

REPUBLIC OF SENEGAL



**UNITED NATIONS
POPULATION FUND**



**MINISTRY OF FAMILY
AND NATIONAL SOLIDARITY**

MUSLIM RELIGIOUS ADVOCACY FOR GENDER EQUITY

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FOREWORD

The debate on gender equity, like other debates which will shape the fate of community life, is essentially a debate for the future. This is all the more urgent as the ideas exchanged obfuscate more than they clarify the facts and issues at stake to which they refer.

And yet, the issue is only about fighting the unequal recognition of men and women as full citizens, which leads to gender disparities emanating from a social construction likely to frustrate any **Sustainable Development Project**.

Against this background, we cannot anymore talk of a trend, but a contribution to the development of long-term bases for growth, which includes social analysis according to gender, in order to facilitate access to development means and benefits for all, men and women at all levels. This means that the gender approach helps reduce gender inequalities between men and women, with a view to building a fairer and more equitable society.

We could say, with no risk of being contradicted, that there is no possibility to develop a society which excludes de facto 52 percent of its population. But the issue is actually more serious and is more than a simple plea in favour of women, because it is a development issue.

Actually, **since 1974**, general social policy patterns have been gradually losing their relevance, i.e. each society is authorised to build its order of priorities, taking into account its tangible situation, hence the importance to identify the key factors which would help effectively meet the social demand.

Facing such situation, the Government of Senegal, eager to successfully fulfil its mission of creating framework conditions for a sustainable development, must be prepared to clarify the debate on gender equity in order to avoid non-clarified identity withdrawals.

Therefore, it is within this framework and to achieve, among other goals, the (2000-2006) fifth Assistance Programme in conjunction with the **United Nations Population Fund (UNFPA)**, that the Senegalese **Ministry of Family, Social Development and National Solidarity** commissioned a religious advocacy on gender equity.

The Christian advocacy, which is based on the findings of the Bible research by Father Jacques Seck, has clearly, unreservedly, definitely and radically established original, natural and essential equality between men and women.

The general conclusion of his research is that Christianity **absolutely rules out any inequality before God and the Church**.

On his part, Doctor Abdoul Aziz KEBE, who has produced the Muslim advocacy on gender equity, indicates that in legal, economic, political and social areas, Islam fully integrates women, as full partners in the mission of ensuring equity and harmony on earth. Therefore, we must build the universal principles shared by men and women, and take advantage of everybody's specificity.

As a consequence, sexual difference will be a factor to control solidarity and cooperation for the building of a peaceful City.

The result of these positive constructions will enable participants and targets of various programs to better utilize gender analysis in managing and implementing general and sectoral development challenges..

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INTRODUCTION

When we try to have a close look at Islam, we realise that it is a religion with a positive view on human beings' lives. It is a religion which has deeply reformed men's and women's habits and unfair traditions in their societies.

At the same time, it has chosen a direction to give to the existence of men and women a meaning based not only on interests and injustice, but on equity, the principle of dignity and justice.

And yet, this religion which has brought changes in men's and women's habits and lives, is today, for some people, a means to justify the most harmful actions and the most humiliating traditions perpetrated against women. However, when we go back to the Sources and the Law in their principles and their arguments, in their purposes and their spirit, we realise that problems hindering gender equity or supporting iniquitous discriminations to the detriment of women can be settled, because the negative pre-Islamic customs and traditions were abolished by the religion. And in this approach to reform human beings' lives, the Koran has introduced two principles: that of Ethics and that of Well-Being.

These principles are important for the researcher and the jurist, as well as for the legislator and the political decision-maker. They actually help reduce and eliminate all negative and unhealthy aspects in social practices, distribution of roles between men and women for social building.

All this clearly shows that this religion was revealed in order to promote well-being and not increase constraints or consolidate inequalities and injustices in men's and women's lives. It facilitates access to what is beneficial and eliminates nuisance. The legislation's aim clearly appears in the verse **“for he commands them what is just and forbids them what is evil; he allows them as lawful what is good (and pure) and forbids them from what is bad (and impure)”**¹, this means to ensure what is pure, make easy what is good and fight nuisance.

When we talk about gender, we must understand that it is an approach tending to take into consideration the two components of the society, men and women, for a balanced and fair participation in social building.

For this, it is useful to recall that legislative prescriptions are built on guiding principles that are important to recall briefly.

I. GENDER AND GUIDING PRINCIPLES OF LEGISLATIVE PRESCRIPTIONS

When we analyse the gender approach as a method to analyse inequalities and injustices resulting from the distribution of roles between men and women in the society, we realise that under this principle, it is in perfect harmony with the Muslim legislation's directives.

In fact, Islam, presented in its legislative form, is a positive and rational system, which calls for the building of a balanced and happy life based on equity and equality between the components of humanity. It encourages progress in human beings' living conditions and societies' development conditions.

¹ Koran: sûra al-A'raaf, verse 157

And yet, it is not possible to contribute to progress by making a negative discrimination between men and women. Incidentally, the injunction to preserve equilibrium on earth and the vicariate mission are also shared between men and women. In this sense, guiding principles which define purposes must always be considered as indicators in appreciating discriminatory acts against women, in order to correct them in accordance with the spirit of the legislation. It seems important to recall the four most relevant principles.

1.1. A factor of ease

The reduction of difficulties is a divine principle present in most divine prescriptions, because Allah did not create the universe to serve human beings and then put on them weights and hinder them in their lives with unbearable constraints. Allah himself teaches us that no one is compelled to endure more than they can. In the Sura, “The Cow”, one can read the verse

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On no soul doth Allah place a burden greater than it can bear. Exegetes explained this verse by demonstrating that the essential aim in any divine prescription, in any legal injunction, remains the need to meet individual and collective needs for humanity, and make them easier.

The principle of the elimination of difficulties is a basis on which the Islamic legislation lies, according to jurists. The useless hindrance, unnecessary difficulties are removed from the legislation, any time it is possible. And the Koran shows us again that the spirit of the law is to make factors of ease easier and not the contrary.²

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All his life, Prophet Muhammad (PBUH) applied the principle of facilitation, taking away difficulty and eliminating nuisance for the individual and the society in all its components.³

Besides, the intangible and absolute nature of this principle is stated by jurisconsults. Which means that it is not possible to apply it on one category and not on another, because the Islamic legislation and its principles are designed for human beings regardless of gender.

1.2. Building well-being

Can we contribute to the building of Well-Being by establishing in the society discriminatory and disturbing practices for one or another of its components? The reason objects to it. Since the Islamic religion speaks to reason, we can conclude that it also objects to this. This religion clearly tells us in a verse

² Verses 185 and 286 of Sura al-Baqara
³ According to Aicha quoted by Al-Bukhari in Sahih, n° 750, Muslim n° 5752, Abu Dawud in Sunan, n°4752.

action carried out to bring more justice and equity in the treatment of women is intended against Islam.

However commendable this approach may be, it is tinted with prejudice. Then it must be dropped to the profit of another one, which is more interested in the situation of today's woman, problems she's facing, which in one way or another are referred to in Islam.

It is this dynamic and analytical approach, based on the observation of the real situation, its appreciation from the scale of values and the authentication method in Islamic jurisprudence, which seems to be meaningful, because it is from it that we can understand acts and practices in their historical and legal meaning, like in their cultural basis. All these things must be perceived in a social building approach.

2.1. The main problems and their justifications

Societies encounter various gender problems in their progress and development approach. Some are related to how the woman is perceived from a religious and ontological point of view. Others are relating to the distribution of roles in social life. In this category of problems, some are related to sexuality and reproduction, others to family management and a third group to public and private activities.

These problems proved to be interrelated. In fact, all problems relating to the distribution of roles in society depend on our opinion on women from an ontological point of view, because it is an opinion which is somewhat influencing.

Finally, if we look at the nature of problems more synthetically, we realise that they include the status, role and functions assigned to women in the society. That is why we realise that to address all these issues, we must start by analysing our opinion on women, ontologically and with regard to Islam, namely their status, because any attitude or behaviour derives from this status.

a. Women's original inferiority

In our societies, a woman is considered as a minor being, a tool, an instrument created for men. This instrumental status conveyed by tradition is said to "justify" her submission to manhood for eternity.

To grant an authenticity to this conception expressed in these words "*jigéen ni ween yi sëggé la xelmi sëgge*"⁷, we look into scripture sources (Koran, Sunna and holy stories). **And it is where it is important to show objectivity in reading Sources and move away from the influence of our own cultures and traditions for us, in retrospection, to get closer to the revealed semantics, because the experienced semantics is often far from the revealed semantics because of history, political interests, adjustments to cultural values.**

a-1 Are women inferior to men because of the way they have been created?

Women are said to be instruments of men , to whom they have been inferior since the beginning. The reason would be that Mother Eve was created from parts of Adam's left ribs.

⁷ "Woman's intelligence is primary like her breast pulling downwards"

What does the Koran say about it?

When we refer to the Koran which is the source par excellence, we find nowhere that Eve was created from Adam’s ribs let alone the left side. The Koran says this about the Creation:

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 ⤵⤵+ ⤵*⤵⓪⬠+ ⤵⓪×⊠◆ / “Ô mankind⁸ ! fear your
 Guardian Lord, Who created you from a single Person, created out of it, His mate, and
 from them twin scattered (like seeds) countless men and women; - fear Allah, through
 Whom ye demand your mutual (rights), and be heedful of the wombs (that bore you):
 for Allah ever watches over you⁹”.

This verse contains no reference to the way the pair of the **primitive soul** (or the companion of the source person) was created. It is interesting to note that a great exegete of the Koran¹⁰, known for his science and his intransigence, says about this verse: “**At the beginning was created a human being, and from him the whole mankind was scattered on earth...We learn in another part of the Koran that Adam was this “unique soul”. And he continues “He is the first man from whom the whole mankind was created and was scattered on earth. We don’t have detailed knowledge of the way his companion was created from him”.** It is this assertion which is just. **The Koran actually remains silent about the way the pair of the primitive soul (or original man’s companion) was created even if commentators refer to the Bible or Talmud to explain the creation of Eve.**

Throughout the Koran, the creation of human beings is referred to by using the words *Insân* and *Bashar*. And both words refer to the human being, mankind regardless of gender, religion or culture.

Besides, the Koran talks about Creation by indicating the source of humanity in three elements: **an-Nafs (the soul), an-Nutfa (the drop of sperm), at-Tîn (clay)**. **Nowhere does it mention the creation of the human being (man or woman) from his “pair”’s organ.**

It may be useful to mention some verses to illustrate these words.

About an-Nafs (the soul)

⁸ The word Nâs used here means “human beings” there is reference to any accident, or gender, or race, or language or religion.
⁹ Sura an-Nisaaa, The Woman, verse 1.
¹⁰ Abul Ala al Mawdûdi, in his comment on the Koran translated into English titled “the meaning of the Qur’ân”, Translation by Ch. Muhammad Akbar, 1990, Islamic Publication Limited, Lahore.

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 “Ô mankind¹¹ ! fear your Guardian Lord, Who created you from a single Person”

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 It is you who has produced you from a single soul¹²

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 ۞ ۞ ۞ ۞ ۞ ۞ ۞ ۞ ¹³He created you (all) from a single Person: then
 created, of like nature, his mate.

About an-Nutfa (the drop of sperm)

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 He has created man from a sperm-drop and behold this same (man) becomes an open
 disputer¹⁴

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 And Allah did create you from dust; then from a sperm-drop; then He made you in
 pairs¹⁵

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 He did create the pairs, - male and female, from a sperm-drop when lodged (in its
 place)¹⁶

About at-Tîn (clay)

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 Man we did create from a quintessence (of clay)¹⁷

¹¹ See note 8
¹² Sura al-An’âm
¹³ Sura Zumur, verse 6
¹⁴ Sura an-Nahl, verse 4
¹⁵ Sura Fâtir, verse 11
¹⁶ Sura an-Najm (The Star), verses 45, 46
¹⁷ Sura al-Mûminûn (The Believers), verse 12

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He who created all things in the Best way and He began the creation of man from clay¹⁸

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Behold, thy Lord said to the angels: "I am about to create man from clay"¹⁹

From these verses derives a consequence: **human beings, between man and woman are ontologically equal. There is no difference between them with regards to the origin, because the primitive soul was created virtually knowing, thinking and well acting. And it is this primitive soul which is the mother of humanity.**

Besides, the fact that women come from men does not mean that the latter are superior to them. Actually, when God revealed us that He created the peer soul from the primitive soul (or the companion from the first man) and that from both, He scattered countless men and women, we easily understand it.

Cellular division that scientists call mitosis²⁰ is exactly what we must understand in the creation of the peer soul from the sister soul. Which shows that genetically no created soul is superior to another, and they are the sources of humanity in its diversity.

But, some will say, if the Koran is silent about this, the hadiths talked about it profusely.

What does the Prophet (PBUH) say about it?

Hadiths were attributed to the Prophet (PBUH) about the creation of woman from man's rib. Let's quote the most famous ones before analysing them.

1. "Do good unto your spouses. In fact, the woman was created from a rib and the most bent part of the rib is its upper part. If you try to straighten it up, you break it, and if you leave it will remain bent. So go good to them"

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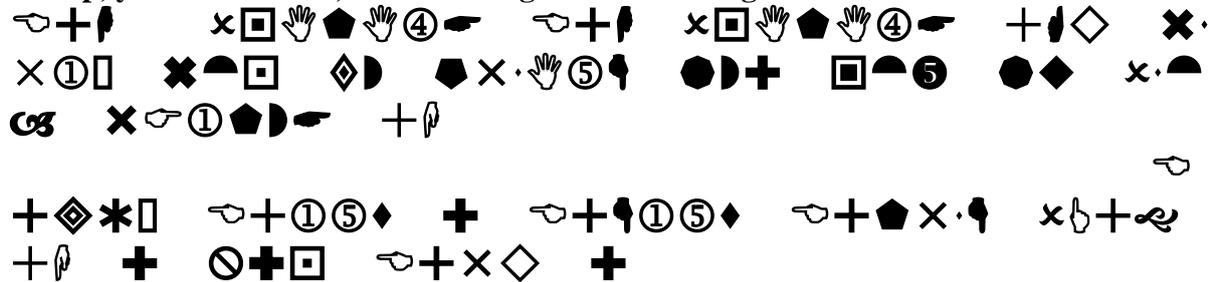
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¹⁸ Sura as-Sajda (Adoration), verse 7

¹⁹ Sura Sâd, verse 71

²⁰ Mitosis is the division of a mother cell into two sister cells genetically identical with the mother cell.

2. "The woman was created from a rib and in no case can be straighten up by you. If you wish to enjoy her ,you'll enjoy her with this deformity. And if you try to straighten her up, you'll break her, and breaking her is divorcing her"



These two hadiths most often quoted to justify woman's natural inability to be virtuous and reasonable like man are strange in their content.

In the content, these hadiths say that women were created from a rib, which justifies their insubordinate nature, which means that they do not absolutely comply with their husbands' directives.

Yet, this nature is mentioned, if we are limited to the semantic value of the text, in the strictly conjugal life. Words ♦*□ divorce and □→☞☞④← the fact of having pleasure, enjoyment prove it. This means that wives cannot be totally submitted to men's desiderata. Searching for this absolute submission means searching for the impossible. It is as if, in this hadith, the Prophet (PBUH) wanted to show that women's autonomous will is as natural as the rib is bent. That leads to a better understanding of women's human nature and a better management of conjugal relations. Is this hadith anything other than an incentive to apply the Koranic injunction which requests us to live with them (wives) with kindness ♦+①□☞←☞ ●++①⑧→□+²¹.

Besides, the Prophet's (PBUH) farewell preach to humanity sheds light on the meaning of these words. He said, talking to humanity for eternity: "Have consideration for your wives. They support you at home, and you don't have authority (of power) on them, out of this. Unless they obviously commit an infamous action. If they do, sleep in separate beds, correct them in a non-violent way, but do not quarrel with them if they disobey you:



²¹ Sura an-Nisâ (The Women), verse 19.

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“Ô Adam! Dwell thou and thy wife in the Garden, and enjoy (its good things) as ye wish: but approach not this tree, lest you become of the unjust”.

Then began Satan to whisper suggestions to them, in order to reveal to them their shame that was hidden from them (before): he said: “Your Lord only forbade you this tree, lest you should become angels and such beings as live forever”.

And he swore to them both, that he was their sincere adviser.

So by deceit he brought about their fall: when they tasted of the tree their shameful parts became manifest to them, and they began to sew together their leaves of the Garden over their bodies. And their Lord called unto them: “Did I not forbid you that tree and tell you that Satan was an avowed enemy unto you?”

They said: “Our Lord we have wronged our own souls: if Thou forgive us not and bestow not upon us Thy Mercy, we shall certainly be lost.

(Allah) said: “Get ye down, with enmity between yourselves. On earth will be you dwelling – place and your means of livelihood, - for a time.”

He said: “Therein shall ye live, and therein shall ye die: but from it shall ye be taken out (at last).

2- In the sura al-Baqra "The Cow", verses 35 to 38 say:

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← ∞ · ⑩ ↖ + ● ◆ * ◆ + ✕ ● ⊗) ← ◆ ⊗ + ② + ✕ ● ↖ ●
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And we said: “Ô Adam! Dwell thou and thy wife in the Garden; and eat of the bountiful things therein as (where and when) ye will; but approach not this tree, or ye may run into harm and transgression”.

Then did Satan make them slip from the (Garden), and get them out of the state (of felicity) in which they had been. And We said: Get ye down, all (ye people), with enmity between yourselves. On earth will be your dwelling place and your means of livelihood – for a time.

Then learnt Adam from his Lord certain words and His Lord turned towards him; for He is Oft-Returning, Most Merciful.

We said: “Get ye down all from here; and if , as is sure, there comes to you guidance from Me, whosoever follows my guidance, on them shall be no fear, nor shall they grieve.

3- In sura "TAHA", from verses 115 to 123, Allah tells us:

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We had already, beforehand, taken the covenant of Adam, but he forgot: and We found on his part no firm resolve.

When we said to the Angels, "Prostrate yourselves to Adam", they prostrated themselves, but not Iblis: he refused.

Then We said: "Ô Adam verily, this is an enemy to thee and thy wife: so let him not get you both out of the Garden, so that thou art landed in misery.

"There is therein (enough provision) for thee not to go hungry nor to go naked, "Nor to suffer from thirst, not from the sun's heat."

But Satan whispered evil to him: he said, "O Adam! Shall I lead thee to the tree of Eternity and to a kingdom that never decays?"

In the result, they both ate of the tree, and so their nakedness appeared to them: they began to sew together, for their covering, leaves from the Garden: thus did Adam disobey his Lord, and fell into error.

But his Lord chose him (for His Grace): He turned to him, and gave him guidance.

He said: "Get ye down, both of you, - all together, from the Garden, with enmity one to another: but if, as is sure, there comes to you guidance from Me, whosoever follows My guidance, will not Lose his way, nor fall into misery.

Verses telling us about the fall of Adam and Eve on earth, in the Koran, do not say that women are to be blamed. On the contrary, if we strictly read what is revealed, Adam is to be blamed, as He gave in to Satan's temptations for lack of resolution, as it is clearly indicated in this part  And we found on his part **no firm resolve**. Or both of them are to be blamed. But, in no way, the Koran has accused Eve, whom a mythical belief wants her to take the blame and, through this, mark for ever women as insubordinate beings and sinners by nature.

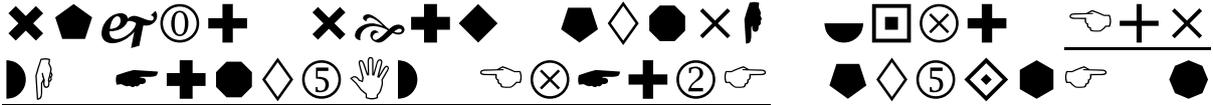
b. Woman's social status

Once light is shed on questions relating to the creation of man and woman, their biological and ontological equality, their joint responsibility in humanity's destiny, it becomes easy to show that inequality at the social level is a human fact, but not a divine decision.

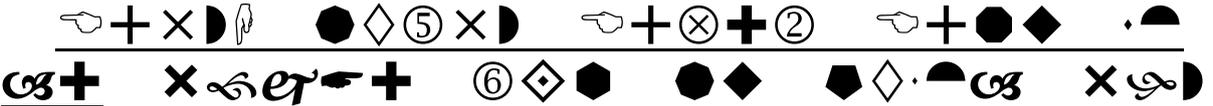
Muslim religion has come to de-build what was built on unacceptable foundations for human dignity. The Koran was and must remain, for vulnerable categories, this "great charter for freedom" concerned about **"freeing human beings from the yoke of traditionalism, (religious, political, economic) authoritarianism, tribalism, racism, sexism, slavery or any other thing inhibiting or preventing human beings from updating the Koranic vision**

Therefore, at first sight, there are three possible ways to understand it:

- ✓ **Men rest on women.** Which is plausible if we come back to verse 21, sura "Roume",



“And among His signs is this, that He created mates from among themselves, that ye might dwell in tranquility with them, and He has put love and mercy between your (hearts). and verse 189 of sura "al-Arâf



“It is He who created you from single person, and made his mate of like nature in order that he might dwell with her (in love).

- ✓ **Men must provide assurance and support to women.** That is also plausible when we come back on some elements of the verse and on the principles of the Muslim law.
- ✓ **Men find support in women and women find support in men.** This understanding show the mutual character of the support even if the nature of this support is different. And the verse continues to corroborate this understanding, because God explains the justifications of this support by two elements. On the one hand, “**because Allah has given the one more (strength) than the other**”, and on the other hand “**because they support them from their means**”.

The first member of the explanation of this support that they must bring each other does not show superiority, but a privilege that some have from the others, the privilege of femininity, peaceful softness, for example, that of motherhood, too.

Or, on the other hand, a man’s privilege as master of the house is related to expenses for the household.

In fact, the word “   /faddala” used in the verse was understood by translators and commentators in the simplest meaning, which is the most appropriate for the patriarchal society. They translated it as excellence, precedence, to prefer, to like better. Now, the verb also means to distinguish, to favour. And this is the most relevant meaning. **Because here, it’s a distinction and a favour that God has granted to one another. Favours which are**

different from one another. “Bi mâ faddalal Lâhu ba’dahum ‘alâ ba’din” then means “because of the favours Allah has granted them regarding the others”.

The second part “wa bimâ anfaqu min amwâlihîm” means “because of the expenses they (men) made”.

Then if we make a synthesis of all this, we realise that the meaning of the verse may be: “men are supported by women because of the favours God granted the ones on the others, and men must support women because of expenses they (men) made”.

This understanding allows to balance again relations between men and women. Social roles must be distributed, because the privilege of motherhood and femininity gives woman a function of mistress of the house, first educating children, but without denying her other social roles.

And the character of head of family, support of the family given to man does not derive from an ontological privilege, but from the fact that he makes expenses, and he must ensure protection and security to the family.

Incidentally, even if we adopt the common version of the translation of the verse, meaning that men have authority on women, and which is corroborated by the verse 228 of Sura “The Cow”: “✕ ⊗ ⊙ ↻ ● + ✕ ◐ ◻ ■ ↗ ⊗ ⊙ ◐ ◑ + /but men have pre-eminence over them”, this authority should not be extended beyond the limits of the family.

It’s a husband’s authority over his wife, but not men’s authority over women which is addressed in these two verses. Measures indicated in verse 34 of Sura “The Women” concern only husbands. And for verse 228 of Sura “The Cow”, the pre-eminence should not be extended beyond the household. Actually, the verse talks about divorce and conjugal relations.

Besides, in the same case, this authority is not an absolute authority, which would confine the woman in the single family space. Because, this verse is often referred to to say that woman’s place is at home. And this assertion is reinforced by withdrawing an argument from a verse in sura

“✕ ◑ + * ↗ ✕ ✕ ◐ + ↗ ⊗ ◑ ↗ ⊙ ⊙ ⊙ ↗ ● ⊗ ⊙ ⊙ ↗ * + ● ◊ ↗ + ✕ ↗ ✕ ◊ + ⊙ ⊙ ⊙ + /And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance²⁶”.

And yet, confining woman in her house is, according to the spirit and the letter of the Koran, a chastisement, a correction inflicted to the woman subjected to a depravity. Confining woman in her house is neither an act recommended by the Koran nor a tradition while the Prophet (PBUH) was alive. The verse referred to in extrapolation is specific to the **wives of the Prophet (PBUH) who are “comparable with no woman”,** according to the Koran

(* ↗ ⊙ ● ◑ ↗ ● ◊ ↻ ↗ ↗ ↗ ↗ ⊙ ⊙ ⊙ ⊙ ⊙ ⊙ ✕ ↗ ● ◑ ↗ * ↗ ⊙ ● ↗ ↗ ✕)

²⁶ Sura al-Ahzab, verse 33.

Incidentally, while the Prophet (PBUH) and his orthodox khalifes²⁷ were alive, women used to attend to their affairs, go to court, produce wealth, managed their property, attend public meetings and hold public functions.

b-1 Some cases as illustration

i. woman in the production of resources and acquisition of property

Islam has considerably improved women’s fate. It can be said that it is the first and the only religion in the world, which assigned duties and granted rights to women for eternity. Before this formidable revolution, women was part of men’s property. Like all goods, she had a using value and a marketing value. It is Islam, which gave back woman her dignity. It made of her a producer, a human being able to acquire property through work and trade, a human being whose life is significant in the building of history.

It is the Koran that has granted women the right to participate in the social building through work in perfect equality with men. Verse 32 of Sura “The Women” says:
 “                    
                /to man is allotted what they earn and to women what they earn”.

The verb (     /to acquire, to earn, to make profits, to obtain) used here is very important in the determination of women’s right to acquire property and wealth by their own means. And it is not possible to raise any ambiguity.

Islam recognises that women, as beings endowed with reason, have the right to enjoy property and manage it themselves, without the intervention of any guardians. Should they be their fathers, uncles, or brothers, none of them can manage their properties for them without their consent. The Koran indicates in several verses this freedom to use their properties legally.

The dowry is an exclusive property of a woman who uses it as she likes, within the Law, of course. In Sura “The Women”, God shows, in many verses, a woman’s right to use her property.

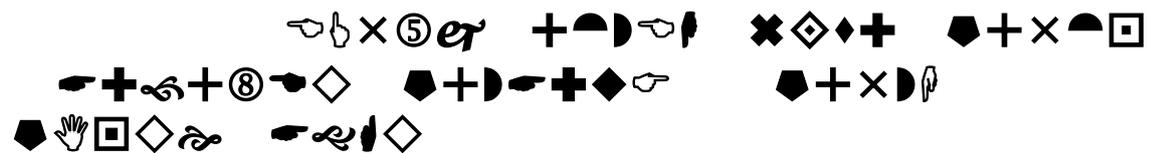
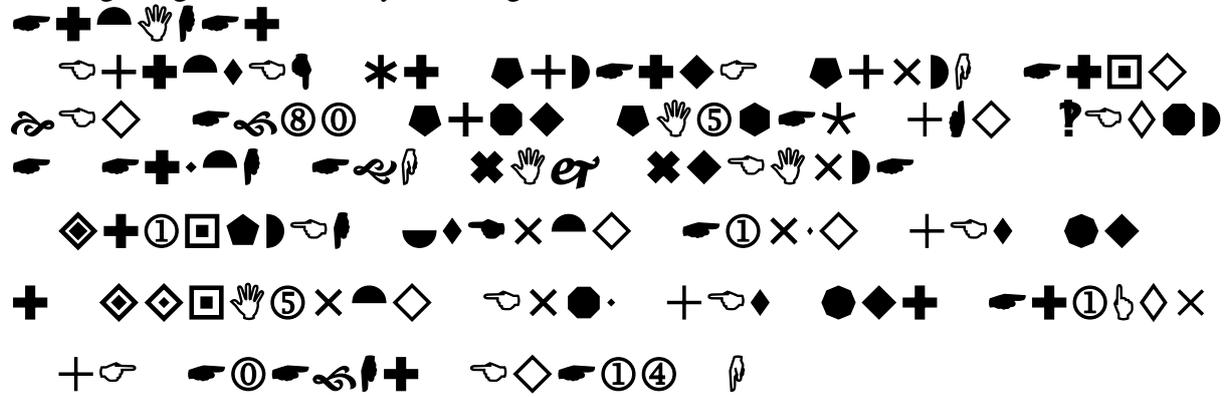
Verse 4
 “                   
                
             /And give the women (on marriage) their dower as an obligation; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer”

²⁷ They are the four khalifes who succeeded the Prophet (PBUH) in the order of succession: Abu Bakr, Omar, Ousmane and Ali.

/From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large – a determinate share.

Verse 6

It shows that the parameter of managing goods, be it for men or for women, remains the fact of being of age and the ability to manage well.



Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up. If the guardian is well-off, let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable. When ye release their property to them, take witnesses in their presence: but all-sufficient is Allah in taking account”

Islam grants the same rights concerning property, acquisition of goods and their management, enjoying property acquired through legal means, to man and woman, without any discrimination. Neither her father nor her husband, nor her brother nor her guardian has the right to use her property, manage it or administrate it, when she is of age and able of judgement, without her consent²⁸.

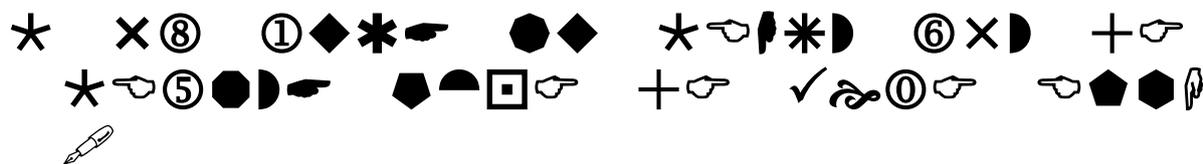
ii. Woman in the defence of her rights

By recognising women’s human dignity and by restoring it to them, Islam freed the woman from the inferiority complex and the feeling of being an eternal minor. That is how women, individually or collectively, have always defended their interests and pleaded their case before the Prophet (PBUH) and before religious or temporal authorities. Some examples can be quoted for this purpose:

- **The lady Khawla bint Mâlik ibn Tha’laba** was repudiated by her husband Aws ibn as-Sâmit. The latter told her “Be for me like my mother’s back”. She went to see the Prophet

²⁸ Dr Marwân al-Qaysi, al-Mar’a al-Muslima bayna Ijtihâdât al-fuqahâ wa Mumârasât al-Muslimîn

- It was reported from Aysha a hadith told by an-Nasâi, **that a young girl came to the Prophet (PBUH) complaining: “My father married me to his brother’s son to enhance his rank, while I do not consent to it”.** She told her: **“Sit down until the Messenger of Allah (PBUH) comes back”.** When the Prophet (PBUH) arrived, I informed him. He sent for the father and told the girl to make the decision: **“Ô Messenger of Allah, I authorise what my father did. I wanted only to make women know that fathers do not have to make the decision in this matter”**



- Ibn Kathîr reported these words from a woman before a gathering of Muslims within the mosque of the Prophet (PBUH), where Khalif Omar decided to reform an act relating to woman’s right. He wanted to limit the amount of the dowry given to the woman before marriage. She took the floor and said: **“How can you deprive us of a right the God granted us?”.** Umar went back on his decision admitting he made a mistake by saying **“The lady is right, Umar is wrong/****”.**

iii. Woman in public life

Many people have been striving to confine woman in housework. They pretend that a woman ought to stay at home and not to appear in public. They justify their opinion by referring to the verse which invited the Prophet’s (PBUH) women to stay at home.

However, the Koran, the history of Islam, the life of the Prophet (PBUH) and orthodox Khalifes inform us about the need to encourage woman to participate in the building of development at all levels.

Besides, the principle of “measure”, of “happy medium”, which Islam is built on must be applied in all issues, including those relating to women. We have to recall here the words of a great contemporary Muslim scholar, Mohamed-al-Ghazâli, who said: **“Thirty years ago, a famous preacher cried out: “May Allah have mercy for a time when a woman used to go out only three times in her life: from her mother’s womb into the world, from her father’s house to her husband’s, and from her husband’s house to her tomb!!! I say: May Allah not bless that time and may He not let them come back to the history of our Umma. It was a time of ignorance and not of Islam, it was a time when unfair traditions triumphed but not the expansion of the Straight way”²⁹”.**

Most Ulemas and Fuqahas (jurisconsults), from the Middle Ages to the present day, have been saying that women have the right to participate in public life. A woman can give legal advice (fatwa). She can make a personal interpretation of issues relating to the Islamic law. She can be judge. Ulemas like Abu Hanifa, Tabari, Ibn Hazm, Ibn al-Qayyim, etc, gave a favourable recommendation for this³⁰.

²⁹ Mohamed al-Ghazali, Qadâyâ al-mar’a bayn at-taqâlid ar-Râkida wal-Wafida

³⁰ See, al-Qawânîn al-Fiqhiyya ; ‘Uddat al-Barûq by Wansharîshî, al-Turuq al-Hukmiyya by Ibn al-Qayyim

Several arguments can be drawn from the Book and the Tradition.

- The story of Balqis, Queen of Sheba, who showed wisdom, consultation and clear-sightedness, in her way of leading the people.
- The appointment of Shifâ bint ‘Abdullah at the economic police in Medina.

2.2. Specific legal rules and gender equity

Does the existence of rules specifically relating to women mean an inequality between man and woman? Is the difference to result in injustice and inequality? These are questions which should be asked in principle, before analysing some rules specific to the woman in order to appreciate them in relation to gender equity.

It is undeniable that the ontological equality between men and women does not mean they are identical in all aspects. The sexual difference, which is obvious, morphologically and physiologically, results necessarily in a difference in some attitudes and behaviours. But this difference that God wanted to be complementary must also be translated into social functions by gender solidarity, gender equity, taking into account specific aspects as a need and not a non-essential, an advantage or a handicap.

And it would be unfair not to consider man and woman as equals, whatever the situations may be. Likewise, it would be a mistake to think that the different treatment is a mark of inferiority.

Two problems are often quoted concerning these specific rules:

- Prayers and imamate
- Inheritance

2.2.1 Prayers and imamate

Concerning specific rules relating to prayers

We must wonder why the fact that God recommends women to say their prayers in a low voice is degrading. What makes the fact that men say some prayers in a loud voice upgrading? Why should women always seek do things like men? Isn't it another way to confirm man's superiority? It is the same thing for women's place in the mosque. They pray behind men, which prevents men from seeing them. Is it a sign of inferiority for women or men's weakness? Besides, do such measures have a negative incidence on the social balance and on progress? We don't see how these specific rules taking into consideration women's physiological characteristics and man's psychological limits constitute fundamental problems in the building of society. Besides, the fact that women pray behind a curtain or in dark rooms is, according to al-Qardawî, an exaggeration and not Sunna.

These are reasonable and realistic measures, which do not mean that woman is inferior. We must rather understand that this shows man's inability to behave correctly in the presence of women. And yet, places of worship are not just social spaces, they are sacred spaces³¹. And everything that preserves purity of hearts and bodies must be necessary.

³¹ ‘Fî Buyûtin

About the imamate, it is common knowledge that a woman cannot be an Imam. This widely shared opinion is not totally true. Because, according to some Ulemas³², a woman can be Imam for other women. The fact that she cannot be Imam before an assembly of men, even if it is not degrading for her, is understandable, for reasons of good grace.

Finally, the basis of equality before God is consciousness about Allah and observance of worship. At this level, there is no difference in the spirit and the form between man and woman. As for the public demonstration of this worship, execution rules are different between man and woman, not because of woman's inequality or inability, but rather man's inability to behave correctly and remain reasonable in some occasions.

2.2.2 Inheritance

Most of the time, the issue of inheritance is raised to justify the "iniquitous" nature of the Muslim law. And yet, only a single aspect of an overall issue is raised to draw conclusions. This approach is neither rational nor just, because inheritance is a Creed-related issue. It's like prayer or zakât. They are not conclusions of Muslim jurists based on the analysis of problems and sources. These are divine prescriptions. And in Islam, these prescriptions have an unchanging and absolute nature.

But in spite of all this, we can try, like many people, to give a sociological explanation of this sharing. They justify unequal parts for men and women by the fact that in all cases, men take care of women. Such an explanation, even if it is historically correct, presents some limits. Because, if it were the only reason the change of situation would abrogate this clause. This means that, in a situation where a woman takes care of herself, the sharing of the deceased person's legacy should not be done according to the Koran's breakdown. That is impossible because this is a divine rule, as already mentioned.

Therefore this provision should be considered as relating to Creed, like the fact of putting hands on the dust to make pulveral ablutions to purify oneself. If water is used, one can understand that it is to clean oneself, but if it is dust, it poses a problem. And yet, it is a divine prescription. And any Muslim has never considered it as a lack of hygiene or a risk of stain.

Finally, light must be shed on two things:

The first one is that the rule, which consists in giving two parts to men and only one to women, is not the only rule in inheritance. It is only one scenario among others.

The second thing is that legal provisions in relation with inheritance are not imperative or absolutely binding. They are binding only in the absence of consensus. Which means that parties involved in the heritage can agree on a breakdown different from the one proposed by the Koran. All legal practitioners know the principle of the withdrawal in favour of a third party in heritage sharing.

Therefore men should show solidarity in the application of these provisions which can be easily understandable in a patriarchal society.

³² Silasilat al-Huqûq

III. TRADITIONAL PRACTICES AND MUSLIM LAW

Many problems encountered by women in their will to fairly divide roles in social building depend on tradition. However, considering the long cohabitation between traditions and Islam, on the one hand, and the hasty interpretation of some verses, on the other hand, these problems tend to be perpetuated on the pretext of religion. A careful study of these questions from the angle of Islamic jurisprudence will shed light on misjudgements resulting in so many problems in the studied areas.

3.1 Motherhood

Most of the time, because of women's specificity, giving birth is considered as their only function. Now, even in this case, this function is not upgraded by giving women all possibilities of health, well-being and comfort.

But, no matter how specific the motherhood function may be for women, it does not justify that fact that they are confined in "that". The Koran reinforces our position. We know that in Islam, pregnancy outside marriage is unlawful. Now, about relations between man and woman, the Koran says: "It is He Who created you from (a) single person, and made his mate of like nature, in order that he might dwell with her (in love)³³". In another verse, he says: "And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity³⁴".

In these verses where Allah talks about conjugal relation between man and woman, He does not put procreation in the first place as a purpose. On the opposite, the purpose of marriage, if we understand these verses is equilibrium and harmony. And the resources contributing to the establishment of harmony are love and goodness, as indicated in the verse.

The Prophet's (PBUH) hadiths referring to marriage, do not talk of giving birth as a justification or purpose. The most famous hadith says this: "Ô young people! The one among you who can afford expenses of marriage, let him get married. This act is a means to look down and protect him against libido. The one who does not have means, let him fast. For him, it's a protection against temptations³⁵". The hadith, which invites to procreation, is known as weak by all Ulemas specialised in hadith.

Motherhood, while being an essential function for humanity, is only a consequence of the love and goodness relation established in marriage. Therefore, we cannot make of it the only function of woman in society.

On the other hand, Allah magnifies motherhood in words calling for respect and a greater status for women : "And we enjoined on man (to be good) to his parents: in travail upon travail did his mother bear him³⁶". All this shows two things: the place of motherhood in the Koran, on the one hand, and the fact that it is not the purpose of conjugal relations, on the other hand. Understanding the sense of motherhood for mankind and its place in the couple helps adopt a fair behaviour with women during this period and outside it.

³³ Sura al-A'râf, verse 189

³⁴ Sura Rûm, verse 21

³⁵ Bukhari and Muslim

³⁶ Sura Luqmân, verse 14

3.2 Forced marriage

Marriage is a contract. And what is peculiar to a contract is that it is based on parties' agreement. In a marriage, there are validity conditions without which the marriage is void. These conditions include the parties' consent and agreement. Here, the parties are those to be united in marriage.

Unfortunately, in the tropics, we take this validity condition for another one, because the presence of the woman's legal guardian does not exempt her from expressing her agreement, and neither can she stand in for it.

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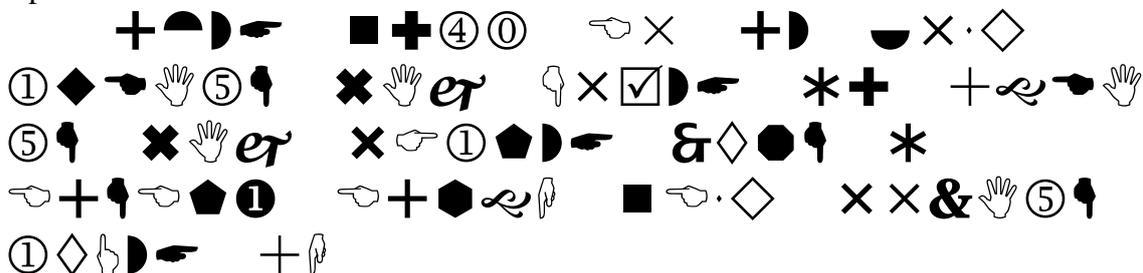
Two famous hadiths show that women have never let themselves go. They have always defended their rights and their interests when they were threatened.

Ibn 'Abbas reported that a girl came to see the Prophet (PBUH) and told him that her father married her without her consent. The Prophet (PBUH) gave her the choice to accept the marriage or invalidate it. In another hadith, Aisha said that a girl complained to the Prophet (PBUH) that her father wanted to marry her to her cousin for reasons of prestige. The Prophet (PBUH) asked her to choose between accepting or invalidating the marriage. The young girl accepted the marriage, saying « I wanted to tell young girls that parents have not to decide in this matter ».

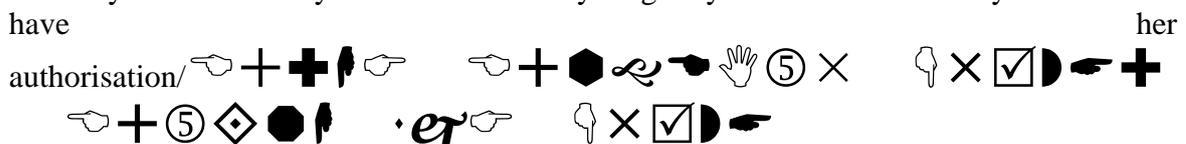
So it's through a false interpretation of provisions of the Islamic law that people manage to justify forced marriages. It is especially traditional practices that we must try to eradicate by teaching Muslims what the religion recommends. Jurists like Shawkânî in « Nayl al-Awtâr », al-Awzâ'î, al-Thawrî, Tirmidhî, Abu Hanîfa invalidate this type of marriage. It is also the case of Ibn Taymiyya.

Several hadiths were reported in different words, but the meaning is the same. They all indicate that marriage without the woman's consent (whether she is a young girl or lady) is void. Following are some examples :

⇒ One cannot marry one's daughter without requesting her consent. A woman cannot be married without her authorisation. He was told « but the young girl has shame ». He replied « her silence means her consent/



⇒ The lady is more worthy of herself and the young lady must be consulted by her father to have



³⁷ al-Qardâwi, Al-Halâl wal Harâm

happen in moral elegance, a minimum of agreement must necessarily be reached on separation conditions for each party to keep his dignity. This is what is called divorce.

Besides, if we paid attention to the Koran’s message, we would realise that the humanism that pervades it lacks when Muslims try to apply it. Most of the time, it is because they are impregnated with traditions.

The Koran cares a lot about women’s interests in case of divorce. That’s why it recommends two things:

1. not to take back things already offered to the woman⁴³ /  * X (8)  + +  X   *    +     +    & X * +

  grant them an appropriate compensation (allowance)⁴⁴  X  (5) &   X   X  +  (1)        +  (0)   (1)    X   +  +  (0)    X   + +    +

It is very important for Muslims to carefully consider the principles of these verses and purposes of justice and equity they pursue in order to understand the meaning of these secular laws, which in their spirit are not far from the Koran.

Finally, even if the divorce is among lawful things what God abhors the most, sometimes it is preferable. And either the man or the woman can take the initiative. What should be noted here is the Koranic orientation for moral elegance in the separation.

Ibn Qudama says in « al-Mughnî »⁴⁵ that when the woman does not love her husband because of his character, his physiognomy, his religiosity, his age or his weakness and she fears not to be able to obey him, she is allowed to ask for the divorce against her. For this purpose the Koran

says:  +      X    + X   ?   *   +   +   X  X *     +   /if ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she give something for her freedom⁴⁶»

The story of Thâbit ibn Qays’s wife reported by al-Bukhârî is famous. Thâbit ibn Qays’s wife complained to Seydina Muhammad (PBUH) that she wanted to part from her husband. The Prophet (PBUH) asked her if she was ready to give back her husband the field he offered her as a dowry. The woman agreed and the Prophet (PBUH) asked Thâbit to accept and free her from the

⁴³ Sura al-Baqara, verse 229
⁴⁴ idem, verse 236
⁴⁵ T 7, p 51/52
⁴⁶ Sura al-Baqara, verse 229

act. And yet, in the line of transmission of this hadith, we encounter one Khalid b. ‘Amr al-Qurashî. This man is not trustworthy, according to specialists. And they consider this hadith as « very weak⁵² », which reinforces its invalidity.

The 3rd and 4th hadiths are those from Um Atiyya⁵³. Let’s have a look at the semantics in these two hadiths.

We immediately note that in the recommendation attributed to the Prophet (PBUH), there is the respect of woman’s anatomy, but especially the conservation of the faculty to enjoy the carnal relation between spouses. This is enough, if we are careful, to disqualify everything aiming at reducing the woman’s pleasure in sexual intercourse with her husband. Besides, this disqualifies any attempt to control woman’s sexuality, without her consent.

On the other hand, this hadith by Um Atiya was reported by Ahmad, who immediately described it as weak. **And yet, as indicated above, the weak hadith is not able to justify a lawful or unlawful act.**

⁵² idem

⁵³ She was a woman who used to practise excision in Medine, according to some hadiths. But others say that she was not known. Which makes hadiths in which she is mentioned doubtful.

CONCLUSION: SOCIAL INTEGRATION AND GENDER EQUITY

Social building is, as mentioned above, a human responsibility, which transcends sexual characteristics. Therefore, all social components should be involved in this process. To be fair, such integration must be based on justice and equity principles. And it is possible to find these principles in the Koranic message and the practice of the Prophet (PBUH).

Once an ontological equality is established between man and woman, any discrimination is no more possible in social building. Besides, the Koran has clearly exonerated women in men's attempt to blame her for the fall (on earth). **So the responsibility has been shared since the Creation, through the violation of the pact with God. Then why wouldn't we share vicariate responsibilities on earth ?** Moreover, the Koran seems to lay the blame on man.

Of course, responsibility sharing means a more efficient distribution of roles. Which leads to take account of everyone's physical and physiological aptitudes. There are characteristics that Allah presents us as a distinction and not a defect or a handicap, or even a precedence.

In this role distribution and responsibility sharing, **the purpose is social equilibrium.** It is necessary to understand that harmony cannot be achieved through contempt for one of the parties or his/her confinement in subordinate tasks.

Islam recognises women's human capacities, namely legal, entrepreneurial, leadership. And it is the Koran which shows that in social building, at least at the material level, the production of wealth is important. And at this level, it makes no discrimination between men and women⁵⁴.

These same human capacities led women to plead their cases before the Prophet (PBUH) until the Koran came in⁵⁵. It is also this capacity which led the young girl to plead her case when her father, for the sake of prestige, married her to her cousin.

Social integration is based on these legal and entrepreneurial capacities. To that may be added the fact that concerning political leadership, we saw that our mother Aisha, though she was erudite⁵⁶, participated in the struggle to control the political power in jousts for succession. This shows, for the careful observer, that the Muslim woman is not a housewife confined in the corner of the kitchen fanning the hearth. She is involved in the building in all its dimensions. Her only limit is the one set by the religion. And yet, the limit is rather restricted in religion.

What corroborates it, among other things, when a woman took the floor in a public meeting after Abu Bakr was elected. When the latter told people in substance that they had to call him to order if he deviated from the right path, a woman stood up and said: « we will straighten you up, if need be by punishment, if you don't observe the rules ». A woman took the floor in public to contradict Seydîna 'Umar who admitted he was wrong.

It may be added that woman can hold the highest functions in Islamic jurisprudence, namely those consisting in producing the rule of law. It is common knowledge that Ulemas agree on

⁵⁴ Sura al-Baqara, verse 32.

⁵⁵ Sura al-Mujâdala

⁵⁶ She make an inventory of over two thousand hadiths.

the fact that women have the capacity to report hadiths of the Prophet (PBUH) and even give fatwas and legal advice on all issues, provided they have the required competencies⁵⁷.

Besides, the function of judge, as we know, is one of the most serious functions in Islam. And yet, women are able to hold this function, under the Muslim law. Of course, there are still controversies about this, because Imams like Malik are absolutely opposed to this. But others, like Tabarî and Shaybânî, absolutely accept it. As for Abu Hanîfa, he accepts it in commercial competencies. This shows that jurisprudence, far from being fossilised, is rather open and men have the power to interpret taking into account the spirit of the Koran and Sharia's equity purpose. And defenders of women's ability to hold this position are based on a prophetic tradition.

In fact, the spirit of equity and responsibility sharing in social building had led Prophet Mohammad (PBUH) and Kalif Umar to appoint **a woman who was in charge of weights and measures and economic police in Medina market**. That woman was **Shifâ bint 'Abdullah** who was highly respected by the Prophet (PBUH) and Kalif Umar, who used to consult her about the city's affairs⁵⁸.

It can be said that in the legal, economic, political and social areas, Islam widely opens the spheres of woman's integration, as stakeholder in the mission to build equilibrium and harmony on earth. In this process, the aim of this religion of rationality and humanism is not to call for ridiculous egalitarianism nor iniquitous masochism. The aim is to rely on the universal values shared by man and woman, and to make of each one's characteristics an advantage for complementarity. Thus the accidental difference will be a solidarity and cooperation strengthening factor in building the peaceful city.

⁵⁷ For this purpose, see scholar al-Wansharîsî in 'Uddat al-Barûq. Dâr al-Gharb al-Islâmî, Beirut.

⁵⁸ see : ibn 'abd al-Barr in al-Isty'âb; Ibn Hajar in al-Isâba and az-zarkalî in al-A'lâm.

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