



Authority in Muslim Family Laws: Rethinking

Qiwamah and



Wilayah

The unequal treatment of men and women in Muslim family laws can be traced to two concepts drawn from classical jurisprudence: *qiwamah* and *wilayah*.

Qiwamah

is commonly understood as a husband's authority over his wife and his responsibility to provide for and protect her, in return for her obedience.

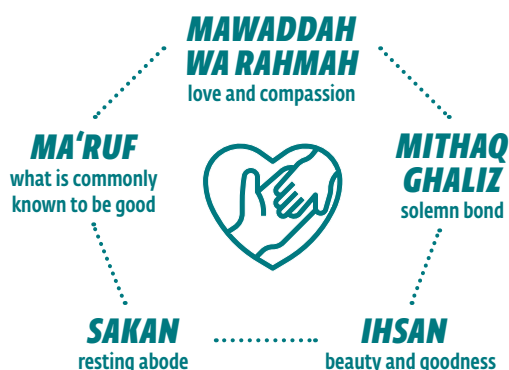
Wilayah

commonly refers to male family members' right and duty to exercise guardianship over female family members.



These two concepts justifying and sustaining male authority in family relations **are not Qur'anic or God-given** but are **human-made concepts** constructed by jurists centuries ago. The word *qawwamun / qawwamin*, from which the broad concept *qiwamah* is derived, appears in the Qur'an only three times, and only once in relation to marriage. The term *wilayah* does occur in the Qur'an in various forms, but never to specifically endorse male guardianship over women. Rather, it refers to **supporting one another, mutual assistance, and mutual reinforcement, in part for the purpose of upholding justice and enjoining the common good** (e.g., verse 9:71).

Other terms appear more often or more directly in relation to marriage, such as ***mawaddah wa rahmah* (love and compassion), *ihsan* (beauty and goodness), *ma'ruf* (what is commonly known to be good), *sakan* (resting abide), *mithaq ghaliz* (solemn bond).**



These ethical Qur'anic concepts could have been emphasized in rulings related to marriage and family relations. Instead, jurists focused on a limited number of terms and verses and interpreted them in ways that reflected patriarchal norms of their times. Such interpretations have contributed to a widespread belief amongst Muslims that hierarchical relations between men and women are divinely sanctioned, and therefore cannot be questioned or changed.

The patriarchal jurist-derived concepts of *qiwamah* and *wilayah* are still used in Muslim family laws and practices to unjustly grant men rights and privileges over women. For instance, a common understanding of *qiwamah* means that a wife must always be sexually available to her husband, such that he can control her movements, make decisions for her, and deny her bodily autonomy and dignity. He can also divorce her unilaterally without her consent or even her knowledge. The concepts also help justify and sustain gender inequality in Muslim contexts.

We can and must reconsider *qiwamah* and *wilayah* in line with Qur'anic principles and Islamic ethico-legal theory (*usul al-fiqh*). This will allow us to build egalitarian family laws and practices and enable families and their members to reach their full potential and live in harmony.

Qiwamah and Wilayah in Classical Jurisprudence (Fiqh)

Qiwamah

The term *qiwamah* in its broad abstract form does not occur in the Qur'an. It is derived from the more specific word *qawwamun* in verse 4:34, where the word describes a particular action. This verse continues to be used as the main textual basis for male authority in marriage and beyond.

An interpretation of verse 4:34 that reflects the consensus of classical jurists reads:

"Men are *qawwamun* (protectors / maintainers) in relation to women, according to what God has favored some over others and according to what they spend from their wealth. Righteous women are *qanitat* (obedient) guarding the unseen according to what God has guarded. Those [women] whose *nushuz* (disobedience) you fear, admonish them, and abandon them in bed, and *idribuhunna* (strike) them. If they obey you, do not pursue a strategy against them. Indeed, God is Exalted, Great."

[This translation leaves contested Arabic terms intact with classical interpretations in parentheses. The verse has been the focus of intense debate and contestations that are outside the scope of this Brief; there are many resources related to the verse and debates.]



Classical jurists interpreted and applied this verse in multiple ways that work together to create the broader concept of *qiwamah*:

- The verse is the **foundation of the classical jurists' understanding of marriage**, which they defined as a contract. The marriage contract **legitimizes sexual relations between spouses** and **establishes a set of reciprocal obligations for men and women in marriage**. Husbands' duties are to provide for their wives through payment of dower (*mahr*) and maintenance (*nafaqah*). In exchange, husbands acquire the right to sexual access to their wives and thus can control their movements. Wives have a duty to obey their husbands and be sexually available (*tamkin* or *ta'a*), which allows them the right to maintenance.



Husband (*qiwamah*):
Responsible for the wife's maintenance and protection



Wife (*ta'a* / *tamkin*):
Required to obey and be sexually available to the husband



- The idea 'men provide and women obey' was also **expanded by jurists to address gender relations generally and to justify male authority and superiority**. Interpretations of the term '*qawwamun*' in verse 4:34 evolved over centuries into the patriarchal legal concept known as *qiwamah*. Omaima Abou-Bakr (2015) shows this happened through **four broad phases**:

1 IN THE 10TH CENTURY

the jurist al-Tabari began a process of turning the specific word *qawwamun* into a broader concept. Instead of *qawwamun* being used to **describe** how families were structured at the time, the term was used to **prescribe** how they should **always** be structured. The descriptive term '*qawwamun*' was turned into a verbal noun '*qiyam*' (being in charge of), which later developed into '*qiwamah*'.

2 SUBSEQUENT JURISTS

(such as al-Zamakhshari, al-Qurtubi, al-Baidawi, al-Razi) **continued to justify the hierarchical concept of *qiwamah***. They argued men's 'superiority' over women in ways ranging from men's roles as prophets and imams to their ability to grow a beard. Language around gender focused on men's rulership and women's supposed inferiority in intellect and religion.



3 14TH TO 16TH CENTURY JURISTS

(such as Ibn Kathir and al-Suyuti) **expanded the concept by linking *qiwamah* to *darajah* (degree) in verse 2:228 and to selectively chosen *ahadith***. They shifted its meaning from just providing financial support into **generalized privilege for men everywhere and at all times**. Over time, selected *ahadith* (including many considered weak) calling for wives' absolute obedience were used as part of interpretations of verse 4:34.

4 MODERN SCHOLARS

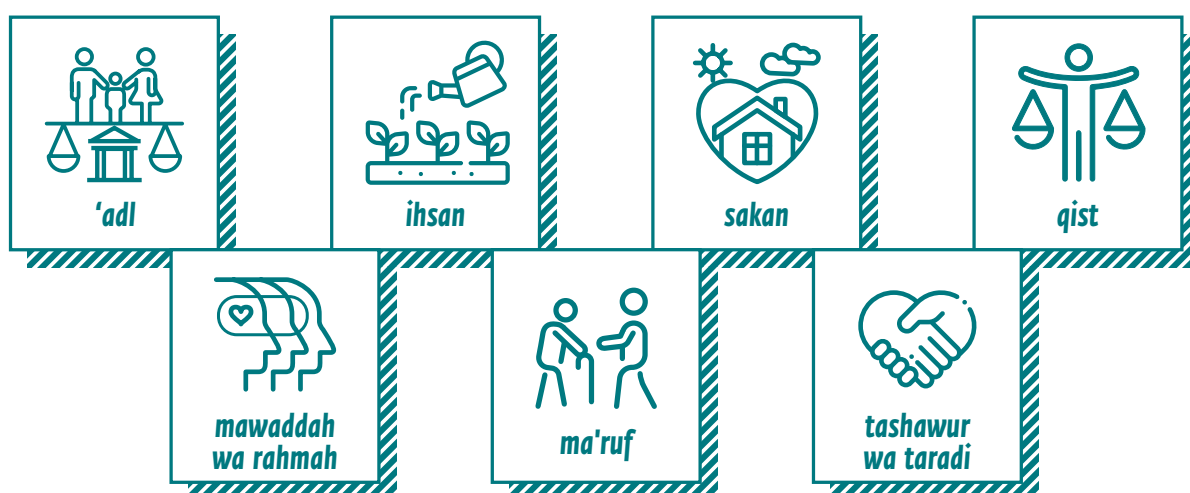
(such as Muhammed 'Abduh, Sayyid Qutb, and Muhammad Mitwalli al-Sha'rawi) **added the ideology of domesticity and women's *fitrah* ('inborn' nature) to the concept of *qiwamah***.



In thinking about marriage and gender relations, jurists focused on verse 4:34 and the broad concept of 'qiwamah' they had constructed based on norms of their times. They interpreted 'qawwamun' in 4:34 without referring to the two other instances (4:135 and 5:8) where it is used to call believers to **stand firmly for justice and fairness** in private and public domains.

Many verses in the Qur'an and *ahadith* address marriage and gender relations and could serve as the foundation for gender relations. These include verses that stress the **equal worth of all human beings** who come from one essence (*nafs wahida*) and **their equal responsibility of taqwa and compassion** in family relations, or those that promote values relating to marriage such as '**adl (justice), qist (fairness), ihsan (beauty and goodness), ma'ruf (what is commonly known to be good), sakan (resting abode), tashawur (consultation), and taradi (consent).**

Qur'anic Values Related to Marriage



Wilayah

The term *wilayah* does occur in the Qur'an, but never in a sense that specifically refers to or sanctions hierarchical gender relations.

- The related term *wali* (conventionally translated as 'guardian') and its plural *awliya'* appear in several verses as an attribute of God or human beings, with the meaning of '**friend and supporter**'. In fact, none of the Qur'anic verses on which the jurists based the juristic doctrine of male guardianship use the term *wilayah*. The main aim of the two divorce verses on which jurists based their understanding of *wilayah* (2:232 and 2:237) is **not about male authority but to ensure justice for women**.
- Furthermore, it is significant that in verse 9:71, the term *awliya'* is used to instruct believing men and women to **support each other as allies and cooperate as they strive to fulfil their shared duty of promoting the common good, forbidding evil, and upholding justice**. This command to do *ma'ruf* (what is commonly known to be good) is addressed equally to men and women, as illustrated in many verses in the Qur'an, such as 3:104, 3:110, 9:112, and 22:41, among others.

Even though the concepts of *qiwamah* and *wilayah* as commonly understood were developed by jurists and not outlined in the Qur'an, they still serve as the underlying logic for gender relations and rights within Muslim contexts.

Qiwamah and Wilayah in Contemporary Laws and Practices

The concepts of *qiwamah* and *wilayah* continue to be used, either explicitly or implicitly, to justify male superiority and authority in Muslim contexts. Many contemporary Muslim family laws are colonial or post-colonial laws that merged classical juristic concepts like *qiwamah* and *wilayah* with colonial influences and negative aspects of local customs. These concepts also inform norms and behaviours.

While laws and practices differ, women may experience the following restrictions, discriminations, and injustices related to *qiwamah* and *wilayah*:

Unequal legal rights or decision-making responsibilities

Men are often considered heads of households regardless of whether they actually provide and protect. Women often do not gain legal rights or decision-making responsibilities from financial or non-financial (care work, housework, cooking, etc.) contributions.

Restricted mobility

Women may not be able to leave home, travel, study, work, obtain travel documents, etc., without permission from husbands or male guardians.



Restricted access to health care

Women may not be able to visit medical specialists without their male guardians present.

Loss of maintenance

Wives may lose their right to maintenance if they are found to be guilty of *nushuz* (commonly understood as disobedience).



Early and/or forced marriage

Male guardians may be able to contract marriages for minor family wards and young women may be coerced into marrying at an early age, with implications for their education, employment, and mental and physical well-being.



Unequal divorce rights

Husbands may be able to divorce their wives unilaterally – requiring no evidence, reason, consent, or even knowledge of the wife – while wives may have limited options for divorce or require extensive evidence or payment.



Unequal custody and guardianship

Mothers may be given physical custody (*hadanah*) but not guardianship (*wilayah*) of their children and thus need consent of the guardians for medical treatment, obtaining documents, travel, school registration, etc.

Unequal public roles

Under the logic of male guardianship and women's diminished legal capacity, women may be barred from holding certain positions (e.g., judgeships), testifying equally in court, or participating in political and economic activities.



Unequal treatment in the workplace

Working women may not enjoy the same benefits as male co-workers because of an underlying assumption that they have financial support from their husbands or fathers.

Sexual violence

Rape and sexual violence within marriage may not be criminalized and marital sex may be considered a husband's right and a wife's duty.



Physical violence

Violence against wives may not be prohibited outright. A husband's right to 'discipline' a disobedient wife may be allowed if it is not 'severe' or 'harmful'.

Patriarchal conceptions of *qiwamah* and *wilayah* undermine family stability and individual well-being.

While women most commonly experience such restrictions, the hierarchical model of marriage stemming from *qiwamah* and *wilayah* can negatively impact **men and children** as well. It is difficult and often impossible for men to meet the expectation and obligation to be sole providers. This can lead to anxiety and feelings of failure, conflicts in relationships, or deterrence from marrying at all. Confining men's roles to providers discourages men from caring for children, thereby depriving both fathers and children of close relationships with each other. Unequal and unjust parental relationships can teach children the opposite of the Qur'an's message of marriage as a place of love, beauty and goodness, and tranquility.

Essentially, **women are not treated as equal human beings** under *qiwamah*- and *wilayah*-based laws.

- This undermines the Qur'anic injunction of the equal worth of humans who were created from one soul and such values as *'adl* (justice), *ihsan* (beauty and goodness), and *karamah* (dignity).
- This infringes upon universal human rights.
- This violates constitutional guarantees of full and equal citizenship.
- This prevents women from fulfilling their potential in spiritual, social, political, and economic realms.

Examples:

How Do *Qiwamah* and *Wilayah* Impact Women's Lives?

Major repercussions arise from a marriage model in which a husband is the sole head of the household with absolute authority and responsibility and a guardianship model in which a male guardian has control over his ward's life choices.

The report from Musawah's Global Life Stories Project called 'Women's Stories, Women's Lives: Male Authority in Muslim Contexts' (2016) chronicles how *qiwamah* and *wilayah* manifest across a variety of contexts. Examples include:

GUARDIANSHIP OVER SINGLE WOMEN

Nasibah (Iran) was required by her father to work to support herself in addition to doing housework for the family. Her father controlled her movements and made decisions on her behalf. She saw marriage as an escape. But her father refused to consent to her marriage with a man she had known for years, despite support from both families, so Nasibah could not marry.

CHILD MARRIAGE

Sultana (Bangladesh) lost her father at a young age. She was sent to work as a child domestic worker instead of going to school; her earnings paid for the education of her younger brother. She married when she was 12 and lived in a joint household with her husband's family. She had to do all the cooking, cleaning, washing, laundry, etc., and they verbally abused her.



PHYSICAL VIOLENCE

Sinta (Indonesia), a community and religious leader, faced a cycle of domestic violence. Her husband was temperamental, jealous, and verbally abusive. He began to hit her for trivial things. The physical abuse escalated. Sinta was ashamed and afraid so initially did not tell anyone. She eventually revealed the violence, obtained a divorce, and used her experience to share the message that the Qur'an and Islam do not condone violence against women.



SEXUAL RELATIONS & MARITAL RAPE

Lila (Canada) believed that men have the right to sex with their wives whenever they want based on a hadith she heard that 'those women who deny their husbands' sexual rights are despised by God's angels'. Throughout her marriage, she was subjected to marital rape, even though this is not endorsed by the Qur'an and is recognized as an offence under the Canadian criminal code.

THE MYTH OF THE MALE PROVIDER / WOMEN'S ECONOMIC ROLES

Nadia (Egypt) worked to support her working class family and became the main provider, paying for her younger siblings' education and marriages. She later migrated to the United Arab Emirates and sent remittances home to Egypt. She married twice and was the primary breadwinner both times, but faced financial neglect, psychological and physical abuse, and abandonment. After her second divorce, Nadia returned to Egypt and started a taxi business, asserting her authority in a male-dominated field.

DIVORCE

Rashida's (Nigeria) husband did not adequately provide for the family, prevented her from working, and sexually abused her. After 16 years, she finally decided to leave. He resisted, and her family pressured her not to divorce for the sake of their children and community respect. When her husband refused to divorce her through *talaq*, the judge suggested she return the *mahr* to secure a *khul'* divorce. She decided she was willing to endure financial and social hardship rather than stay with her husband.



The Way Forward

Male authority over women and the model of marriage that requires women's obedience in exchange for men's protection and maintenance cannot be supported on religious grounds. The concepts of *qiwamah* and *wilayah* as commonly understood are not Qu'anic or God-given, but were developed through human interpretation. These patriarchal constructs lead to injustice and do not reflect or serve family realities today.

The Qur'an and the Sunnah of the Prophet (*pbuh*) call for marriage to be grounded in ethical principles such as *'adl* (justice), *ihsan* (beauty and goodness), *mawaddah wa rahmah* (love and compassion), *sakinah* (tranquility), *karamah* (dignity), *ma'ruf* (what is commonly known to be good), and *tashawur wa taradi* (consultation and mutual consent). A model of marriage based on these values can promote healthier and stronger families.

Qur'anic verses that promote equality, justice, beauty, and goodness in marriage and family relations include:

- **4:1:** 'O mankind, have *taqwa* of (*itaqu*) your Lord, who created you from one soul (*nafs wahida*) and created from it its mate (*zawj*) and dispersed from both of them many men and women. And have *taqwa* of Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer.'
- **5:8:** 'O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to *taqwa* ...'
- **16:90:** 'Indeed, Allah orders justice (*'adl*) and beauty and goodness (*ihsan*) and giving to relatives and forbids immorality and bad conduct and oppression. ...'
- **9:71:** 'The believing men and believing women are allies (*awliya'*) of one another. They enjoin what is right (*ma'ruf*) and forbid what is wrong and establish prayer and give zakah and obey Allah and His Messenger. ...'
- **3:195:** 'And their Lord responded to them, "Never will I allow to be lost the work of [any] worker among you, whether male or female; you are of one another ..."'
- **30:21:** 'And of His signs is that He created for you from yourselves (*anfusikum*) mates that you may find tranquility (*sakan*) in them; and He placed between you affection (*mawaddah*) and mercy (*rahmah*). ...'
- **7:189:** 'It is He who created you from one soul (*nafs wahida*) and created from it its mate (*zawj*) that he might dwell in security (*sakan*) with her. ...'
- **4:19-21:** 'Live with them in kindness (*ma'ruf*). For if you dislike them – perhaps you dislike a thing and Allah makes therein much good. And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant (*mithaq ghaliz*)?'
- **2:187:** '... [Your wives] are a clothing (*libas*) for you and you are clothing (*libas*) for them. ...'
- **2:233:** '... And if they both desire weaning through mutual consent (*taradi*) from both of them and consultation (*tashawur*), there is no blame upon either of them. ...'

How can we work together to build egalitarian Muslim societies?

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