



## NIKĀH, WILĀYAH, AND QIWĀMAH : EVALUATING FEMINIST CRITIQUES FROM AN ISLAMIC MORAL PERSPECTIVE

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### **Abstract:**

*Critique of feminist analysis of nikāh (marriage), wilayah (guardianship), and qiwamah (male authority/responsibility) in Islamic Family Law within an Islamic epistemological framework. While much feminist critique of Islamic Family Law is based on autonomy, equality and symmetry of power as the main indicators of justice, this paper posits that feminist critiques of nikāh, wilayah and qiwamah have been limited by an epistemic disconnect from the legal-moral structure that is embedded in the Islamic faith. The paper uses guidance from the Quran, historical jurisprudence and the maqasid al sharia to demonstrate that nikah is a covenant that generates reciprocal rights and responsibilities for both spouses; wilaya is a form of conditional protection/governance; and qiwama represents an ethically bounded responsibility, and not a right or privilege. Using the concepts of obligation, account, and proportional justice, the paper will demonstrate that Islamic Family Law has as its goal to create social cohesion and ethical justice, and not to further patriarchal interests. Ultimately, the paper posits that any reform to Islamic Family Law should be grounded within the Islamic moral system, and thus reflect an internal, epistemological coherence.*

**Keywords:** *Islamic Family Law, Nikāh (Marriage), Wilāyah (Guardianship), Qiwāmah (Male Responsibility), Feminist Critique, Maqāsid al-Sharī'ah, Islamic Ethics*

### **Introduction**

Criticism of Islamic Family Law by Contemporary Feminists: A Critique of Gendered Authority Structures Islamic Family Law is being scrutinized by feminists today based on larger criticisms of gendered authority structures. These criticisms rely heavily on liberal and postmodern views of autonomy, equality and power. Critics view the Islamic legal institutions of *nikāh* (marriage), *wilāyah* (guardianship) and *Qiwāmah* (male responsibility/authority) as tools of patriarchal oppression, rather than as legally-grounded systems of ethics.<sup>i</sup>

Feminist thinkers—whether Western or Muslim—frequently evaluate *nikāh*, *wilāyah* and *Qiwāmah* using an ontology of rights and individualism. The moral legitimacy of a system is then determined by the degree to which it protects and preserves individual autonomy. Therefore, any type of authority that is asymmetrical between men and women is considered to be inherently oppressive,<sup>ii</sup> and therefore, provides a lens for evaluating Islamic Family Law.

#### **1. Feminist Criticisms of Nikāh**

*Nikāh* is often criticized by feminists who reduce *nikāh* to a contract that is alleged to favor



male interests. Scholars have argued that classical juristic formulations of *nikāh* emphasize male sexual access to a woman, as well as female obedience to a man, thereby creating marriage as a transactional relationship of inequality, rather than a mutually supportive and reciprocal moral commitment.<sup>iii</sup>

The concepts of mahr, *tamkīn* and the differing rights to divorce of men and women are often cited as evidence that *nikāh* institutionalizes gender hierarchy, and not partnership.<sup>iv</sup> In addition, some Muslim feminist authors also claim that traditional juristic interpretations of *nikāh* give priority to patriarchal social norms at the expense of the ethical ideals of the Quran, and that the contractual nature of *nikāh* reflects historical contingency and not divine will. Therefore, they recommend a new understanding of marriage that is based on egalitarian reciprocity, and mutual autonomy.

## 2. Feminist Criticisms of *Wilāyah*

*Wilāyah*, and specifically marriage guardianship, is perhaps the most contentious aspect of Islamic law among feminist critics. They characterize *wilāyah* as a denial of full legal agency of women, in that the choice of whom a woman may marry is subject to the approval of a male guardian.<sup>v</sup>

Feminist critics argue that *wilāyah* is inconsistent with the Quranic assertion that women are morally accountable individuals (*mukallafāt*), and that *wilāyah* functions as a means of male dominance by masquerading as a protective function.<sup>vi</sup>

Therefore, feminist critics interpret *wilāyah* as a structural expression of distrust towards the rational capacity of women, rather than a temporary and contextual legal safeguard. Thus, feminist hermeneutics seek to either reinterpret *wilāyah* as nonbinding or to abolish it altogether from modern Islamic legal frameworks.<sup>vii</sup>

## 3. Feminist Criticisms of *Qiwāmah*

*Qiwāmah*, which originates in Quran<sup>viii</sup>, represents the focus of feminist criticism. Feminist scholars argue that *Qiwāmah* creates male superiority by giving men the right to exercise authority over women, and thus legitimizes gender hierarchy within families and societies.<sup>ix</sup>

Furthermore, feminist scholars criticize *Qiwāmah* because it is linked to issues of unbalanced domestic power, and in extreme readings, the normalization of gender-based violence.<sup>x</sup> Some Muslim feminist authors also assert that classical exegesis of *Qiwāmah* universalized a context-specific social arrangement, turning a functional responsibility into a permanent signifier of male dominance.<sup>xi</sup> As such, *Qiwāmah* is reinterpreted as either reciprocal, symbolic or contingent, rather than as normative and obligatory.

4. Basic Epistemological Assumptions of Feminist Critiques of *Nikāh*, *Wilāyah* and *Qiwāmah*. While there is considerable variation in how feminist critics of *nikāh*, *wilāyah* and *Qiwāmah* proceed, all share a basic epistemological presumption: that justice is equivalent to sameness and autonomy, and that asymmetry necessarily implies injustice.<sup>xii</sup> Authority is therefore understood to be tantamount to coercion; hierarchy is viewed as equivalent to domination, and differentiation is seen as equivalent to discrimination.

However, this epistemology rarely considers the Islamic legal concepts themselves, nor



does it consider the Islamic legal tradition's duty-centered moral philosophy, the importance placed on functional responsibility, and the primacy placed on social cohesion over radical individualism.<sup>xiii</sup>

Consequently, feminist critiques tend to atomize Islamic family law, examining each component independently of the others rather than as part of a comprehensive moral/legal system.

**Methodology:**

The current study uses a qualitative (textual), analytic (comparative) and Doctrinal method to analyze how feminists critique *nikāh*, *wilāyah* and *Qiwāmah* in Islamic Family Law. Sources used were primary (Qur'an; classical juristic texts; seminal exegesis); Secondary (contemporary feminist scholarship; Legal Analysis; *maqāsid*-based analysis). The study will apply Comparative Hermeneutics by comparing/contrasting Feminist Interpretations of these three institutions with the Ethical & Legal aspects of Islamic Jurisprudence in order to determine Epistemological Divergence. The study's application of Textual Analysis; Doctrinal Interpretation; Normative Evaluation, will allow the study to provide a Moral, Responsibility-Centered; Ethically Constrained Re-Construction of these three Institutions; Provide a Coherent Internal Critique; Identify possible avenues for Reform that are Based on an Epistemologically Sound Paradigm.

**Islamic Epistemology of Authority and Responsibility: A Moral-Relational Framework**

A genuine assessment of *nikāh*, *wilāyah*, and *Qiwāmah* cannot be performed without assessing the epistemological roots of Islamic law as opposed to those derived from external normative standards. Therefore, Islamic legal and ethical theory is not based upon a liberal-individualist ontology, but rather, on a relational-conception of the human being where rights and duties are indistinguishably linked, and authority and accountability exist as intertwined concepts.<sup>xiv</sup>

in its foundation, Islamic epistemology posits that humans are *mukallaf* morally accountable agents who have been commanded by God, and therefore all legal differences in Islamic law do not determine ontological hierarchies, but rather provide for the distribution of functional obligations based on the social realities and moral responsibilities of individuals.<sup>xv</sup>

Authority (*wilāyah* or *Qiwāmah*) in Islamic epistemology is not a right that stems from privilege, but rather a duty that is subject to both ethical and legal constraint.

1. Authority as *Taklīf*, Not Sovereignty

In opposition to the contemporary view of power as sovereign, authority in Islamic epistemology is defined as *taklīf* (a moral obligation) as opposed to the concept of sovereignty or domination. Jurists throughout Islamic history have continuously reiterated that authority provides its holder with increased moral accountability to Allah, not a greater degree of liberty of command.<sup>xvi</sup>

As demonstrated in the Quran, the use of the term "*amānah*" (trust) to describe the relationship between leaders/guardians and those under their care clearly illustrates that the



abuse of this trust will result in a moral culpability rather than a claim of entitlement.<sup>xvii</sup>

This understanding clearly undermines the assumption of many feminists that authority is equivalent to oppressive power. In Islamic epistemology, authority is meant to facilitate the achievement of moral goals — protection of the weak, maintenance of social order, and the realization of justice (*'adl*) — not the securing of individual freedom as an ultimate value.<sup>xviii</sup>

## 2. Moral Differentiation vs. Ontological Equality

Islam recognizes the ontological equality of men and women as moral agents, however, it also acknowledges that there exists a functional differentiation among individuals in terms of social roles and legal obligations.

Feminist critiques often collapse this differentiation into one another, and interpret differentiation as an inability to recognize equality, as opposed to a manner in which morality is organized.<sup>xix</sup>

Islamic jurisprudence is based upon the principle of proportional equity (*al-'adl bi-l-qist*), in which fairness is achieved through the equitable allocation of duties and protections commensurate to an individual's capability and responsibility.<sup>xx</sup>

Therefore, this epistemological framework challenges the modern notion that justice necessitates the existence of similar roles, and/or symmetrical structures of authority.

## 3. The Importance of *Maslahah* and Social Cohesion

An additional critical epistemological divide in this regard lies in the importance placed by Islam on *maslahah* (the public and moral well-being) above radical individualism. Islamic law views the family as the fundamental moral unit that has an impact on the social harmony as a whole,<sup>xxi</sup> and therefore the legal structure of the family including *nikāh*, *wilāyah*, and *Qiwāmah* are designed to prevent harm (*dar' al-mafāsīd*), and ensure continuity, as opposed to maximizing individual preference.<sup>xxii</sup>

Thus, in this context, *nikāh*, *wilāyah*, and *Qiwāmah* operate as interconnected systems of responsibility, legality, and social solidarity. Critiques by feminists that disconnect these concepts from their systematic context risk distorting the purposes and normative logic of these concepts.<sup>xxiii</sup>

## 4. Limitations and Responsibility of Authority in Islamic Law

As opposed to the common assertion of unqualified patriarchal dominance, Islamic law places stringent limitations and restrictions on authority within the family. The abuse of authority is a breach of the objectives of the *Shari'ah* and could potentially provide grounds for the intervention of the court, or dissolution of the marital bond.<sup>xxiv</sup>

Jurists throughout Islamic history have repeatedly stressed that if a guardian fails to fulfill his financial, moral, or protective obligations, then he will lose his claim to authority.

This conditional nature of authority demonstrates that authority in Islamic law is revocable, limited to a particular goal, and subject to moral and legal constraint, as opposed to being absolute and perpetual. Thus, this epistemological framework is in direct conflict with feminist representations of Islamic family law as inherently authoritative.



## 5. The Epistemological Dissonance in Feminist Interpretation

The continued tension between feminist critiques and Islamic legal concepts is therefore due to an epistemological dissonance. Feminist frameworks emphasize autonomy, choice, and power equivalence, whereas Islamic law emphasizes moral responsibility, social interdependence, and accountability to ethics.<sup>xxv</sup>

When Islamic concepts are interpreted via alien epistemologies, authority is interpreted as domination, and responsibility as privilege.

It is therefore necessary to acknowledge this epistemological dissonance prior to undertaking a detailed analysis of specific doctrines such as *nikāḥ*, *wilāyah*, and *Qiwāmah*. Without establishing a foundation in Islamic epistemology, reformist efforts may substitute Islamic moral reasoning for secular paradigms as opposed to revitalizing the tradition from within.<sup>xxvi</sup>

### Re-conceptualizing *Nikāḥ* Beyond Contractual Reduction

Although many modern feminist critiques of Islamic marriage rely heavily on a reduced contractual view of *nikāḥ* to understand how *nikāḥ* creates unequal power dynamics among spouses which can be identified using three primary criteria (consent, reciprocity and exit options) —they do so at the expense of a much wider array of aspects related to the ethical, theological and social bases for the *nikāḥ* as found in Islamic law.

As a result, reducing *nikāḥ* to a contractual understanding of *nikāḥ* is not reflective of how *nikāḥ* is seen by scholars of the Islamic legal-moral tradition.

#### 1. *Nikāḥ* as a Moral–Legal Covenant

Though *nikāḥ* is legally defined as a contract (*‘aqd*), there has been significant scholarly discussion about the fact that *nikāḥ* is more than simply a contract (*‘aqd*). It is considered to be a moral covenant (*mīthāq*) that instills long-standing moral obligations on the couple (and specifically the man) that continue long after the couple have agreed to enter into the marriage.<sup>xxvii</sup>

The Qur’ān explicitly uses the term *mīthāq ghalīz* (solemn covenant) when referring to the nature of marriage (Q. 4:21), and reserves this term for those relationships that have substantial moral importance.

Therefore, the covenantal framing of *nikāḥ* undermines the ways in which feminist readings of *nikāḥ* define *nikāḥ* as a process of bargaining over rights.

Consent (*riḍā*) initiates marriage, but it does not define the full scope of the moral obligation that is established in *nikāḥ*. Rather, *nikāḥ* establishes a lifelong relationship characterized by continuing obligations of care, protection, and moral restraint — most notably by the husband.<sup>xxviii</sup>

#### 2. Asymmetry of Obligations, Not a Hierarchy of Worth

Feminist critiques of *nikāḥ* frequently identify the inherent inequalities in *nikāḥ* as being the result of male privilege, and therefore, argue that the different rights given to men and women as described in the Qur’ān, such as financial support (*nafaqah*), shelter, protection, leadership and the right to seek divorce, are the result of a hierarchical understanding of



worth.<sup>xxix</sup> However, Islamic jurisprudence does not create a foundation for *nikāh* based on the idea of symmetry of entitlements. Instead, Islamic jurisprudence creates a structure of obligations based on the idea of asymmetric obligations based on functional responsibility.<sup>xxx</sup>

Specifically, the husband's obligations (including *nafaqah*, providing shelter, and protecting his spouse) are unconditional and enforceable, while the husband's claims to authority over his spouse are contingent upon him fulfilling his obligations.<sup>xxx</sup>

Jurists have also repeatedly stated that if a husband fails to fulfill his obligations, he loses all claim to authority over his spouse and his spouse may pursue judicial remedies for dissolution of the marriage. In other words, the structure of obligations in *nikāh* is designed to protect the interests of the spouse who is dependent on the other spouse, and therefore, is not inherently unjust or patriarchal.

### 3. *Mahr*, *Tamkīn*, and the Ethics of Responsibility

Feminist scholars have frequently used elements of *mahr* and *tamkīn* to demonstrate how Islamic law views marriage as a commodity to be purchased. However, classical jurists did not see *mahr* as a purchase price for entering into a marriage, but rather as a means of symbolizing and demonstrating the husband's willingness to accept the obligations of a husband, including financial obligations and the obligation to treat his wife ethically. In the same way, *tamkīn* was always viewed in the context of the reciprocal ethical obligations of kindness (*mu'āsharah bi-l-ma'rūf*), emotional care, and non-harm that each spouse had toward one another.

In addition, the Qur'ān has instructed husbands and wives to relate to each other in a manner consistent with ethical obligations (Q. 30:21; Q. 4:19), and therefore, feminist scholars who remove *mahr* and *tamkīn* from their ethical context risk viewing these concepts through the lens of a marketplace that is foreign to the Islamic moral universe.<sup>xxxii</sup>

### 4. *Nikāh*, Gender Complementarity and Social Stability

Islamic law has developed a comprehensive vision of gender complementarity, in which gender differences are seen as a legitimate basis for interdependence and cooperation.

Within this framework, Islamic law views marriage as a mechanism for promoting the well-being of families, the well-being of children, and the continuation of generations, which are concerns that are frequently ignored in autonomy-based feminist analysis.<sup>xxxiii</sup>

Therefore, by treating *nikāh* as an area of individual preference bargaining, feminist critiques of *nikāh* undermine the normative foundations that foster long-term commitments.

On the contrary, Islamic law provides a moral economy that limits the individual self-interest of individuals in order to promote lasting ethical relationships.

### 5. Epistemological Reductionism in Feminist Critiques of *Nikāh*

The principal limitation of feminist critiques of *nikāh* is not their desire for justice, but rather their epistemological reductionism. That is, feminist critiques of *nikāh* are limited by their reliance on contractual and power-based paradigms to explain marriage, and thereby reduce a richly textured moral institution to an arena of domination and



resistance.<sup>xxxiv</sup>

To engage with *nikāh* in a more authentic manner, it is necessary to recognize *nikāh* as a synthesis of law, ethics and religion — as opposed to seeing it merely as a set of rules.

If feminist critiques of *nikāh* fail to acknowledge *nikāh* as a synthesis of law, ethics and religion, they will ultimately replace the normative framework of Islamic law with assumptions derived from secularism rather than developing new forms of critique that derive from within the epistemic resources of the Islamic tradition.<sup>xxxv</sup>

### ***Wilāyah* as Protective Governance Rather Than Patriarchal Control**

*Wilāyah* (Guardianship) has been one of the few institutions of Islamic family law criticized by feminists for many years. The common view is that *wilāyah* is a method that diminishes the freedom of women's marital choices by giving men legal authority over them. Feminist scholars state that because *wilāyah* is based on a belief in the incompetence of women, it acts as a structural support to patriarchal systems within Islamic Law.<sup>xxxvi</sup> These readings, however, do not consider the juristic conditions, goals, or limitations of *wilāyah*.

#### 1. Legal Definition of *Wilāyah*

Islamic jurists have traditionally defined *wilāyah* in terms of legal responsibility to protect interests (*hiḏ al-maṣlahah*) in marriage and not as an unqualified right to control. Therefore, they have limited the application of *wilāyah* to very specific situations—especially those preventing exploitation, deception or damaging relationships to society—and especially in cases where women were economically or socially vulnerable.<sup>xxxvii</sup>

It is also important to note that not all schools of law require *wilāyah*. For example, the Ḥanafī school of thought recognizes the legal capacity of an adult woman to make her own marriage arrangements; thus, indicating that the requirement of guardianship is considered to be situational and practical as opposed to being a matter of inherent principle.<sup>xxxviii</sup> This diversity among the different schools of thought creates complexity regarding the feminist argument that *wilāyah* denies female agency uniformly.

#### 2. *Wilāyah* and Moral Agency

Feminists claim that Islamic law denies women moral agency (*mukallafāt*) by virtue of requiring male guardianship. However, Islamic law holds that women are fully accountable before God independent of male guardianship. Therefore, *wilāyah* does not deny female agency but works within a legal framework that makes a distinction between the moral capacity of individuals and legal procedures to ensure that marriages occur in a manner that provides transparency, fairness and social legitimacy.<sup>xxxix</sup>

The feminist conflation of protection and domination is reflective of a broader contemporary skepticism towards any form of intermediate authority. In contrast, Islamic jurisprudence views limited mediation as a legitimate means of protecting the interest of individuals, especially in those areas that have significant social implications, such as marriage.

#### 3. *Wilāyah* in the Context of *Maqāṣid*

*Wilāyah* can be seen as a legal instrument to achieve higher objectives of *sharī'ah* when



viewed in the context of the *maqāṣid al-sharīʿah* such as the preservation of the dignity, lineage, and social order. Furthermore, *wilāyah* is not unlimited and/or irrevocable; abuses of guardianship authority constitute violations of *sharīʿah* objectives and will result in judicial intervention.<sup>xl</sup>

Therefore, the *maqāṣid* understanding shows that *wilāyah* is not an instrument of male superiority, but a preventative legal measure working within ethical boundaries. Thus, feminist objections to abolishing *wilāyah* could potentially dismantle a protective structure without providing a new alternative based on Islamic moral principles.

#### 4. Limitations of Feminist Critiques

The primary issue in feminist critiques of *wilāyah* is based upon the use of autonomy as the supreme moral value. Islamic law, however, seeks to balance the concept of autonomy with the concept of responsibility, individual choice with the well-being of the community. When feminist critiques rely upon abstract individualism, they tend to overlook why Islamic law is more careful in regulating marriages compared to other contracts.

Thus, the issue is not that *wilāyah* is contrary to justice, but how justice is conceptualized differently within Islamic moral epistemology. Therefore, until these differences are acknowledged, critiques of guardianship remain normatively outside of Islamic law, as opposed to being internal reformative.

#### ***Qiwāmah* Reframed: Responsibility, Obligation, and Moral Accountability**

While most of the current debates about *Qiwāmah* take place with-in the context of family law, feminist critics of Islamic family law focus almost exclusively on the institution-ization of male authority and gender hierarchy within the household via *Qiwāmah* — which is based on Qurʾān 4:34. Feminist scholars have argued that *Qiwāmah* affords men a position of greater authority than women and therefore entrenches inequitable power relations for women and enables patriarchal domination.<sup>xli</sup> In doing so, these readings of *Qiwāmah* also typically abstract the institution from its ethical, legal, and conditional frameworks that exist in Islamic jurisprudence.

##### 1. Qurʾānic Foundations of *Qiwāmah*

The Qurʾān provides an explicit foundation for the institution of *Qiwāmah* through linking male responsibility to economic obligation (and function) when it states that "men are *qawwāmūn* over women because of the expenditures they make" (Q. 4:34). Exegetes traditionally have explained that *Qiwāmah* is based upon a causal connection, not a metaphysical one; *Qiwāmah* emerges out of responsibility, not by virtue of being inherently superior.<sup>xlii</sup>

Thus, the Qurʾānic foundations for *Qiwāmah* undermine feminist assertions that *Qiwāmah* represents a metaphysical hierarchy between the sexes. Rather, it is a conditional leadership role, and the legitimacy of that leadership is predicated upon the fulfillment of economic maintenance, protection and ethical behavior.

##### 2. *Qiwāmah* as Burden Rather Than Right

Jurists have traditionally viewed *Qiwāmah* as a burden-bearing obligation (*taklīf*), and not as a right to issue commands. A husband's authority is tied to his obligations to provide



nafaqah, housing and refrain from causing harm to his wife; failure to fulfill those obligations negates any legitimate claim to lead, and may necessitate judicial action.<sup>xliii</sup>

Feminist readings that view *Qiwamah* as a means of exerting domination over women often ignore this juridical conditionality. By examining the symbolism of authority, and disregarding the obligation to provide, feminist critiques run the risk of confusing responsibility as power, and duty as privilege.

### 3. Misuse vs. Normativity

One of the recurring arguments of feminists concerning *Qiwamah* is that the Qur'anic approval of male authority sanctions the use of coercion against wives and that such a sanction creates a culture that accepts abuse. Islamic legal theory has always made a clear distinction between normative legal doctrine, and the misuse of that doctrine. Jurists have consistently maintained that harm (*ḍarar*) is categorically forbidden, and that abuse violates the *Sharī'ah* and is not part of fulfilling the *Sharī'ah*.

It is methodologically incorrect to conflate misuse of the doctrine of *Qiwamah*, with the meaning of the doctrine itself. Just as the existence of political tyranny does not negate the moral concept of governance, the existence of abuse does not negate the ethical framework of *Qiwamah*.

### 4. Feminist Hermeneutics and Contextual Reductionism

Some Muslim feminist interpretations of *Qiwamah* argue that it was based on a historically-specific social arrangement, and not a universal principle of the *Sharī'ah*. Although the historical context of a particular practice or law is certainly important, it is wrong to reduce *Qiwamah* to a mere historical contingency, and ignore the fact that *Qiwamah* was integrated into the Qur'an's moral structure, which repeatedly emphasizes responsibility, self-restraint and accountability to Allah, and not domination.

Contextual reductionism runs the risk of separating Qur'anic ethics from the legal norms of the *Sharī'ah*, and of turning the moral guidance provided by the Qur'an into sociological descriptions of how people behave, rather than into continuing ethical obligations.

### 5. Justice Beyond Equality of Authority

Ultimately, the rejection of *Qiwamah* by feminists is driven by a desire for equality of authority as the standard of justice. However, Islamic moral reasoning defines justice according to proportionate responsibilities and just outcomes, and not to identical authority structures. Therefore, *Qiwamah* is an example of a morally bounded form of leadership, that seeks to create stable families, and not to create male supremacy.

Therefore, if *Qiwamah* is examined within the complete context of its legal/ethical conditions, it appears to be a moral assignment of responsibility, that is accountable to both Allah and human society.

### **Epistemic Mismatch: Why Feminist Frameworks Struggle with Islamic Family Law**

A fundamental epistemological (knowledge) mismatch between feminist critiques of *nikāḥ* (marriage), *wilāyah* (paternal guardianship) and *Qiwamah* (husband's authority) and the justice, autonomy and authority constructs of Islamic law is likely responsible for many of the limitations of these critiques. The majority of feminist critiques of these three Islamic



legal constructs assume that justice, autonomy and authority are best served through the lens of individual autonomy; symmetric power relationships; and equality based on rights. Conversely, the majority of the assumptions regarding justice, autonomy and authority within Islamic law are centered on an individual's moral obligations, an individual's proportionate responsibilities; and the individual's obligation to be ethically accountable.<sup>xliv</sup>

The nature of this disparity helps explain why the tensions in debates surrounding Islamic family law have been so recurrent. Feminist critiques of Islamic law often reduce legal concepts into mere tools of oppression, rather than analyzing these concepts in the system they exist in, and the ethical construct which defines that system. Conversely, Islamic law is concerned with conceptualizing its legal constructs as part of a larger and more holistic moral construct, one which prioritizes the duties, protections and social solidarity among individuals over the absolute equality of all roles. Understanding the nature of this disparity will be essential in developing a positive dialogue, and internal reforms, as opposed to simply imposing external paradigms.<sup>xlv</sup>

### **Conclusion**

The present research has examined *nikāḥ*, *wilāyah*, and *Qiwāmah* through the lens of Islam's own way of understanding (epistemology), so as to counter the many feminist criticisms that have reduced each of these structures to mere tools for patriarchal control. Some major results of the current research include:

1. *Nikāḥ* is a covenant with both moral and legal implications; it generates mutual obligations, not unilaterally granted privileges.
2. *Wilāyah* operates as a protective, condition-based safeguarding system; it does not deny women their right to make decisions on their own behalf.
3. *Qiwāmah* is defined by being responsibility-centered, ethically limited, and dependent on fulfilling responsibilities.
4. The feminist interpretations of the institutions in question have suffered from a form of "reductionism," where they have interpreted what are clearly ethical roles as if they were merely instruments of power.

By placing Islamic family law within its full legal, social, and ethical frameworks, this research illustrates how Islamic structures are designed to support the pursuit of justice and fairness through the use of equitable, proportionate, and accountable responsibilities — not through the equal sharing of power. Therefore, reform efforts in this area should be internal, contextualized and based in the same epistemological ways that Islamic jurists rely upon, using *ijtihād* and the *maqāṣid al-sharī'ah*, as opposed to simply applying foreign conceptions of equality.

### **References**

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<sup>i</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990).



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- <sup>ii</sup> Martha C. Nussbaum, *Women and Human Development* (Cambridge: Cambridge University Press, 2000).
- <sup>iii</sup> Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010).
- <sup>iv</sup> Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton: Princeton University Press, 1999).
- <sup>v</sup> Kecia Ali, *Sexual Ethics and Islam* (Oxford: Oneworld, 2006).
- <sup>vi</sup> Asma Barlas, “*Believing Women*” in *Islam* (Austin: University of Texas Press, 2002).
- <sup>vii</sup> Ziba Mir-Hosseini, “Muslim Legal Tradition and the Challenge of Gender Equality,” in *Men in Charge?*, ed. Z. Mir-Hosseini et al. (London: Oneworld, 2015).
- <sup>viii</sup> The Quran, 4:34
- <sup>ix</sup> Amina Wadud, “Islam Beyond Patriarchy,” in *Gender and Islam*, ed. H. Bodman and N. Tohidī (Boulder: Lynne Rienner, 1998).
- <sup>x</sup> Scott Siraj al-Haqq Kugle, *Homosexuality in Islam* (Oxford: Oneworld, 2010).
- <sup>xi</sup> Asma Lamrabet, *Women in the Qur’an* (Leicester: Kube Publishing, 2015).
- <sup>xii</sup> Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989).
- <sup>xiii</sup> Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009).
- <sup>xiv</sup> Wael B. Hallaq, *The Impossible State* (New York: Columbia University Press, 2013).
- <sup>xv</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003).
- <sup>xvi</sup> Al-Ghazālī, *Ihyā’ ‘Ulūm al-Dīn*, vol. 2 (Cairo: Dār al-Ma’rifah).
- <sup>xvii</sup> Qur’ān 33:72.



- <sup>xxviii</sup> Tariq Ramadan, *Radical Reform* (Oxford: Oxford University Press, 2009).
- <sup>xix</sup> Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989).
- <sup>xx</sup> Ibn al-Qayyim, *I'lām al-Muwaqqi'īn* (Beirut: Dār al-Kutub al-'Ilmiyyah).
- <sup>xxi</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008).
- <sup>xxii</sup> Al-Shāṭibī, *al-Muwāfaqāt*, vol. 2 (Cairo: Dār Ibn 'Affān).
- <sup>xxiii</sup> Ziba Mir-Hosseini, "Justice, Equality and Muslim Family Laws," in *Wanted: Equality and Justice in the Muslim Family* (Kuala Lumpur: Sisters in Islam, 2009).
- <sup>xxiv</sup> Khaled Abou El Fadl, *Speaking in God's Name* (Oxford: Oneworld, 2001).
- <sup>xxv</sup> Charles Taylor, *Sources of the Self* (Cambridge, MA: Harvard University Press, 1989).
- <sup>xxvi</sup> Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009).
- <sup>xxvii</sup> Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Amman: Dār al-Nafā'is).
- <sup>xxviii</sup> Muhammad Abu Zahrah, *al-Aḥwāl al-Shakhsiyyah* (Cairo: Dār al-Fikr al-'Arabī).
- <sup>xxix</sup> Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989).
- <sup>xxx</sup> Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009).
- <sup>xxxi</sup> Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 2 (Beirut: Dār al-Kutub al-'Ilmiyyah).
- <sup>xxxii</sup> Talal Asad, *Formations of the Secular* (Stanford: Stanford University Press, 2003).
- <sup>xxxiii</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008).



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<sup>xxxiv</sup> Charles Taylor, *Sources of the Self* (Cambridge, MA: Harvard University Press, 1989).

<sup>xxxv</sup> Wael B. Hallaq, *The Impossible State* (New York: Columbia University Press, 2013).

<sup>xxxvi</sup> Ziba Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco* (London: I.B. Tauris, 2000).

<sup>xxxvii</sup> Ibn Qudāmah, *al-Mughnī*, vol. 7 (Riyadh: Dār ‘Ālam al-Kutub).

<sup>xxxviii</sup> Wael B. Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009).

<sup>xxxix</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003).

<sup>xl</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008).

<sup>xli</sup> Amina Wadud, *Qur’an and Woman* (New York: Oxford University Press, 1999).

<sup>xlii</sup> Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, commentary on Q. 4:34 (Cairo: Dār Ṭayyibah).

<sup>xliii</sup> Ibn Qudāmah, *al-Mughnī*, vol. 7 (Riyadh: Dār ‘Ālam al-Kutub).

<sup>xliv</sup> Wael B. Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009).

<sup>xlv</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003).