

# Abused Women and Islamic Divorce

BY SHEIKH SUHAIB WEBB



Pillars of Peace



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A domestic shelter in New York City requested I address the topic of an abused Muslim woman's right to end her marriage.<sup>1</sup> I hope this short paper will share some jurists' opinions on this topic. It is my hope that this eases Muslim women's concerns about being trapped in abusive relationships. It is common to see women given advice on this topic that is ill-informed, harmful, and irresponsible.

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<sup>1</sup> I define abuse later

## **Marital Discord**

Islam acknowledges that life is complicated; marriage is not always perfect and, at times, couples will argue and fight. When marriages sour, Islam commands spouses to adhere to religious principles rooted in the life they share, and the vows they took when married. Specifically, it encourages them to work for their marriage, to stay resilient,<sup>2</sup> and to seek consultation when the marriage is struggling.<sup>3</sup> However, there are times, more often than people like to admit, when the bonds of marriage are shattered by abuse and ill treatment.

In this answer, I examine the position outlined by Maliki<sup>4</sup> jurists<sup>5</sup> that an abused woman can end<sup>6</sup> her marriage. After that, I address the process of ending her marriage because it is there that communities fail women, leaving them empty-handed with no means to end an abusive relationship.<sup>7</sup> It is not sufficient to offer women a theoretical victory in these situations, but to enact policies that improve their lives and achieve justice.

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<sup>2</sup> Al-Qur'an 4:19

<sup>3</sup> Al-Quran 2:233

<sup>4</sup> A juridical-religious group of orthodox Islam which formed itself into a school ( al-madhab al-mālikī ) after the adoption of the doctrine of Imām Mālik b. Anas who died at Medina in 179/795.

<sup>5</sup> While I mentioned three, their opinion is what the madhab relies upon for fatwa. See Khalil's quote later in the document.

<sup>6</sup> This is different from khal'a. In this context, she is invoking her right to divorce (talaq), whether the husband agrees or not, without an exchange, for her exiting the marriage.

<sup>7</sup> Too often women are left with theory and no application. I hope this paper will provide a framework to help them out and hold abusers accountable

### **The Concept of Harm**

Islamic jurists put great effort towards understanding, unpacking, and defining all types of domestic abuse. Eventually, they settled on the term *darar* (Eng. Harm).<sup>8</sup> As a legal term, “harm” is a wise choice; its meaning is wide enough to include all forms of abuse, and precise enough to ensure due process and justice.

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<sup>8</sup> The choice of wording here is important since harm is more comprehensive than physical abuse, and that comprehensiveness grants wide interpretive leeway.

## Definitions of Harm in Islamic Law

In defining domestic abuse, I will refer to the definitions written by three Maliki jurists.<sup>9</sup>

Sheikh al-'Adawi<sup>10</sup> defines domestic abuse, writing:

الضرر المعهود الذي لها التظليل به، كأن ينقصها حقها في النفقة أو يكلفها شغلا لا يلزمها خدمته أو يشتمها أو يضربها ضربا مبرحا

Harm that permits her to seek a divorce, as an example, is to fail to uphold her rights, like financial support, or burdening her with work that is not obligatory upon her, insulting her, or (physically) assaulting her.<sup>11</sup>

Sheikh Ahmed al-Dardir<sup>12</sup> defines it,

وهو ما لا يجوز شرعاً، كهجرها بلا موجب شرعي، وضربها وسبها وسب أبيها نحو: يا بنت الكلب، يا بنت الكافر، يا بنت الملعون.

Harm, in this context, is what is forbidden by Shari'a, like abandoning her without a religious reason, hitting her, insulting her<sup>13</sup> or her father, saying, for example, "Daughter of a dog," "Daughter of a non-Muslim," or "Daughter of the cursed".<sup>1415</sup>

And Imam Ibn Farhoon<sup>16</sup> describes it,

من الضرر قطع كلامه عنها، وتحويل وجهه في الفراش عنها، وإيثار امرأة عليها، وضربها ضربا مؤلما

Forms of harm include cutting her off (extended periods of silence), turning away from her in bed, preferring another woman to her, or physically assaulting her.<sup>17</sup>

As is evident, those scholars did not restrict the definition of abuse to physical assault. But, by choosing an abstraction - "harm" - they expanded the concept of abuse to include emotional assault, financial neglect, abandonment, sexual

<sup>9</sup> Each text quotes is relied upon for fatwa in the school

<sup>10</sup> 'Ali al-Saidi al-Adwai was one of the preeminent Egyptian, Maliki jurists of his day. His meta commentary of the Risala of Ibn Abi Zaid contains the opinions need for fatwa in the school. He died in 1785 C.E

<sup>11</sup> Hashiya al-'Adawi, Vol. 2 Pg. 146

<sup>12</sup> Ahmed ibn Ahmed ibn abi-Hamid al'Adawi al-Maliki al-Azhari al-Khalwati ad-Dardir (AH 1127 – 1204 AH) known as Imam ad-Dardir or Dardir was a prominent late jurist in the Maliki school from Egypt. His Sharh as-Saghir and Sharh al-Kabir are two of the most important books of fatwa (Islamic legal rulings) in the Maliki school.

<sup>13</sup> I know of cases where body shaming has led to anorexia and bulimia

<sup>14</sup> Hashiyat al-Dusuki' 'Ala l-Sharh al-Kabir, Vol. 3 Pg. 213.

<sup>15</sup> Other jurists noted things like sustained silence or ignoring her in order to punish her

<sup>16</sup> Burhān al-Dīn Ibrāhīm b. 'Alī al-Ya'marī, Mālikī jurist. He was born about 760/1358 in Medina into a scholarly family of Andalusian origin. After travels in Egypt and Syria he was appointed to the ḳaḏā' in Medina in 793/1390 and is stated to have revived the Mālikī rite there. He died in 799/1397.

<sup>17</sup> Mawahib al-Jalil, vol. 4 pg. 17

assault, and abusive insults. Thus, each, as defined by those jurists, is a violation of Allah's command for men to live amicably with their wives.

Allah says,

وَعَاثِرُوهُنَّ بِالْمَعْرُوفِ  
"Reside with your wives well." Qur'an 4:19

Ibn al-Arabi,<sup>18</sup> the great Andalusian judge, commenting on that verse writes,

أمر الله سبحانه الأزواج إذا عقدوا على النساء أن يكون أدمة ما بينهم وصحبتهم على التمام والكمال ، فإنه أهدأ للنفس ، وأقرّ للعين ، وأهنأ للعيش ، وهذا واجب على الزوج

"Allah commands men who marry to treat their wives well, to constantly maintain wholesome relations between them because it pleases the soul, brings security to their lives, and eases marital life. That is obligatory on the husband."<sup>19</sup>

The Prophet صلى الله عليه وسلم commanded husbands to treat their wives well, when he said,

استوصوا بالنساء خيراً  
Treat women well.<sup>20</sup>

And he صلى الله عليه وسلم said,

خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِهِ  
The best are those who are best to their wives.<sup>21</sup>

Imam al-Jassas,<sup>22</sup> the great Hanafi scholar, summarizing the application of the verse writes,

أمر للأزواج بعشرة نسايتهم بالمعروف، ومن المعروف: أن يوفيتها حقها من المهر، والنفقة، والقسم، وترك أذاها بالكلام الغليظ، والإعراض عنها والميل إلى غيرها، وترك العبوس والقطوب في وجهها بغير ذنب

Allah commands husbands to reside with their wives in goodness. Examples of that are to fulfil her right of mahr, financial support, administration of assets, avoid

<sup>18</sup> Abū Bakr Muḥammad b. ‘Abdallāh b. Muḥammad b. ‘Abdallāh b. Aḥmad b. Muḥammad b. ‘Abdallāh al-Ma‘āfirī al-Ishbīlī, known as Ibn al-Arabi, b. 468, d. 543 was an outstanding Andalusī scholar during the Almoravid period, who served as qāḍī (judge) in Seville (Ishbīliya), his hometown and the Almoravids' capital on the Iberian Peninsula.

<sup>19</sup> Ahkam al-Quran vol. 2 pg. 363

<sup>20</sup> Sahih al-Bukhari, 5185 and Sahih Muslim, 1468.

<sup>21</sup> Takhrij Mushkil al-Athar by Sh. al-Aranouth, #2523

<sup>22</sup> Abū Bakr Aḥmad ibn ‘Alī al-Rāzī al-Jassas 305-370 was a Hanafi scholar, renowned for his legal commentary of the Qur'an.



abusing her with abusive language, abandoning her, to prefer others over her, and to avoid frowning or showing displeasure in her presence without warrant.”<sup>23</sup>

### **Removing Harm**

A quick survey of Islam’s religious texts reveals an important pattern:<sup>24</sup> The texts consistently seek to remove harm when it occurs, even going a step further, seeking to prevent it before it happens.<sup>25</sup>

The Prophet صلى الله عليه وسلم said,

لا ضرر ولا ضرار

There is no instigating harm nor reciprocating with harm.<sup>26</sup>

That hadith is the foundation of an important Islamic legal principle: “Harm is to be removed.” The axiom grants a Muslim and a jurist great freedom because it expands the restrictive definition of the word abuse to include the legal and cultural variants based on the existence, or the potential existence of religious, physical, emotional, or financial harm.<sup>27</sup>

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<sup>23</sup> Ahkam al-Quran Vol. 3 pg. 47

<sup>24</sup> Istiqra (Eng. Surveying) of the evidence is considered one of the important way to recognize the objectives (Maqasid) of Islamic law. Particularly legal axioms related to theory and practice.

<sup>25</sup> See the Qur’an, 2:29, 20:108 and 65:6

<sup>26</sup> Ibn Majah (1910)

<sup>27</sup> An example is a fasting person who determines that fasting would harm his health. Because of the threat of harm, he is allowed to break his fast. See Tuhfa al-Muhtaj Sharh al-Minhaj of al-Haythami al-Shafi’i.

## Removing Harm & Nullifying An Abusive Marriage

Recognizing the harm of physical, sexual and emotional abuse, the jurists of the Maliki school, as well as some Muslim countries, like Algeria<sup>28</sup> and Egypt<sup>29</sup> permit a woman whose husband is harming her to invoke divorce.<sup>30</sup>

Imam Khalil<sup>31</sup> states that position writing,

ولها التطلاق بالضرر البين ولو لم تشهد البينة بتكرره

To her is the right to seek divorce (talaq) because of proven harm, even if it occurs once.<sup>32</sup>

Commenting on Khalil's opinion, Imam al-Kharashi<sup>33</sup> writes,

إذا ثبت بالبينة عند القاضي، أن الزوج يضارر زوجته، ولو كان الضرر مرة واحدة، فالمشهور أنه يثبت للزوجة الخيار، فإن شاءت أقامت على هذه الحالة، وإن شاءت طلقت نفسها، بطلقة واحدة بائنة

If it is established by a judge<sup>34</sup> that the husband struck her, even once, the popular<sup>35</sup> opinion is that it becomes her right to choose: If she wants, she can stay with him, and if she wants, she can end the marriage - separate from him with a single, irrevocable divorce.<sup>36</sup>

In his Majmu, al-Amir<sup>37</sup> writes,

ولها التطلاق بائنة بثبوت الضرر وإن لم يتكرر، ومثلوا له بقولهم كقطع كلامه عنها أو تولية وجهه عنها في الفراش

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<sup>28</sup> It is also the law found in several Muslim countries. See Algerian Family law, law 113/108

<sup>29</sup> In Egyptian divorce law it is written, Seeking divorce due to harm or dysfunction. Egyptian law permits an Egyptian woman to seek divorce from a judge if she claims the existence of harm from her husband, and she does not have the ability to permanently reside with him.

<sup>30</sup> Egypt initially adhered to the Hanafi position that does not allow a woman to seek divorce because of abuse, but changed its position in 1925 to the Maliki and Hanbali positions, under family law, number twenty-five, and It was ratified again in 1979, under section six, and reformed it again in 1985.

<sup>31</sup> Khalil ibn Ishaq al-Jundi (died CE. 1365,) also known as Sidi Khalil, was an Egyptian jurist in Maliki Islamic law who taught in Medina and Cairo. His Mukhtasar, known as the "Mukhtasar of Khalil", is considered an epitome of shariah law according to the Maliki madhhab, and is regarded as the most authoritative legal manual by North and West African Muslims.

<sup>32</sup> Hashiyat al-Dusuki 'Ala Sharh al-Kabir, Vol. 3 Pg. 343

<sup>33</sup> Sheikh Muhammad al-Kharashi (Died 1690 CE) was the former Sheikh al-Azhar and a scholar of the Maliki school.

<sup>34</sup> There are times when there is no judge and the responsibility for adjudicating falls upon the community and its leadership.

<sup>35</sup> Popular (Ar. Mashur) in the Malki school means the opinion with the most scholarly support

<sup>36</sup> Hashiyat al-Kharshi 'Al Mukhtasar Khalil Vol. 4 Pg. 411

<sup>37</sup> Muhammad al-Amir al-Maliki was from Egypt, and a major scholar and jurist in the Malki school. He was born in 1154 AH.

The wife has the right to request an irrevocable divorce due to clear harm, even if it is not repetitive. An example of that is refusing to speak to her or refusing sex with her.<sup>38</sup>

Thus, when abuse occurs, and it is proven,<sup>39</sup> the woman has the right to seek an irrevocable divorce<sup>40</sup> because of the harm she has endured, the failure of the husband to live up to his contractual obligations, and because his abuse of her is forbidden - a violation of God's law.<sup>41</sup>

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<sup>38</sup> See Sharh al-Hijazi on the Majmou' of al-Amir under the section khula'

<sup>39</sup> I will address this soon inshallah

<sup>40</sup> An axiom states, يكون بائنا, "Any divorce ordered by the judge is irrevocable."  
See al-Sharh al-Saghir, vol. 2 pg. 746

<sup>41</sup> Mawaib al-Jalil, al-Hattab, vol. 4 pg. 17

## Community Responsibility

It is incumbent upon the community to assist her in this situation because it is not permissible for them to support disobeying Allah.

Allah says,

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۗ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

And cooperate with one another in virtuous conduct and devotion, and do not cooperate with one another in sin and hostility. And fear God. God is severe in punishment. (Quran 5:2)

A community or its leadership that sits dormant in the face of proven abuse is sinful, cooperating in evil, rebellion, and disobedience. Thus, they must act to end the marriage, if that's what the wife wants, support her as she moves forward, and to hold the abuser accountable.<sup>42</sup>

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<sup>42</sup> This is especially important for in-laws and friends of the couple. They must mute their sense of loyalty to the abuser and ensure that the abused is treated justly.

## How is Abuse Proven

It is at this juncture that women and communities find themselves lost. While their imagination, and even moral compass, encourage them to do what's right, they get disoriented, asking "How do you religiously prove abuse, and how do you annul a marriage without a religious judge?"<sup>43</sup>

Religious scholars understood this problem well. Due to different circumstances, it was not uncommon to find Muslim communities without a judge to address their needs. There is an important axiom that addresses that. Khalil mentions it in his Mukhtasar. Commenting on a woman whose husband had disappeared he writes,

ولزوجة المفقود الرفع للقاضي والوالي والوالي الماء وإلا فالجماعة المسلمين

The woman whose husband is missing [she has the right to end her marriage] can present her case to a judge, a governor, or a mayor. If she cannot find one of those, then a group of Muslims can assume that responsibility.<sup>44</sup>

The context of Khalil's writing is a woman who wants to end her marriage because her husband has disappeared but she does not have access to religious authorities who could assist her. Her last resort, in that situation, is to refer her case to a group of Muslims who, as the axiom states, "act as the judge." The reason for that, in this case and others, is to prevent harm and bring benefit; to ensure that people's lives continue, and in this case, to protect her from abuse.

There are several texts that support communal adjudication,

The statement of 'Abdullah bin Masud:<sup>45</sup>

مَا رَأَاهُ الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ

What Muslims view as good is good with Allah.<sup>46</sup>

Supports the idea of communal adjudication, as well as the statement of the Prophet ﷺ,

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<sup>43</sup> I'm of the opinion that a secular court, if it finds the claims of abuse to be real, is sufficient. She can take the court's decision, submit it to an Imam or leader, and her religious divorce must be granted.

<sup>44</sup> Mukhtasar Khalil Pg. 157

<sup>45</sup> Abū 'Abd al-Raḥmān 'Abdallāh Ibn Mas'ūd b. Ghāfil al-Hudhalī (d. c. 32–3/652–4), also commonly called Ibn Umm 'Abd after his mother, was a prominent early Companion of the Prophet from Mecca, whom tradition counts amongst the famed ten Companions promised Paradise (al-'ashara al-mubashsharūn bi-l-janna). He was one of the earliest converts to Islam in Mecca and undertook more than one migration (hijra) to Axum (in Ethiopia), fleeing persecution by the Meccans, and, finally, to Medina in 1/622.

<sup>46</sup> Jami' al-Masanid wa al-Sunna pg. 83

لا تجتمع أمتي على الضلالة  
My community does not agree on misguidance.

And his صلى الله عليه وسلم statement,

لْمُؤْمِنُ لِلْمُؤْمِنِ كَالْبُنْيَانِ، يَشُدُّ بَعْضُهُ بَعْضاً  
"The faithful are like (bricks) in a solid structure: they support each other."

The Qur'an identifies the community of Muslims as good and a source of benefit,<sup>47</sup> as does the Prophet صلى الله عليه وسلم who said,

إن الله تعالى لا يجمع أمتي على ضلالة  
Allah, the Most-High, will not unite my community on misguidance.<sup>48</sup>

For communities in the West, this axiom becomes important because just as they have the liberty to conduct religious marriages, the axiom permits them the freedom to settle religious disputes, or end marriages, especially in the presence of harm.

Defining the role of the replacement Qadi, scholars noted that whatever is required to come to the correct assessment of a dispute, then that is allowed. Meaning, a group of people, with different expertise, should examine situations and offer their thoughts.<sup>49</sup> My recommendation is that a team of religious teachers and case workers should investigate each case, coming to a conclusion after they have concluded the correct process.<sup>50</sup>

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<sup>47</sup> Quran 3:110

<sup>48</sup> Related by al-Suyutti in Jami' al-Saghir, hadith number 1818

<sup>49</sup> Al-Sharh al-Kabir ala Mukhtasar Khalil vol. 4 pg. 129

<sup>50</sup> Because of the threat of harm, the abused should be provided housing with the shelter, or her family until the case is settled.

## A Precedent & Procedure

The Qur'an provides directions on how investigations of abuse should happen: If a marriage is rocked with instability and harm, arbitrators should investigate. As I stated in the previous point, the arbitrators can recommend the marriage continue or be dissolved based on their assessments.

Allah says,

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّي اللَّهُ بَيْنَهُمَا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا  
خَبِيرًا

If you fear a breach between the two, appoint (two) arbitrators, one from his family and the other from her's; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things.

Qur'an 4:35

Imam al-Baji writes that 'Ali رضي الله عنه mentioned the case of Aquil bin Abi Talib and his wife, Fatima bint 'Utba. They were involved in a serious dispute and 'Uthman رضي الله عنه sent Ibn 'Abbas and Mu'awiya to adjudicate between them. Ali said to both of them,

إِنْ رَأَيْتُمَا أَنْ تَجْمَعَا جَمْعَتُمَا وَإِنْ رَأَيْتُمَا أَنْ تَفْرِقَا فَرَقْتُمَا

If you deem it correct, reconcile them, and if you deem it correct to separate them, then do so, and I will separate them.<sup>51</sup>

Commenting on that, Malik writes, "That is the best of what I have heard from the people of knowledge. Whatever the two arbiters say concerning separation or staying together is taken into consideration "<sup>52</sup>

The above narration proves that the two witnesses do not have to be from the couple's family, as oftentimes relatives are unjust. The goal of the investigators is to come to the correct conclusion, and for that reason, as illustrated above, Uthman sent two people who were not related to the couple, but who could do an effective job. Imam al-Baji writes, "If no one from their families is qualified to do this work, others can be appointed to do it."<sup>53</sup>

So, in the case where a woman is accusing her spouse of abuse, she should report it to the shelter. The shelter will appoint an Imam who will work with her and the shelter to investigate along with a caseworker. The books of fiqh note that her friends, neighbors, family, anyone who can testify to the validity or her claims are

<sup>51</sup> Al-Muntaqa: Sharh al-Muwatta vol. 5 pg. 495

<sup>52</sup> The Muwatta Book 29, Hadith 1233

<sup>53</sup> Al-Muntaqa: Sharh al-Muwatta vol. 5 pg. 495

eligible to share information.<sup>54</sup> If the woman has any court papers, police or medical reports, as well as any reports filed by caseworkers or staff, those can be admitted, the first two being grounds for immediate divorce.

If the investigators conclude that abuse has happened, the woman should make her intentions to separate clear. At that time, the center will issue a document, signed by an Imam and the caseworkers who grants her a religious divorce.

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<sup>54</sup> This is not a form of backbiting, as some people assume. It is an obligation as noted by al-Ghazzali and other scholars.



I ask Allah to bless us with the bravery to be just and the integrity to be fair in all our dealings.

And Allah knows best.

Suhaib Webb  
Ramadan 21, 1442 AH.

## About

### **Sheikh Suhaib Webb**

Suhaib, William Webb has a degree in Education from the University of Central Oklahoma, and Islamic Law from al-Azhar in Cairo. He was named as a “Faith Leader to Watch” by The Center for American Progress in 2016, selected by the Muslim community as one of CNN’s 25 Most Influential Leaders; as well as one of “Five Hundred of the Most Influential Muslims” by the Royal Islamic Studies Center in 2021. He is currently the resident scholar at the ICNYU and teaches a course at NYU on Islamic Law and Ethics. He sits on the executive council of the North American Fiqh Council, is a member of the International Union of Muslim Scholars, and sits on the advisory board of the Political Theologic Network. His writings have appeared in the New York Times, and he has been on CNN, NBS, al-Jazeera, CBS and more. He currently runs an online school that focuses on functional religious literacy for English-speaking Muslims.

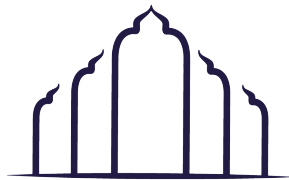


## **Pillars of Peace**

Pillars of Peace was founded by members of the Islamic Center at NYU community in order to address a gap in appropriate residential services for Muslim survivors of domestic and gender-based violence. While our focus is on the Muslim community, all are welcome.

We aim to create a trauma-informed organization that is based on an empowerment model of services which focus on cultivating an atmosphere of support and encouragement. Our mission and goals are rooted in the Universal Declaration on Human Rights and we will continue to advocate for these basic rights on behalf of survivors of gender-based violence.

As an initial step, we are developing a series of in-person seminars, online webinars, and private counseling sessions. All of our initiatives aim to encourage more care, knowledge, and resources for survivors of domestic violence in addition to fostering long-term, sustainable support systems.



*Pillars of Peace*

### **The Islamic Center at New York University**

The Islamic Center at NYU serves a diverse Muslim population in the New York and the tri-state area. Located in the heart of lower Manhattan, the Islamic Center at NYU provides a safe place for individuals with multiple points of entry to learn, pray, socialize and utilize a space situated at intellectual and spiritual crossroads. Inspired by the belief that communities develop in a supportive environment, people from all backgrounds are welcomed to engage in cross-cultural experiences, social justice endeavours, civic engagement initiatives, multifaith programming, spiritual practices and religious education.



