



**musawah**

For Equality in the Muslim Family

**Producing Gender-Egalitarian Islamic Law:  
A Case Study of Guardianship (*Wilayah*) in Prophetic Practice**  
Ayesha S. Chaudhry

Was the Prophet of Islam a patriarchal man who institutionalized existing forms of patriarchy found in seventh century Arabia into Islam? Or was he the first feminist, granting women rights to own property and political participation that western women only acquired recently? This chapter argues for a view of Prophet Muhammad that is complex and does not reduce him to simple representations of either a patriarch or a feminist. Instead, Prophet Muhammad was a man of his time and place – seventh century Arabia – and thus his practice necessarily embodied patriarchal assumptions and behaviours about gender. At the same time, Prophet Muhammad disrupted patriarchal understandings and practices of his times by granting women rights and protections that were unique and progressive for his context.

In this chapter, Ayesha S. Chaudhry examines a few prophetic reports (*ahadith*) on the topic of the guardianship (*wilayah*) that focus on how a woman's marriage is contracted. She considers both the challenges and the opportunities afforded by each selected *hadith* to Muslim feminists who are committed to recovering the Prophet Muhammad's example of establishing an egalitarian vision of marriage. In particular, Chaudhry seeks to shed light on messages and acts in the *Sunnah* (Prophetic practice) that interrupt patriarchy and reflect a concern for women as full human beings.

Chaudhry explores two types of prophetic reports on guardianship. First, she examines several prophetic reports that discuss the need – or lack thereof – of a woman's verbal consent in her own marriage. Second, she considers prophetic reports that combine the concerns of guardianship in marriage and polygamy.

Chaudhry shows that while on the one hand, these selected reports acknowledge and seem to tacitly accept patriarchal and hierarchal gender relations in the family domain, they also clearly support a reading that affirms women's right to consent in marriage as well as their right (particularly when they are in vulnerable positions such as being orphans) to multi-layered protection from abuse by their guardians. Chaudhry sees these interruptions in patriarchal assumptions and expectations as exemplifying moments where the Prophet points the way towards an egalitarian framework for gender rights in the family.

Chaudhry concludes that Muslim feminists, in their quest for equal and just gender rights based on an Islamic framework, can build on these moments that disrupt patriarchy. However, when undertaking this endeavour, Muslim feminists must employ nuanced and balanced methodological approaches towards the tradition that neither dismiss it as

irredeemably patriarchal nor erroneously celebrate it as embodying feminist values and principles. Furthermore, the interpretive frameworks of Muslim feminists should be robust and complex, and must include a re-reading and re-imagining of Prophetic Practice, alongside fresh and creative readings of the Qu'ran, Islamic law, and theology.

The Prophetic Practice provides Muslims with a rich source of narratives to re-think and reform Islamic law to be more gender equal. This quest for a gender equal vision of Islam is not merely a 'women's' project, but must be embraced by Muslims at large, especially if Islam is to remain relevant and a pathway towards emancipation from discrimination and injustice of all kinds.