the Prophet Muhammad through the Angel Jibril (Gabriel).

Sahih: authentic

Sunnah: the way of the Prophet Muhammad, understood through his words and actions

Surah: chapter of the Quran

Tafsir : Quranic explanation, exegesis

Talfiq: choosing or mixing between schools of jurisprudence

Ummah: community of Muslims

'Urf: Local custom; in absence of something contrary, a source of law as approved commonly

Usul: origins, foundation

Usul al fiqh: Islamic jurisprudence

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Article 1	Definition of discrimination
Article 2	Policy measures to be undertaken to eliminate discrimination
Article 3	Guarantees basic human rights and fundamental freedoms on an equal basis with men
Article 4	Temporary special measures to achieve equality
Article 5	Sex roles and stereotyping
Article 6	Trafficking and prostitution
Article 7	Political and public life
Article 8	Participation at the international level
Article 9	Nationality
Article 10	Equal rights in education
Article 11	Employment
Article 12	Healthcare and family planning
Article 13	Economic and social benefits
Article 14	Rural women
Article 5	Equality before the law
Article 16	Marriage and family law
Articles 17-22	Details the establishment and function of the Committee on the Elimination of Discrimination against Women (CEDAW Committee)
Articles 23-30	Details the administration of the CEDAW Convention