

A Feminist Reader's Guide to
Justice and Beauty
in Muslim Marriage:
Towards Egalitarian
Ethics and Laws

Edited by Ziba Mir-Hosseini, Mulki Al-Sharmani,
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*A Feminist Reader's Guide to Justice and
Beauty in Muslim Marriage: Towards Egalitarian
Ethics and Laws*

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Table of Contents

Preface	6
----------------	----------

Using this Study Guide: Tips for Readers	8
---	----------

Using this Study Guide: Tips for Facilitators	14
--	-----------

The Qur'an

Chapter 1: Qur'anic Ethics of Marriage	16
---	-----------

By Omaima Abou-Bakr, Asma Lamrabet and Mulki Al-Sharmani

Chapter 2: Reading the Qur'an through Women's Experiences	22
--	-----------

By Nur Rofiah

Chapter 3: <i>ihسان</i>: A Mandate for Beauty and Goodness in Family Relations	28
---	-----------

By Amira Abou-Taleb

Lessons from the Prophet

Chapter 4: Reclaiming Khadija and Muhammad’s Marriage as an Islamic Paradigm: Towards a New History of the Muslim Present 34

By Shadaab Rahemtulla and Sara Ababneh

Chapter 5: ‘Your Wife Enjoys Rights Over You’ or Does She? Marriage in the Hadith 39

By Yasmin Amin

Chapter 6: *Qira’a Mubadala*: Reciprocal Reading of Hadith on Marital Relationships 44

By Faqihuddin Abdul Kodir

Islamic Legal Theory and Ethics

Chapter 7: Rethinking Muslim Marriage Rulings through Structural *Ijtihad* 49

By Mohsen Kadivar

Chapter 8: Reform of *Usul al-Fiqh* and Marriage: A Spiritually Integrative Approach 55

By Nevin Reda

Chapter 9: Ethics and Gender Equality in Islam: A Constructivist Approach 60

By Mariam Al-Attar

Law and Practice

Chapter 10: Historicizing Muslim Marriage Practices in Pre-Modern Islamic Egypt 66

By Hoda El Saadi

Chapter 11: Muslim Family Laws: Trajectories of Reform 71

By Lynn Welchman, Zahia Jouirou and Marwa Sharafeldin

Chapter 12: Justice, Refinement and Beauty: Reflections on Marriage and Spirituality 77

By Sa'diyya Shaikh

Preface

The edited volume *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws* is the first product of Musawah's Research Initiative on 'Reclaiming *ʿAdl* and *Ihsan* in Muslim Marriages: Between Ethics and Law'. This research initiative aims to **build and promote an understanding of marriage as a partnership of equals** in a way that is **rooted within Muslim legal tradition**. This is being done through producing and sharing knowledge that:

- Reclaims and promotes the egalitarian ethics of Islam's textual sources;
- Explores how this ethics can be reflected in the jurisprudence of marriage and family relations;
- Shifts the dominant conception of Muslim marriage from one of male domination and female obedience to that of a partnership between two equals;
- Empowers people to use the new knowledge towards Muslim family laws and practices that reflect equality and justice.

The book was produced by partnering with 17 scholars from different disciplines and different parts of the world to explore **how Muslim marriages can be grounded in equality, justice and mutual spiritual growth and well-being**.

The scholars, working individually or in teams, focused on this question through the lenses of the Qur'an, Sunna, Muslim legal theory and ethics, history, or contemporary laws and practices. The result is an exciting and inspiring collection of chapters that make the case for grounding Muslim marriages in the principles of equality, justice and beauty.

This Feminist Reader's Guide is an effort to make the book more accessible to more readers, and more approachable for study circles or reading groups who want to discuss the topics. Through chapter summaries and 'Pause for Thought' questions, readers can explore the content, their reactions or opinions about different ideas, and how the concepts apply to their own lives and contexts.

We hope that this Reader's Guide will help readers engage with Justice and Beauty in Muslim Marriage and with others around you, and will inspire you to work towards more egalitarian marriage and family relations. Please let us know what you are doing by emailing musawah@musawah.org or posting on social media and tagging Musawah!

Musawah Knowledge Building Working Group

Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger and Sarah Marsso
October 2022



Using this Study Guide: Tips for Readers

This guide will take you on a tour of the key points of each chapter in *Justice and Beauty in Muslim Marriage* but cannot provide the full picture on its own. View the chapter summaries as a taster for each chapter before and/or after you delve into the full text.

- Each chapter summary begins with one or more rhetorical questions to help you focus on what ideas the chapter explores. The summaries all finish with a 'Pause for Thought' section which offers some questions you can consider individually or in reflection with others. You may want to read the summary before and/or after reading the corresponding chapter in *Justice and Beauty in Muslim Marriage* and then take some time to answer the questions. If doing this as part of a group session, it is useful to share answers and generate discussion.
- You can have on hand a copy of the Qur'an with translation – or perhaps even a few different translations – in order to read the verses offered in the chapters and to reflect on these yourself. Consider having a notebook nearby to jot your thoughts and ideas as you read each chapter. Write down key words, phrases, verses and hadith.

- Start talking! Let your reading and learning spark conversations. Engage the people in your own lives with what you learn so we can advance a discourse that promotes justice, beauty and equality in our marriage laws, contracts, rituals and practices.
- Each chapter offers a unique entry point into how our model of marriage can be transformed from one of male domination and female obedience to one guided by core ethical principles such as *'adl* (justice) and *ihsan* (beauty and goodness). While there is a logic to the ordering of the chapters, you may also read them in any order, based on where your interests lie.

The Chapters

Introduction

This introductory chapter by the volume's co-editors provides an overview of the ideas within the book and connections with *Men in Charge? Rethinking Authority in Muslim Legal Tradition* (Oneworld 2015) and the concepts of *qiwamah* and *wilayah*. It then outlines Musawah's holistic approach that combines Islamic teachings, international human rights standards, national laws and constitutional guarantees of equality, and lived realities. It concludes with summaries of each of the sections and chapters.

Section 1: The Qur'an

Authors of these chapters make the case for **moving beyond pre-modern interpretations of the Qur'an that perpetuate patriarchal ethics and instead centring the Qur'anic ethical worldview of justice, beauty and goodness**, in line with realities of the twenty-first century.

- **Omaima Abou-Bakr, Asma Lamrabet, and Mulki Al-Sharmani** (Chapter 1) set forth an overarching Qur'anic framework for marriage consisting of interconnected ethical principles.
- **Nur Rofiah** (Chapter 2) offers a holistic reading that recognizes women's underlying historical marginalization and physical experiences and charts a trajectory towards gender justice.
- **Amira Abou-Taleb** (Chapter 3) applies a linguistic and intra-textual Qur'anic analysis to establish *ihsan* (goodness and beauty) as an overarching ethical principle and divine command that can guide family relations.

Section 2: Lessons from the Prophet

These chapters propose **different angles through which prophetic teachings can be understood to inform contemporary ideas around justice and equality in Muslim families.**

- **Shadaab Rahemtulla** and **Sara Ababneh** (Chapter 4) delve into the legacy of Khadija and lessons from her marriage to the Prophet.
- **Yasmin Amin** (Chapter 5) looks at Sunna related to the Prophet's marriages to develop a model for marriages today.
- **Faqihuddin Abdul Kodir** (Chapter 6) shares a new methodology that can be used to interpret all hadiths – even seemingly discriminatory ones – as calling upon partners to treat one another justly and lovingly in their relationships.

Section 3: Islamic Legal Theory and Ethics

These chapters focus on **ethics and Islamic legal tradition in theory and practice, proposing new approaches to interpretation that preserve principles and standards within the tradition** while addressing today's needs, contexts and standards.

- **Mohsen Kadivar** (Chapter 7) proposes a bold new approach called 'structural *ijtihad*', in which human reason and intellect play a key role in determining ethics and justice in line with values and ethical principles affirmed in the Qur'an.
- **Nevin Reda** (Chapter 8) proposes an Islamic feminist, spiritually integrative approach to *usul al-fiqh* that frames marriage as a site for spiritual growth in which mutual care and support between spouses are part of their striving towards ethical excellence.
- **Mariam Al-Attar** (Chapter 9) concentrates on philosophical approaches within Islamic religious sciences.

Section 4: Law and Practice

Authors explore examples of **how Muslim marriage norms are developed through the enactment, application, reform of laws, and people's interactions with these laws** in specific and time-bound contexts.

- **Hoda El Saadi** (Chapter 10) examines historical sources from pre-modern Egypt to help understand marriage and divorce in jurisprudence (*fiqh*) and lived experiences.
- **Lynn Welchman, Zahia Jouirou and Marwa Sharafeldin** (Chapter 11) explore the complexities of contemporary Muslim family laws and shed light on various strategies and arguments used to introduce three broad types of reforms and their complex outcomes.
- **Sa'diyya Shaikh** (Chapter 12) considers how to cultivate spiritually nourishing marriages that are based on justice and beauty through rituals, contracts and day-to-day practice.

The book is a theoretical and spiritual exploration of how we can live justice, love and equality in marriage. The chapters can help show the ways in which the Qur'an, Sunna, Muslim legal tradition, and an exploration of historical and contemporary family laws and practices can guide us to egalitarian marriages.

Using this Study Guide: Tips for Facilitators

The tips provided below may help facilitators or reading groups use the guide most effectively:

- **Granting participants the freedom to discuss and explore their thoughts on each chapter** as well as **engage with one another** is key. Each chapter is in itself powerfully generative and provokes thoughts and self-reflection, so the key role of the facilitator is to ensure there is the space for participants to engage.
- It is vital that facilitators **create a safe environment** for participants to explore their ideas. Whilst debate should be encouraged, this cannot be at the expense of respectful engagement.
- Even if each chapter has been read prior to any group discussion, it is still useful for a facilitator or participant to give a **very brief summary of the chapter** and/or to state **the key learning objectives/arguments of the chapter (no more than 5 minutes)**. Discussion can then start with a broad question – even the rhetorical question at the beginning of each chapter summary in the Guide. An alternative would be to open the session by asking participants what are three main points from the chapter being discussed that they found most valuable/striking.

- It would be useful to have participants **print off the Feminist Reader's Guide** and answer the questions prior to a group discussion so that they are well acquainted with the work and can bring questions of their own to the group. Questions posed by participants should be offered to the **whole group to consider**, and not just to the facilitator.
- To encourage maximum participation, it is worth **breaking the group down into pairs or smaller groups** to discuss the *Pause for Thought* questions and to then feed back to the wider group. It is worth brainstorming these ideas on a virtual/physical board, so that each session ends with a visual of some of the key points of discussion, debate, agreement and even disagreement.
- It is important for the facilitator to help the group **connect what they have read to their work/life/practice/activism**. At the same time, it is important to **keep the discussion on track**. The facilitator should allow space for self-reflection and personal experience to inform the discussion, since lived experiences are also a source of knowledge, but where necessary, draw the group back to the original question or issue.
- It is useful to bring closure to the session by summarizing what participants have raised through the discussion, especially those points from each chapter that they found most empowering.

Thank you to Sofia Rehman for preparing these tips in Musawah's **first guide**, 'A Feminist Reader's Guide to *Men in Charge? Rethinking Authority in Muslim Legal Tradition*'.

CHAPTER 1

Qur'anic Ethics of Marriage

BY OMAIMA ABOU-BAKR, ASMA LAMRABET AND
MULKI AL-SHARMANI

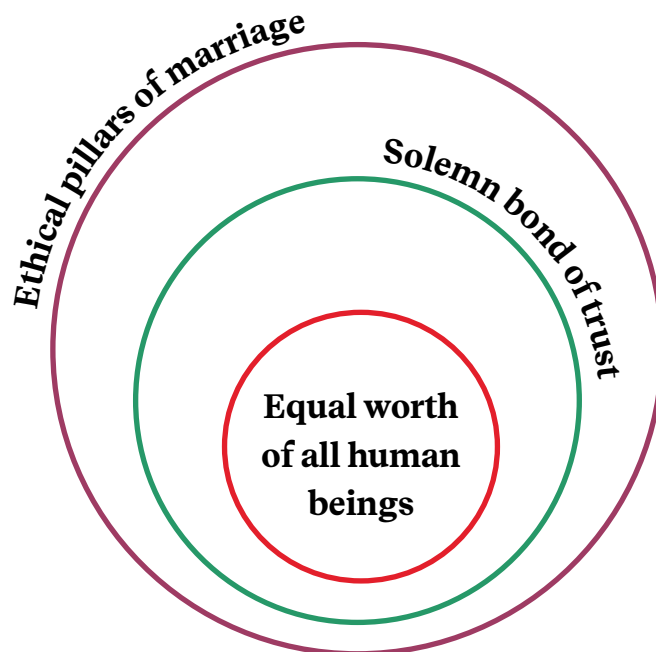
What are the Qur'an's teachings on marriage as an intimate human relationship? As an integral part of the spiritual work of the believer? As a basic social institution? What happens when we read all of the verses on marriage and family together, guided by the Qur'an's central principles and ethical concepts? What are the implications of such an ethically-oriented reading of the Qur'an for Muslim gender norms and rights?

In this chapter, Omaima Abou-Bakr, Asma Lamrabet and Mulki Al-Sharmani tackle these questions. First, they map out some of the **key gaps in *tafsir* tradition**, which is also known as exegesis or the science of explanation of the Qur'an. These gaps relate to both the **methodology used** and **the interpretations themselves**.

They include:

- ==== *Mufassirin* (interpreters or exegetes) tended to interpret individual verses instead of making connections between verses in different suras.
- ==== Most *tafsir* works emphasized legalistic and procedural details over broader ethical and spiritual meanings of Qur'anic verses related to marriage.
- ==== Interpretations were influenced by the cultural contexts of early scholars, in which the hierarchical gender norms of their times shaped their conceptions of marriage and social relations.

The authors then propose, explain and implement an interpretive approach towards reading the Qur'an that is **holistic, thematic, intra-textual, linguistic** and **ethically-oriented**. They show how the Qur'an's egalitarian ethics of marriage is formulated within three interconnected circles:



- The **first circle** affirms that human relations in general and family relations in particular are based on the **equal worth of all human beings who come from one essence (*nafs wahida*) and their equal responsibility to enact *taqwa** and compassion in family relations.**
- The **second circle** constructs marriage between two equal human beings as a **solemn bond (*mithaq ghaliz*) or a special and strong bond of trust, commitment to each other's well-being, and mutual care.** This bond has a **spiritual significance** akin to that between prophets and the Creator.
- The **third circle** establishes **three key ethical pillars** of the solemn bond of marriage, namely **affection (*mawadda*), resting abode (*sakan*), and compassion (*rahma*).** Such a bond is **one of the signs (*ayat*) of God.**

The authors explore how these circles connect with one another: marriage as a solemn bond can only be built on the ontological equality of the couple and their commitment to moral agency. Furthermore, such a bond can only be upheld by the ethics of mutual tranquility, love and compassion.

The authors argue that because there is an overarching Qur'anic ethical framework for marriage consisting of interconnected ethical principles, **every aspect of marriage and family life** needs to be approached from within this overall framework and principles.

**Taqwa* is a term with layered meanings including God-consciousness, devotion to God, self-reflective piety, commitment to justice and an ethical life.

They then explore how the Qur'anic ethical framework can be applied to different dimensions of **spousal relations** such as **dower, spousal maintenance, sexual intimacy, marital discord** and **polygyny**. For example, the authors state:

“

The Qur'an depicts sexual intimacy in marriage as a relationship that is based on equality between the spouses and whose spiritual, emotional and ethical dimensions are intertwined. Key terms regarding this subject matter are *rafath* (intercourse), *mubashara* (sexual relations), *libas* (garment), *harth* (tilth) and *ifda'* (going into one another) ... (p. 44)

”

The authors examine the concept of *libas* in verse 2:187 – where spouses are called garments for one another. *Libas* has connotations of spouses covering, veiling and protecting one another in such a beautiful, intimate manner that they become one. They link verse 2:187 to verse 7:26, ‘in which the *libas* of *taqwa* is more significant and benevolent than material garments’ (p. 44).

They take a similar deep dive into the concept of *harth*. This term is well-known from verse 2:223, which is often interpreted in a discriminatory manner to say that men can do what they wish with women sexually, or that men are active and women passive. But the authors use the **holistic ethical framework** to instead read it in conjunction with other verses and principles. As such, the verse and others related to it, such as 42:20, portray a sense of cultivation, generosity, wealth, fortune, and reward for good deeds.

Finally, the authors discuss implications for their approach. One significant implication is that the Qur'anic ethical worldview that they map out can guide reform of gender norms and rights. Together, we can imagine a world in which relationships are grounded in Qur'anic concepts such as justice (*'adl*), fairness (*qist*), goodness and beauty (*ihsan*), forgiveness (*'afw*), magnanimity (*fadl*), reconciliation (*islah*), consultation (*tashawur*), and consent (*taradi*).

About the Authors

Omaima Abou-Bakr is a professor of English and comparative literature at Cairo University and a founding member of the Women and Memory Forum.

Asma Lamrabet is a haematologist at the Avicena Public Hospital in Rabat, Morocco, who has studied and delivered lectures on women's issues in Islam for many years.

Mulki Al-Sharmani is an associate professor of Islamic and Middle Eastern studies at the University of Helsinki and a member of Musawah's Knowledge Building Working Group.

Pause for Thought



1. Think about your marriage, that of your parents or one of your relatives or friends, or your ideal marriage. To what extent does it line up with the three concentric circles and principles: the absolute equality of spouses; spouses' shared responsibility of *taqwa*; viewing the marriage as a solemn bond of trust, commitment and mutual care; and centring *sakan*, *mawadda* and *rahma* as the core pillars on which the union rests?
2. The authors explain that they are working within the field of 'Islamic feminist scholarship and the larger Muslim reformist intellectual efforts to provide systematic understanding of the Qur'an as a source of Islamic ethics'. Why do they take the time to explain this, and why does it matter?
3. How do you understand the authors' five pronged approach ('holistic, thematic, intra-textual, linguistic and ethically-oriented')? What do you think are the benefits of this approach? What might be some challenges to such an approach?
4. The authors explore how the method could be applied to five areas of spousal relations: dower, sexual intimacy, spousal maintenance, marital discord and polygyny. Which arguments are most compelling to you? Are there any you find problematic?
5. How could the authors' approach influence contemporary family laws?

CHAPTER 2

Reading the Qur'an through Women's Experiences

BY NUR ROFIAH

In what ways have women's experiences been silenced in the conventional readings of the sacred text? How can we reclaim these voices in contemporary engagements with the Qur'an? What is the Qur'an's dynamic trajectory towards justice for women?

In this chapter, Nur Rofiah puts forward a gender-sensitive, holistic reading of the Qur'an that recognizes how different verses speak to different stages of **the Qur'anic trajectory to gender justice**.

Her methodology focuses on:

“

Embracing the full humanity of all people while taking into account the different locations, privileges, and other factors that play an important role in advantaging or disadvantaging some humans over others. (p. 62)

”

Nur Rofiah maps out the Qur'an's ethical trajectory towards justice for all people. This trajectory represents a gradual approach with a starting point, intermediary stage and final goal. She identifies three types of verses related to women's issues that reflect different locations within the trajectory:

1 The **first category of verses** convey the social fabric and systems of Arab society at the time of the revelation, which viewed women as inferior and dependent on men. The teachings behind these verses are starting points that do not reflect and cannot be applied to today.

2 The **second category of verses** plant the seeds for reforming discriminatory norms and practices, but still address a context in which women's full human dignity and equality were not a given. They are a step forward and **an intermediary stage** towards gender justice, but have not moved all the way to the final goal.

3

Verses in the **third category** focus on the **final goal of the Qur'anic trajectory**: a system that is a blessing for the universe, provides real justice for all people, and values women equally with men.

“

Through these verses, the Qur'an reminds us of the **foundations of its ethical message: justice, equality, human dignity, beauty and compassion**. In order to achieve this final objective, women and men, as well as all people at the margins, are to be **treated as equals**. Anything that stands against these foundations, such as injustices, discriminatory norms, and practices and violence perpetrated against women, constitutes an obstacle to achieving the Qur'anic ethical end-goal.
(pp. 63-4)

”

Nur Rofiah explains that these three types of verses mirror three types of societies: **hard patriarchies** that establish structures of domination of men over women; **soft patriarchies** that sustain existing forms of male domination while putting in place a system of protection and care for those who are subjected to this domination; and **gender just societies** that aim to prevent, counteract and redress the consequences of patriarchal domination.

She then analyses verses that show that one of the underlying messages of the Qur'an aims to:

alleviate the historical marginalization of women;

recognize and validate their physical experiences, such as menstruation, pregnancy, childbirth, puerperium (*nifas*) and breastfeeding; and

chart a dynamic trajectory towards real gender justice (which she terms '*haqiqi justice*') that is based on equality.

Nur Rofiah argues that the Qur'an's ethical trajectory has been impeded by patriarchal interests. This has helped to sustain male privilege and exclude women from shaping understandings of individual and collective well-being. She proposes an approach that centres women's experiences as a lens for reading the Qur'an to overcome textual problems related to gender issues.

To illustrate this argument, Nur Rofiah applies the approach to a set of verses on gender relations in marriage. These verses are grouped into and envisioned as **five pillars of marriage**:

1. Spouses as partners (*zawj*)

2. Spouses protecting each other (*libas*)

3. Marriage as a solemn bond (*mithaq ghaliz*)

4. Spouses treating each other with kindness (*bil ma'ruf*)

5. Spouses solving problems through consultation (*tashawur*) & mutual consent (*taradi*)

Nur Rofiah closes by reflecting on the implications of this approach in her native Indonesia, and specifically how the Congress of Indonesian Women Ulama (KUPI) applied these messages when issuing a fatwa on child marriage. She uses this example to highlight **the importance of women's agency in inhabiting the spaces in which religious knowledge is produced**. She also shows how centring women's lived experiences and the needs of the vulnerable can guide us in reshaping Muslim norms on gender and family relations.

About the Author

Nur Rofiah is a lecturer of methodology of Qur'anic interpretation at the Islamic State University Syarif Hidayatullah and the Institute for Qur'anic Studies (PTIQ) in Jakarta, and a women's rights activist who promotes gender justice within Islam as a writer, facilitator and resource person.

Pause for Thought



1. What do you find most interesting or illuminating about Nur Rofiah's approach?
2. How is Nur Rofiah's approach similar to and different from that of Abou-Bakr, Lamrabet and Al-Sharmani in the previous chapter?
3. How does Nur Rofiah's method of centring women's physical and social experiences speak to you personally in terms of your own relationships?
4. Nur Rofiah explains the KUPI process, which includes understanding and referring to women's experiences when issuing fatwas. Can you imagine jurists in your own context doing the same? Who might lead this kind of process, or how might it come about?
5. Think about how using a process that refers to women's experiences could influence how we approach various issues affecting women and girls. Consider one issue – education, sexual education, age of marriage, polygyny, guardianship, etc. – and think through how taking into account women's experiences might change our current laws or practices.

CHAPTER 3

ihsan: A Mandate for Beauty and Goodness in Family Relations

BY AMIRA ABOU-TALEB

How is *ihsan* (beauty and goodness) reflected in marriage and family matters in the Qur'an? How can cultivating *ihsan* individually and across communities result in more egalitarian marital and family relationships?

In this chapter, Amira Abou-Taleb focuses on the Qur'an's command for believers to exercise moral agency and spiritual growth by enacting ***ihsan***, which can be understood as a fusion of **goodness and beauty**. The Arabic root *h.s.n*, of which *ihsan* is a derivative, occurs 194 times in the Qur'an. Abou-Taleb applies a close linguistic and intra-textual analysis to establish *ihsan* as an overarching ethical principle and divine command that can serve as a guiding framework for family relations at both the individual and the societal levels.

The chapter has **three major sections**:

1 Abou-Taleb begins by looking at how **goodness and beauty are intertwined within the concept of *ihsan***. She explains the concept of *ihsan* and situates it within academic literature. She notes that studying Qur'anic ethics in a holistic, systemic and methodological way is primarily a contemporary approach, thus her study draws from many contemporary scholars.

She then shows, through a reading of multiple verses, that the Qur'an guides us on how *husn* is integral to creation, an act that stems from God, who is the ultimate beauty and goodness. It is connected with moral action that believers are ordered to manifest into the world. She says:

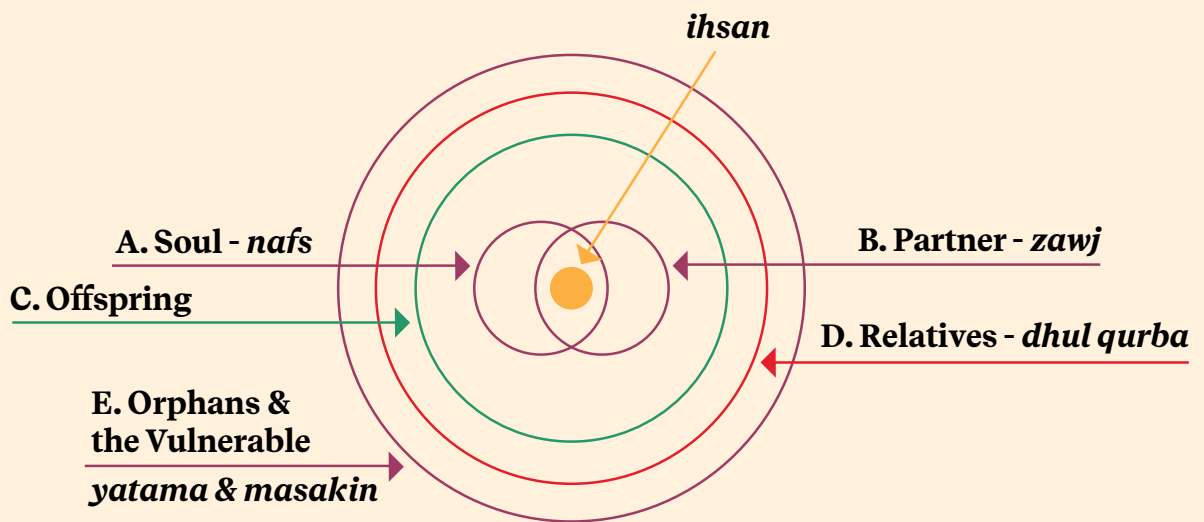
“ ... a holistic reading of all the relevant verses reveals a full cycle of *ihsan*; *husn* is embedded into all creation and *ihsan* is expected from humans in return. (p. 92)

She examines the deep relationship between *'adl* (justice) and *ihsan* in the Qur'an, stating:

“ The Qur'an therefore establishes upholding justice and manifesting the beauty and goodness of *ihsan* as imperative obligations incumbent upon all believers at all times. (p. 93)

2

Abou-Taleb investigates *ihsan* within the family through a focus on verses related to couplehood and parent-offspring relations. Abou-Taleb outlines how the call for *ihsan* creates ripple effects throughout layered concentric circles in society, starting with the innermost soul (*nafs*), expanding to include the partner (*zawj*), offspring, extended family, and finally encompassing orphans and those who are most vulnerable.



She examines verses related to familial relationships that collectively establish the Qur'anic ethical worldview of manifesting *ihsan* within families. These verses can be seen as part of a larger ethical mandate that includes concepts such as *ma'ruf* (that which is commonly known to be good), *taqwa* (God-consciousness) and *birr* (decency and doing right by others), among others. She also looks at interpretations of these verses by three seminal classical scholars whose exegetical works have had strong impact on current Muslim thought.

3

Finally, Abou-Taleb reflects on **the significance of *ihsan* in today's Muslim communities, laws and societal relations**. She argues that the ethics of *ihsan* should be foregrounded in the process of reviewing and reforming Muslim family laws and, correspondingly, that amending family laws to rectify gender discrimination is necessary to reclaim the ethics of *ihsan*. In addition, she recognizes that our ways of interacting with each other must also change in order to ensure holistic gender justice.

Abou-Taleb's inquiry connects the moral message of the Qur'an, the historical interpretations of this message, and the guidance that we can take from it in our daily lives and relationships:

“

The Qur'an centralizes *ihsan* as a divine command that promotes beauty and goodness in society; by enacting *ihsan* in social relationships, one is answering a religious call. Manifesting *ihsan* thus bridges the constructed gap between religion and the worldly by serving society through a spiritually motivated moral call. (p. 90)

”

About the Author

Amira Abou-Taleb is a doctoral fellow in the Faculty of Theology at the University of Helsinki; she received her MA in Islamic studies from the American University in Cairo.

Pause for Thought



1. In what ways is *ihsan* central in the Qur'anic ethical worldview? In what ways does *husn* relate to creation and to God, and the relationship between God and human beings?
2. How does Abou-Taleb explain the connection between *ihsan* and *ʿadl* (justice), and what does this imply for gender dynamics in Muslim households?
3. Based on your reading of the chapter or knowledge from other sources, how do you think *ihsan* relates to other Qur'anic ethical concepts?
4. How does the concept of *ihsan* apply to you personally in your life and family relationships?

5. The analysis of *ihsan* as an active intentional daily practice can be transformational because it enables us to actively work to change the world one act and one relationship at a time, and also to be fallible yet continue to try again. How can we embed this approach in our work for social justice at both the individual and societal levels?

6. There is an immense gap between the love, beauty and justice described as a mandate in this chapter and the realities of violence against women, especially in family situations. How can the concept of *ihsan* help formulate solutions to this violence?

CHAPTER 4

Reclaiming Khadija and Muhammad's Marriage as an Islamic Paradigm: Towards a New History of the Muslim Present

BY SHADAAB RAHEMTULLA AND SARA ABABNEH

What can we learn from the Prophet's marriage with Khadija? How is it different from the marriage model we find today in most Muslim family laws and practices? How can we reclaim it as a model for feminist Muslim masculinities and egalitarian marriages?

In this chapter, Shadaab Rahemtulla and Sara Ababneh suggest that the marriage of Prophet Muhammad and Khadija should be upheld as a model for present day Muslim marriages and spousal relations. They question the dominant narratives that 'portray Muhammad's marital life as relationships of power disparity (however compassionate and loving)'.

They imagine what the Sunna around marriage would look like if it were based on Muhammad's monogamous, twenty-five-year-long relationship with Khadija, a powerful businesswoman who had been in two previous marriages, was older than the Prophet, and was his employer.

Rahemtulla and Ababneh begin by explaining their approach. They are trying to write a '**history of the present**'. To do so, they engage with how **our choice of how to frame history and which historical narratives to highlight shapes our view of the world**, which then becomes normalized and neutralized. A history of the present allows us to **take apart these norms and envision other possibilities** based on other historical events.

The authors use the example of Khadija and the Prophet's relationship to try to re-construct the dominant narratives and histories of Islamic marriage. They write:

“

What we have in their example is a **non-patriarchal, indeed acutely matriarchal**, relation of power. ... [T]his remarkable (and admittedly unrepresentative) historical moment provides us with a critical prophetic resource, an **alternative and yet authoritative** archive ... with which to begin the project of **reconstructing Muslim marriage, in our own times, as an egalitarian partnership of equals.** (p. 126)

”

The authors then explain their conceptual framework of 'masculinities analysis'. This is an analysis of **how certain masculinities (understandings of what it means to be a man at a certain time and place) are valued more than others, and how the masculinities themselves as well as this valuation changes over time and context.** Their goal, in part, is to conceptualize and enact a feminist masculinity that can **'challenge the existing patriarchal construction of normative (read: hegemonic) masculinity and, in its place, envisage alternative normative constructions which are committed to feminist values of gender equality and inclusion'** (p. 128). And their further goal is to do this within an Islamic framework, thus envisaging **different forms of Islamic masculinities.**

Next, they focus on two 'snapshots' of Khadija's life to show that Khadija was the more powerful partner in their relationship (in terms of age, resources, wealth, influence, strength, etc.), and that Muhammad was not threatened by this power dynamic, but rather thrived within it.

==== **The first 'snapshot' relates to the inception and nature of their marriage.** Khadija initiated the marriage and served as the solid economic foundation for the union.

==== **The second 'snapshot' relates to how Khadija proved to be a comforting and supportive partner when the Prophet was shaken during the first Qur'anic revelations.** She was the person the Prophet turned to for reassurance and advice, which speaks volumes about how much he trusted and relied on her wisdom, judgement and affection.

As the authors share the information, they note that many of the details that seem surprising to us today were not discussed as unusual by the biographers, and therefore were likely accepted practices of the time.

Rahemtulla and Ababneh conclude by commenting on the implications of their historical explorations for contemporary spousal relations. They argue that **Khadija and Muhammad's relationship not only challenges the notion of a male provider and dependent wife, but offers an alternative model for marital relationships built on mutual care, support and love.**

About the Authors

Shadaab Rahemtulla, a Canadian Muslim from Vancouver/Coast Salish Territories, is a lecturer in Islam and Christian–Muslim relations at the School of Divinity, University of Edinburgh, and was previously an assistant professor at the University of Jordan.

Sara Ababneh is a lecturer in international relations in the Department of Politics and International Relations at the University of Sheffield who was previously an associate professor at the Center for Strategic Studies, University of Jordan.

Pause for Thought



1. How do you feel personally when you hear that Muhammad was extremely comfortable with being younger, poorer and less respected than his wife, and that he was willing to be supported by her financially and emotionally?
2. In what ways was Muhammad's marriage with Khadija an alternative to the *fiqh*-based model of marriage?
3. How do Rahemtulla and Ababneh understand the concept of 'Muslim feminist masculinity'?
4. How is it useful for gender activism to reconsider historical moments using the method of 'history of the present'?
5. How can the Prophet's marriage to Khadija inform our re-envisioning of Muslim marriages to be based on '*adl* (justice) and *ihsan* (beauty and goodness) instead of domination and control? How can their marriage help promote a different, healthier model of masculinity?
6. Can you think of examples in which current family laws or practices contradict the model of marriage posed by Khadija and Muhammad, despite claims that these laws are inspired by the Qur'an and practices of the Prophet? Can you imagine how this research could be used to reform personal status laws?

CHAPTER 5

‘Your Wife Enjoys Rights Over You’ or Does She? Marriage in the Hadith

BY YASMIN AMIN

What does the Hadith tradition teach us about the Prophet’s marriages and Muslim marriage in general? How do spousal relations demonstrated by the Prophet differ from the model presented by jurists in classical *fiqh* rulings? Can the Prophet’s example be revived to help us come closer to the Qur’anic spirit and ideal of what marriage should look like?

In this chapter, Yasmin Amin examines hadith-reports that record the teachings and examples of the Prophet Muhammad on marriage and spousal relations. She uses these reports to provide a framework and set of values that can guide our marriages today.

Amin begins by outlining different approaches that Muslim feminists have taken with regard to Hadith literature. After describing her own methodology, she discusses hadith-reports related to marriage, which she groups according to the following themes:

Foundations of marriage

Amin states: 'The accounts of the Prophet as a husband and his sayings affirm the Qur'anic view of piety, *taqwa* (God-consciousness) and love as the foundation for an ethical Muslim marriage' (p. 151).

Dower and spousal maintenance

While dower and maintenance were part of the Prophet's marriages, he was clear that such payments are rights and not conditional on anything. This is in contrast to the classical jurists' model in which payment of mahr and nafaqa are linked to sexual availability and/or obedience.

Spousal relations

The Prophet's teachings and conduct show that mutual care, kindness, respect, trust, thoughtful conflict resolution, cooperation and sharing of responsibilities should be the cornerstones of spousal relations.

Sexual intimacy

The prophetic example shows that within marriage, sexual intimacy is encouraged for both men and women for enjoyment and pleasure as well as for procreation, and, unlike in *fiqh*, is not linked to or conditional on dower and maintenance.

“

The ideal marriage according to the Prophet's example and his sayings is – much like the Qur'an – based on love, mutual care, kindness and trust, as well as companionship and joy. Marriage is a shared responsibility built on mutual respect; conflicts are resolved with magnanimity and wives are not controlled but trusted. The shared responsibility is also translated to sharing household duties, which are not only for women, as Muhammad helped his wives with the housework. (p.164)

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Amin then considers some commonly cited hadith-reports that demean women in relation to some of the previously discussed hadith-reports and some verses from the Qur'an. She shows that jurists' notions of hierarchical spousal roles (as outlined in classical *fiqh* rulings) do not align with the vision of marriage articulated in the Qur'an and with the example of the Prophet.

The chapter concludes by exploring an alternative construction of Muslim marriage, based on ethics of equal value, sharing and real partnership, reflecting on how Hadith can contribute to promoting egalitarian models of marriage in contemporary times.

About the Author

Yasmin Amin is an Egyptian-German who received her PhD in Islamic studies from Exeter University's Institute of Arab and Islamic Studies, and a postgraduate diploma and MA in Islamic studies from the American University in Cairo.

Pause for Thought



1. In your community or context, how are Hadith around marriage and gender relations viewed and used? When are they quoted, and which are common?
2. Amin provides many hadith-reports that shed light on the Prophet's marriages. Which were already familiar to you, and which were new?
3. What did you learn about the Prophet's marriages? How would you describe his behaviour as a husband and approach to marital life?
4. One of Amin's core arguments is that the model of marriage set forth in both the prophetic example and the Qur'an is very different from the one prescribed by jurists in classical *fiqh*. Yet the *fiqh* model is the one that most Muslim family laws are based on. How do you explain this?
5. Many feminists struggle with Hadith, since misogynistic hadith-reports are often used to demean women, and women are sometimes labeled as 'deviant' or 'blasphemous' for questioning such reports. In what ways does Amin's chapter help address these challenges?
6. Amin's chapter reviews different approaches used by Muslim feminist scholars in approaching Hadith. Which of these resonate with you and why?

CHAPTER 6

Qira'a Mubadala: Reciprocal Reading of Hadith on Marital Relationships

BY FAQIHUDDIN ABDUL KODIR

How can Qur'anic ethics be applied to methodologies for interpreting Hadith? How can we read seemingly misogynistic Hadith through an ethically-oriented egalitarian lens?

In this chapter, Faqihuddin Abdul Kodir explains and applies his **reciprocal (*mubadala*) methodology**, which offers an interpretive framework for understanding Hadith from a gender-justice perspective. The methodology connects the Hadith tradition to Qur'anic ethics and the overarching higher purposes of Islamic theology.

Abdul Kodir points out that many Islamic feminists have decided not to engage with Hadith as a textual source and instead focus on the Qur'an because of the ways hadiths have been used to justify political and patriarchal interests. But he argues that it is essential to engage with the Hadith tradition in a way that promotes gender-just relations because many ordinary Muslims live with Hadith and seek inspiration from the prophetic example, while also believing in gender equality within Islam.

He explains the *mubadala* approach, which builds on the work of the **Islamic scholar 'Abd al-Halim Muhammad Abu Shuqqa**. The approach proposes that we read and interpret hadiths **beyond their surface meanings and from the lens of the key ethical principles established by the Qur'an**. The methodology is grounded in the Qur'an's central principles of the equality of all human beings and their equal responsibility and accountability to enact *tawhid* (oneness and unity of God). Using this methodology, Abdul Kodir interprets selected hadiths to call upon both men and women to treat one another justly and lovingly.

The chapter consists of **four sections**:

1 A **brief review** of the main scholarly approaches towards the question of gender in Hadith, and an introduction of Abū Shuqqa's interpretive approach of equality (*musawa*).

2 An **explanation of the methodology** of reciprocal reading (*Qira'a Mubadala'*), its rationale, and its foundations in the Qur'an and traditional Islamic legal theory (*usul al-fiqh*).

“ [T]he main premise of the *Qira'a Mubadala* method is to ensure that men and women are equal subjects in the texts. The textual tradition requires both men and women to work to achieve what is beneficial (*jalb al-maslaha*) and prevent what is harmful (*dar' al-mafsada*). ... Gender equality is the main requirement for creating ideal gender relations of reciprocity, partnership and cooperation. (pp. 187–188)

3 **Application of the methodology** to hadiths related to marital relations that may be perceived as suggesting different and hierarchical gender roles and rights for spouses. The methodology identifies gender-sensitive meanings and messages, then directs these messages to both men and women, regardless of which audience the hadith originally addressed. The *mubadala* methodology works to ensure loving and peaceful marital relations by applying core principles reciprocally to both spouses.

4

A **discussion of why this methodology is useful** for engaging with different actors on issues of gender equality and presenting the case for egalitarian Muslim marital relationships using Hadith tradition. Abdul Kodir explains how this has been done in the Indonesian context and why it matters for him and his communities.

The chapter reflects on the ways in which the methodology builds on but also departs from Abu Shuqqa's ideas, and closes with notes on the potential and limits of this methodology and areas for further work and development.

About the Author

Faqihuddin Abdul Kodir teaches Hadith and legal injunction at Syekh Nurjati State Institute for Islamic Studies, Indonesia. He is a founder of the Fahmina Institute for Islamic Studies, an Indonesian NGO working on gender, democracy and pluralism from an Islamic perspective.

Pause for Thought



1. Why does Abdul Kodir believe it is necessary for feminists and progressive Muslims to engage with Hadith literature? Do you agree that Hadith can be used to promote gender equality and justice?
2. What is the *Qira'a Mubadala* methodology, and how does it relate to the Qur'an and legal tradition?
3. How does the *mubadala* methodology address seemingly misogynistic hadiths?
4. What do you think about the *mubadala* methodology? What are its strengths and can you think of any weaknesses or critiques?
5. In what ways can the *mubadala* methodology be used in the struggle for gender justice in your own contexts and/or work? Consider those examples posed by Abdul Kodir as well as others.

CHAPTER 7

Rethinking Muslim Marriage Rulings through Structural *Ijtihad*

BY MOHSEN KADIVAR

How do we critically engage with the foundations of *usul al-fiqh* in order to revisit rulings related to marriage for contemporary times? What criteria can guide our evaluation of such rulings?

In this chapter, Mohsen Kadivar critiques the traditional theory of *ijtihad*, which he argues remains attached to literal understanding of textual sources.

He begins with an observation:

“

Since the early twentieth century it has increasingly become apparent that Muslim jurists' understandings of what constitutes 'Islamic law' are no longer in line with the demands of the lived realities of Muslims. ... By the second part of the twentieth century, *fiqh* rulings pertaining to almost the entire area of human and social interactions (*mu'amalat*) had been thrown into question. (p.213)

”

Kadivar proposes a new approach that he calls '**structural *ijtihad***', in which human reason and intellect play a key role in determining ethics and justice in ways that affirm central values and principles in the Qur'an.

Within this new methodology, he holds that all juristic arguments and the validity of all derived rulings should meet the following **four criteria**:

- ==== They must be **just**;
- ==== They must be **rational** or **reasonable**;
- ==== They must be **ethical**; and
- ==== They must be **more effective or functional than alternative solutions**.

All of these criteria should be tested against *current* standards and understandings of justice, rationality, ethics and functionality, rather than the standards that existed in the time of the classical jurists.

In the **first part of the chapter**, Kadivar outlines contemporary approaches to rulings in classical *fiqh*. He explains that Muslim theologians and jurists can be divided into four categories – **traditionalists, fundamentalists, semi-reformists** and **reformists** – and outlines what these categories entail.

He then sets out and explains three key premises and requirements of structural *ijtihad*:

Minimalist expectations of religion/minimalist *fiqh*

Religion should not be applied to every issue. Issues can be further classified as within the realm of divine knowledge (thus related to theology or Islamic philosophy), or not related to revelations or scripture (thus can be addressed through human reasoning).

Rationality as the source of ethics

Ethics are derived from reason, and not from revelation. This means that 'the Qur'an and the Sunna are not the primary sources for morality and ethics; they are necessary but secondary sources that play a great role in clarifying moral and ethical principles' (p. 218).

Timeless or time-bound

Rulings (*ahkam*) can be classified as either timeless or time-bound. In contrast to classical *fiqh*, 'all legal rulings in the Qur'an, Sunna and *fiqh* are time-bound unless we can find valid evidence/proof (*dalil*) that they are timeless and permanent' (p. 218).

In the **second part of the chapter**, Kadivar applies structural *ijtihad* to four contested areas of marriage to demonstrate the implementation of the four criteria of rationality, justice, ethics, and functionality. These contested areas are:

- ===== **marriage of minors;**
- ===== **rights and duties in marriage;**
- ===== **unequal rights of spouses to divorce; and**
- ===== **men's right to polygamy.**

Kadivar argues that most classical *fiqh* rulings in these areas can no longer be regarded as 'Islamic' because they are not in line with the current lived realities of marriage, conceptions of justice, rationality or morality, and they are less functional than other laws. He states that they were 'Islamic', '[b]ut they can no longer be accepted today ... Traditional jurisprudence does not fit the mentality of modern times'.

In contrast, structural *ijtihad* offers a new paradigm based on egalitarian notions of justice and a set of criteria to evaluate all arguments. He closes the chapter by saying:

“

We should not return to the past. We should bring our tradition to the mentality of today, preserving our principles and standards and rereading the rulings on Islamic marriage in this context. (p. 230)

”

About the Author

Mohsen Kadivar is an Iranian theologian and a leading public intellectual who has been a research professor of Islamic studies at Duke University since 2009.

Pause for Thought



1. What are the four categories of scholars that Kadivar identifies, and what are their positions? Which category does he agree with, and why? Where do scholars that you know from your context fall?
2. What are the four criteria that every ruling must meet under Kadivar's structural *ijtihad* approach, and what is the importance of each of them?
3. One of the obstacles that Muslim women face in their struggle for equality is *fiqh* rulings on marriage that are not in line with the lived realities of marriage nor with contemporary conceptions of justice or equality. How does Kadivar's 'structural *ijtihad*' approach address this issue?
4. Kadivar outlines how structural *ijtihad* can be applied to four key areas of family relations – child marriage, rights and duties in marriage, divorce and polygamy. What do you think of his arguments and proposals? Are you more convinced on some issues than others?
5. What issues do you think need to be revisited using the 'structural *ijtihad*' approach? Try to apply the four criteria to each issue and consider the results.

CHAPTER 8

Reform of *Usul al-Fiqh* and Marriage: A Spiritually Integrative Approach

BY NEVIN REDA

How can we develop an Islamic legal theory that is authentic to the Qur'an's central message of the pursuit of spiritual growth? How can we use such a theory as a foundation for egalitarian Muslim marriages in which mutual care and support contribute to spiritual fulfilment?

In this chapter, Nevin Reda critically engages with traditional Islamic legal theory through an Islamic feminist, spiritually integrative approach to *usul al-fiqh* (principles of jurisprudence) that builds an understanding of marriage as a site for spiritual growth. In the process, she attempts to recapture some of the dynamism of the classical jurists. She respectfully critiques the methodologies of *usul al-fiqh*, introduces a new theory that better fits the needs of our time, and applies it to the case of marriage and divorce.

In the first section, Reda begins with a methodological critique of *usul al-fiqh*, outlining and discussing **problems related to the contexts** in which rulings are derived and **problems related to foundational principles or sources**. Within her discussion of source-related problems, Reda sheds light on **the following gaps related to each of the traditional four main sources**:

Qur'an: certain verses are preferred as the main source of rulings, rather than looking at the Qur'an as a whole

Sunna: often privileged over the Qur'an

Analogical reasoning (*qiyas*): sometimes used arbitrarily and to the detriment of women

Consensus (*ijma'*): often used to deduce or re-enforce discriminatory rulings that depart from the ethos of Qur'anic justice

In the second section, she **proposes an ethical-legal theory** built on four principles or sources:

==== **Qur'an**

==== **Sunna**

==== **Reason (*'aql*)**

==== **Consultation (*shura*)**

Reda explores each of these proposed principles and offers rationale for why they should be included in the proposed approach. She explains that the principles are similar to the four traditional sources mentioned above, but structured and conceptualized differently in order to overcome the contextual and source-related problems outlined in the first section.

Reda calls this approach a ‘spiritually integrative methodology’ that gives more weight to the Qur’an than other sources and better connects with and serves contemporary law and ethics. She notes that the approach does not locate itself within one school of *fiqh*, but ‘is in conversation with the tradition in its entirety, drawing on all of [the schools], as it adds yet another methodology to a tradition that is rich in diversity’ (p. 233). She explains:

“

[W]hat makes this methodology different is its Islamic feminist, spiritually integrative lens and its concern for justice (*‘adl* and *qist*), since classical methodologies lack a distinct mechanism (for example, a principle/*asl*) that would suggest a concern for justice, including basic gender justice. (p. 233)

”

In the third section, Reda applies the approach to marriage and then divorce to show how ethical, egalitarian frameworks for marriage and divorce might be constructed. In the explorations of marriage and divorce, Reda uses *Surat al-Baqara* and other suras in the Qur’an to help outline definitions and then cornerstones of marriage or divorce. Reda then adds another layer through values and processes described in *Surat al-Nisa*’.

In addition to exploring how verses can be applied, she also uses key hadiths and rational principles such as consideration of justice.

Reda argues that using this spiritually integrative methodology and framework, marriage can become a spiritual space in which mutual care and support between spouses are part of their striving towards ethical excellence. The flip side of a more egalitarian marriage is divorce that is by mutual agreement, after attempts at reconciliation have failed, and not a single partner's unequivocal, unilateral right to rid himself of the other.

The chapter closes with a brief description of the new, spiritually integrative methodology. Reda states that the methodology 'is well suited to the needs of the time, responding to the growing spiritual turn on one hand, and to the emergence of the modern state on the other' (p. 267).

About the Author

Nevin Reda is an associate professor of Muslim studies at Emmanuel College of Victoria University in the University of Toronto.

Pause for Thought



1. What is *usul al-fiqh* and what are the challenges posed by this tradition, especially in terms of its impact on family laws today?
2. What does Reda mean when she calls her proposed approach ‘spiritually integrative’? How does it merge technical and spiritual aspects of Islamic tradition?
3. Reda proposes a new methodology for deducing rulings. How does she approach the Qur’an? How does she view the relationship between the Qur’an and Hadith in deducing rulings?
4. Instead of analogical reasoning (*qiyas*) and consensus (*ijmaʿ*), Reda proposes reason (*‘aql*) and consultation (*shura*). How does she see these two working as resources or tools for deducing just rulings? How does *shura* differ from *ijmaʿ*, and what makes *shura* a more useful strategy for the purposes of furthering gender equality?
5. If we were to implement *shura*, how would we ensure that the consultation process would be inclusive and not marginalize certain voices like *ijmaʿ* has done in the past?
6. How does Reda apply her methodology to the issue of divorce rights?
7. How might this methodology be relevant to activists or practitioners on the ground working to reform laws or to help promote gender justice?

CHAPTER 9

Ethics and Gender Equality in Islam: A Constructivist Approach

BY MARIAM AL-ATTAR

What is the nature of morality and what sources of moral knowledge could inform egalitarian Muslim gender norms? Are norms simply to be discovered from textual sources or the natural world or can they be uncovered through human reasoning and specifically ethical reasoning? What kind of ethical reasoning can lay the foundation for gender equality?

In this chapter, Mariam Al-Attar **explores Islamic ethical theory and its application to the question of gender**. She outlines the field of Islamic ethics, including recent developments, and then elaborates on a theory related to moral judgements that she contends should guide the development of *fiqh* and evaluation of existing moral judgements (*ahkam*), including for the area of family law.

In the first section, Al-Attar **sheds light on how different genres of pre-modern Islamic religious sciences tackled ethical questions** related to collective moral values, norms and norm-making, ways in which individual virtues were emphasized, etc. She explains how ethics was studied **not as one distinct Islamic discipline, but piece by piece within several disciplines**, including:

- ==== *kalam* (speculative theology);
- ==== *fiqh* and *usul al-fiqh* (law and jurisprudence);
- ==== *tasawuf* (Islamic mysticism); and
- ==== *falsafa* (philosophy).

She discusses some of the challenges of this approach, and in particular notes that ***fiqh* discourse was prioritized over other Islamic discourses in part because it relates to rules and regulations**. This is closer to normative ethics and how ethics are practised, as opposed to the theory behind ethics.

Al-Attar underscores how **this diverse tradition nonetheless offers concepts and arguments that can be the building blocks for a new and robust understanding of the foundations of moral judgements in our societies**. She also outlines important recent developments in Islamic intellectual thought, notably:

In recent years, there has been **more systematic study of Qur'anic ethics**, with ethics increasingly playing a central role in discussions about Islamic norms.

There is **more emphasis on the idea that moral judgements (*ahkam*) are constructed, rather than discovered in nature**, and how this construction relies on human reasoning guided by objective and universal principles.

In the second section, **Al-Attar elaborates on 'constructivism' – that moral judgements (*ahkam*) are constructed and not discovered**. She explores how this field can be used to advance issues related to gender.

She expands on two presuppositions – **rationality** and **objectivity** – that were not engaged fully in the past. She argues that there is a set of rational criteria that can be used to evaluate moral judgements. This means **there are rules that any moral judgement needs to abide by in order to be valid**.

She states:

“

I argue that moral judgements (*ahkam*) are, in fact, constructed rather than discovered or invented and that by adopting a form of constructivism we can avoid both ethical relativism according to which anything goes, and moral absolutism which implies that moral judgements, rules and regulations are static and absolute. I contend that by embracing universal Qur’anic moral values and the rules of practical reason, we can develop criteria for assessing judgements, for example in relation to gender relations and rights. (p. 274)

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Al-Attar closes with thoughts about the importance of understanding and applying ethical reasoning in developing Muslim jurisprudence generally, and family laws in particular.

She states:

“

... norms and values that can guide egalitarian gender relations are not simply to be discovered as monolithic and fixed teachings from sacred texts. Nor are they merely reducible to context-determined worldviews and discourses. Rather they are constructed through human reasoning in dynamic processes where the sacred texts and social historical contexts play a role but **do not** negate or replace ethical reasoning that can evaluate moral judgements independently with its own rational tools. (p. 292)

”

About the Author

Mariam Al-Attar holds a PhD in Islamic Ethics from the University of Leeds and currently teaches Arabic heritage and Islamic philosophy at the American University of Sharjah.

Pause for Thought



1. In what ways has this chapter helped you understand Islamic disciplines like *kalam*, *falsafa*, *tasawuf*, and *usul al-fiqh* and their relevance for the question of ethics in Islam? How can an understanding of ethics influence you personally or in the work that you do?
2. What is the constructivist approach? What is the relevance of this approach to Muslim feminists and reformers?
3. According to the constructivist approach, what role may Qur'anic values play in ethical reasoning?
4. How might this approach, and Al-Attar's suggestion for a series of criteria or rules to evaluate moral judgements, be used by feminists or activists?
5. Al-Attar's description of how ethics has been handled within Islamic tradition raises questions like: Whose ethics? Whose *fiqh*? Whose justice? Our tradition is intimately related to who is defining the terms. How do activists insert their voices and ideas and shape the Islam, ethics, *fiqh*, and justice that are being defined and debated?

CHAPTER 10

Historicizing Muslim Marriage Practices in Pre-modern Islamic Egypt

BY HODA EL SAADI

What can Muslim marriage practices of the past teach us about the nature of Islamic law and its sources? What can we learn from the strategies and agency of women as they navigated marriage and family life? How can insights from such historical inquiry inform contemporary debates on advancing gender equality in Muslim family laws?

In this chapter, Hoda El Saadi offers snapshots of marriage and divorce practices in Egypt from the 7th to the 16th centuries CE. She shows that **in addition to studying textual sources of family laws such as the Qur'an, Hadith and Islamic jurisprudence (*fiqh*), it is also important to study the cultural, social and practical ways in which families lived and family laws operated.**

El Saadi examines a variety of traditional and non-traditional historical sources to help understand marital relations both in *fiqh* and in people's lived experiences. The chapter has three sections:

1 El Saadi begins by **outlining her methodological framework and the sources used** in this study. These include **court records, marriage contracts, deeds, fatwa collections, traditional biographical dictionaries and chronicles**. She discusses her approach to understanding the complexity of Islamic law. She highlights the importance of looking at **both legal and historical sources** to better comprehend the dynamics of the early and medieval Islamic societies. This can influence how we understand the laws and the possibilities for implementation and reform.

2 El Saadi **examines marriage contracts from early and medieval Islamic Egypt** and compares them to contracts of other religions and of earlier periods before Islam. This helps trace the development of marriage practices in Egypt and identify the impact of the socio-cultural context in shaping Muslim practices and rules. In particular, the analysis shows how *‘urf* (custom) played an important role in the formulation of the laws.

3

El Saadi **highlights the plurality of the legal scene in Islamic Egypt, showing how such plurality and diversity worked in favour of women.** In many cases, *fiqh* scholars had different opinions on various aspects of marriage and divorce rights. Also, sultans and military officials were sometimes able to issue rules about marital relations. In addition, in many cases qadis had flexibility in implementing and applying *fiqh* rulings. This flexibility often benefited women. The study shows that there was a difference between the written law and the law in practice; jurists were not the only actors able to influence family laws.

The study shows that **plurality, diversity and dynamism were integral to the implementation of *fiqh* rulings**, and that the **implementation of rulings responded to the realities and needs of different Muslim communities.** Rather than dictating gender relations and women's behaviour, **jurists in pre-modern Egypt in fact reacted and responded to women's lived experiences and needs** in ways that supported justice. In addition, **women reclaimed their voice and agency** in marriage in different ways. This shows the interplay between historical, legal, sociological and economic factors that impacted Muslim marital norms and practices.

Ultimately, the chapter demonstrates that **Islamic laws related to marital relations were not crafted only by Muslim jurists, and are not and have not always been one set of stagnant rules that has only one source of authority.** Instead, there is historical evidence that Islamic laws were shaped through practice and were responsive to social norms and customs. This important feature of the legal tradition can facilitate modern efforts towards gender-sensitive reform in *fiqh*-based Muslim family laws.

About the Author

Hoda El Saadi is an adjunct faculty member in the Department of Arab and Islamic Civilization at the American University in Cairo in Egypt and a co-founder of the Woman and Memory Forum.

Pause for Thought



1. What kinds of historical sources does El Saadi use, and what does each reveal?
2. What were the legal and court environments like for women in pre-modern Islamic Egypt? How did qadi court judges respond to women's claims and arguments?
3. What are El Saadi's key findings related to the dynamism of Islamic law in the medieval period?
4. How can El Saadi's research findings be used for public education and legal advocacy today?
5. What are some critiques, problems or limitations of this kind of research?

CHAPTER 11

Muslim Family Laws: Trajectories of Reform

BY LYNN WELCHMAN, ZAHIA JOUIROU AND MARWA SHARAFELDIN

What are the different pathways through which family laws have been reformed in different contexts? What ideas, arguments, strategies and lessons can we learn from these reform efforts to further advance gender justice?

In this chapter, the authors review three broad types of reforms in contemporary Muslim family laws:

substantive reform using multiple frames of reference;

procedural reform and indirect reform to family law; and

practices introduced through other legislation.

The authors first explore the **complexities and dynamic configurations of Muslim family laws**.

They explain:

“

Muslim family law matters ... because it governs our most intimate relationships. It also configures relations with the world outside the family, including the worlds of education, work, property, politics and resource distribution. (p. 321)

”

The authors share that family laws generally reflect the interplay between **Muslim legal tradition, human rights, state laws and societal norms**. The examples of law reform that they share in the chapter show how multiple factors come together in each of these four areas to create change towards gender equality.

The authors then shed light on **various strategies and arguments used to introduce different types of reforms**. Activists use multiple textual and non-textual sources to shape these strategies and arguments. But success or failure is also impacted by a variety of factors such as **political will, ways in which rights groups interact and come together, economic exigencies**, etc.

The authors explore three main scenarios for law reform:

1 Substantive reform using multiple arguments balanced to fit the political, religious and social context. The authors outline three examples of substantive reform efforts:

- the 2004 comprehensive family law reform in Morocco that included the concept of equality between spouses as well as changes to the rules on child marriage, marriage guardianship and other areas of family law;
- the 2000 reform of divorce laws in Egypt; and
- the recent inheritance reform debates in Tunisia.

2 Administrative or procedural reform: The authors consider marriage registration requirements; courts ensuring compliance with preconditions in laws and regulations, such in cases related to child marriage; and notification requirements in cases related to child marriage, polygyny, divorce, and distribution of property or inheritance.

3 Enactment or reform of laws outside family laws that nevertheless address family and cultural practices: The authors examine examples of new laws combating violence against women and reform of Penal Code provisions related to exoneration of rapists through marrying their victims.

In each of these scenarios, the authors highlight the strengths and weaknesses of the approaches as well as the important role of women's movements in enabling change. The wider the networks, the greater the opportunity for differently placed actors to exchange and identify short- and longer-term strategic objectives. The authors conclude with this sombre but hopeful advice:

“

Activists and reformers working towards law reform must study the field, the opportunities, challenges and resources available, and use this analysis to choose strategies and pathways to reform. In the process, they must question what impact the reforms have on the lives of women, and how change can happen in a holistic way. Though it may take many years of persistent, consistent work, there are multiple pathways to law reform based on the opportunities presented in a given context. Efforts at reform can lead to changing laws or adopting new ones, changing processes and expectations, and hopefully bringing about real equality within families in the process. (p. 357)

”

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Pause for Thought

1. How have activists and reformers used religious-based arguments and constitutional arguments to push for substantive change of religious-based family laws or personal status codes? Have you encountered this in your context, in your region, or in contexts that are similar to yours?
2. In what ways have human rights standards influenced arguments for reform? How could you use human rights standards and provisions in your context?
3. Instead of trying to reform the core provisions of family laws, some countries choose to change administrative or procedural laws. What are examples in which this has happened? In what ways can you imagine this taking place in your context?
4. What approaches have countries adopted to address issues related to family and gender relations without touching the family laws themselves? Consider laws related to the family like violence against women or changes to the penal code or labour laws, as well as laws and regulations related to implementation.
5. Based on the three scenarios and many examples given in the chapter, what pathways of reform, strategies and/or arguments can you imagine pursuing in your context?

CHAPTER 12

Justice, Refinement and Beauty: Reflections on Marriage and Spirituality

BY SA'DIYYA SHAIKH

How can we build more just, equal and spiritually nourishing Muslim marriages and intimate relationships? How do the ethics of equality, justice and mercy guide us in shaping such relationships and help us realize our better selves?

Sa'diyya Shaikh begins her chapter with the idea that for a believer, marriage 'constitutes a workshop for human-divine encounters'. She considers **how to pursue spiritual growth and nourishment in marriage through rituals, contracts and day-to-day practice.**

Shaikh asks a series of questions throughout that challenge us to think deeply about our own spirituality and how it is reflected in our most intimate relationships.

Shaikh begins by setting out a framework that **ties marriage to *rahma***, which she defines as a combination of divine love and compassion, **and a related *jamali*-based ethics**, which refers to ethics based on the divine quality of beauty.

She writes:

“

Believers, as lovers of God, the Qur'an and the Prophet, are thus invited to inscribe upon ourselves loving compassion and mercy in all that we are and do, how we engage and embody faith and tradition in the world, and in all that we seek to become. As such I propose a *jamali* ethics to nourish our marital journeys in attaining increasingly deeper and higher forms of virtue or *ihsan*.
(pp. 365–6)

”

Shaikh then focuses on applying these ideas within three areas:

1 She first considers the **nature of the *nikah* (marriage) ceremony and creation of the *nikah* contract**, especially in contexts where women are made invisible. To address existing imbalances, she proposes ways to conclude contracts and organize celebrations that embody ethics of equality, justice and mercy. She states:

“ We need to create alternative ritual forms that imbibe the inner spiritual essence and reflect the egalitarian aspirations of marriage that we seek to embody. (p. 367)

2 She explores the **spiritual dynamics within everyday marital life that might support spiritual growth and deepen love, justice and beauty within marriage**. Shaikh writes:

“ Marriage is indeed half of religion because the work that goes into it can be some of the most intense inner and outer work a human being can do. Some of this work is deeply joyous, nourishing and fulfilling, some of it is just ordinary and mundane, and some of it is difficult and painful. (p. 370)

She sees marriage – and the mirror each spouse provides to the other – opening up possibilities for transformation. This requires integrity, equality and respect, and then connecting love to the virtues of truth, compassion, justice and grace. Shaikh works through how each of these virtues can be reflected in our marital relationships and relationship with God.

3

Shaikh **concludes with a *du'a* (prayer)** she gave at the *nikah* ceremony of her sister and brother-in-law that **reflects the possibilities for healthy, loving and just relationships.**

All in all, the chapter presents a way to imagine and practise marital and intimate relationships that are intensely spiritual at their core, and guided by central Qur'anic ethics of justice, love and beauty.

About the Author

Sa'diyya Shaikh is an associate professor in the Department for the Study of Religions at the University of Cape Town. Her research is situated at the intersection of Islamic Studies and Gender Studies.

Pause for Thought



1. This chapter is a spiritual and practical exercise. How would you answer one or more of Shaikh's initial questions on page 381:

What might it take to embody the Qur'an? How can we best exemplify the divine *jamal*? How do we learn to reflect and reverberate beautiful qualities such that those we are closest to, and with whom we engage on an everyday basis, can see living evidence of the beauty, love, kindness and justice of the Divine?
2. Shaikh quotes Shaykh Muhammad Rahim Bawa Muhaiyaddeen as stating 'Unless love is connected to God, unless it is connected to truth, to compassion, to justice, to grace, it is possible for it to break down' (p. 371). What does it mean to connect love within our relationships to God, to truth, to compassion, to justice, and/or to grace? How does Shaikh talk about each of these connections?
3. In what ways could *nikah* (marriage) practices and rituals – whether it relates to engagement, preparation, contract, ceremony, celebration – be more gender just, inclusive, and spiritually fulfilling for all parties?
4. In a similar but more technical topic, how do we go about legislating *mawadda* and *rahma* (love and compassion) into our family laws? Generally laws are based on concrete rules, rights and obligations. How do we address this constraint?


5. Consider how the ideas portrayed in this chapter play out in our lives. How can we embrace the *jamali* aspect of Allah, loving ourselves and others? How do we foster the connection Shaikh makes between spiritual growth and equality and justice in marriage? How do we move from theory into application in our homes, communities and societies around the world?

About Musawah

Musawah is a global movement for equality and justice in the Muslim family, comprising non-governmental organisations (NGOs), activists, scholars, legal practitioners, policy makers, and grassroots women and men from around the world. Launched in 2009, it seeks to link scholarship with activism, bring fresh perspectives on Islamic teachings and contribute constructively to the reform of Muslim family laws and practices.

For more information, visit www.musawah.org.

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About Musawah's Research Initiative on Reclaiming 'Adl and Ihsan in Muslim Marriages

This research project, initiated in 2018, builds on the findings of Musawah's previous research initiative on *qiwamah* and *wilayah* (commonly understood as male authority and guardianship in the family), which showed that hierarchical gender relations and unequal rights have detrimental impacts on the well-being of Muslim families and their members. This research inquiry aims to help build and promote an understanding of marriage as a partnership of equals in ways that are rooted within Muslim legal tradition.

Justice and Beauty in Muslim Marriage comes out of explorations of egalitarian ethics and frameworks for Muslim marriages through textual, historical and socio-legal scholarship. Beginning in 2023, Musawah will conduct in-depth ethnographic research on how egalitarian values such as 'adl and ihsan are being pursued, articulated and/or lived in selected national contexts. All of our activities attempt to advance a discourse that promotes justice, beauty and equality in marriage laws, contracts, rituals and practices.