

# QURĀNIC PRECEPTS ON FAMILY LAW: A CONTEMPORARY FEMINIST AND MAQĀSID-BASED EXEGETICAL STUDY

REHANA MAJEED

VISITING LECTURER, DAARI MUNIRA, INTERNATIONAL ISLAMIC UNIVERSITY ISLAMABAD  
haya.hareem22@gmail.comEMAIL;

DR. SHAH JUNAID AHMAD HASHIMI

ASSOCIATE PROFESSOR, DEPARTMENT OF TAFSIR AND QUR'ANIC SCIENCES, INTERNATIONAL ISLAMIC  
UNIVERSITY ISLAMABAD, EMAIL; SHAH.JUNAID@IIU.EDU.PK

## Abstract

This study critically examines Islamic family law as articulated in the Holy Qur'an in response to contemporary feminist and Orientalist discourses that challenge its normative framework. Issues such as marriage, *wilāyah* (guardianship), *qiwāmah* (male responsibility), polygyny, *mahr* (dower), divorce, and *ḥalālāh* are frequently portrayed as instruments of patriarchy or gender inequality when assessed through Western normative paradigms. The research analytically engages with the writings of prominent Muslim feminist scholars and Orientalist thinkers to identify their methodological assumptions, interpretive approaches, and limitations. In response, the study advances a jurisprudential and *Maqāsid al-Sharī'ah*-based analysis, drawing primarily on *al-Taḥrīr wa al-Tanwīr* by Ibn 'Ashūr and *Aḥkām al-Qur'ān* by Ashraf 'Alī Thānwī. The findings demonstrate that Islamic family law constitutes a coherent ethical-legal system that integrates rights with responsibilities and legal norms with moral objectives. When understood holistically, it upholds human dignity, protects women's rights, and ensures social justice, thereby offering principled responses to contemporary critiques.

**Keywords:** Islamic Family Law, Women's Rights, Feminist Critiques, Maqāsid al-Sharī'ah, Qur'ānic Precepts, Contemporary Feminist Approaches to Qur'ānic Family Law, Maqāsid-Based Exegesis

## INTRODUCTION

This study presents a critical and analytical examination of the Islamic family system as articulated in the Holy Qur'an, in light of contemporary critiques advanced by Orientalists and feminist thinkers. In modern academic and social discourse, women's issues are frequently assessed through Western normative frameworks, leading to persistent objections regarding Islamic family laws. Central themes such as marriage, guardianship (*Wilayah*), male responsibility (*Qiwamah*), polygyny, dower (*Mahr*), divorce, and the concept of Halala have been particularly targeted, often portrayed as manifestations of patriarchal dominance or gender inequality. The research systematically analyzes the arguments of contemporary Muslim feminist scholars, including Amina Wadud<sup>1</sup>, Tahir Ibn Ashur (d. 1363 AH) and *Aḥkām al-Qur'an*<sup>2</sup> by Allama Ashraf Ali Thanawi<sup>3</sup> (d. 1393 AH). Through these sources, the research demonstrates that Islamic family laws are not arbitrary or discriminatory constructs,

<sup>1</sup>. Amina Wadud is an American Muslim scholar specializing in Qur'anic interpretation. Born in 1952, she received her PhD in Islamic Studies from the University of Michigan. Wadud is known for developing a gender-inclusive Qur'anic hermeneutics that emphasizes ethical principles and challenges patriarchal readings of the text. See: Wadud, A. (1999). *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. New York: Oxford University Press, pp. 1–3, 72–75.

<sup>2</sup>. *Aḥkām al-Qur'ān* is a Hanafi jurisprudential tafsīr project initiated under Maulana Ashraf Ali Thanawi, compiled by his senior students — Zafar Ahmad Thanwi, Muhammad Shafi, Muhammad Idrees Kandhlawi, Sayyid Abd al-Shukūr Tirmidhi, and Jamil Ahmad Thanwi — to extract legal rulings from the Qur'an in accordance with traditional Hanafi methodology. See: *Aḥkām al-Qur'ān* (Vols. 1–5). Karachi: Idāratul Qur'ān wa Uloom-e-Islāmīyah. Vol. 1, pp. 1–10, Vol. 3, pp. 45–47

<sup>3</sup>. Ashraf Ali Thanawi (1863–1943) was a prominent South Asian Islamic scholar, jurist, and spiritual reformer associated with the Deobandi movement. Born in Thana Bhawan, India, he authored more than a thousand works on Islamic jurisprudence, ethics, spirituality, and Qur'anic exegesis. Thanawi emphasized practical guidance for Muslims, combining Hanafi jurisprudence with moral and spiritual instruction. Among his most significant contributions is *Aḥkām al-Qur'ān*, a multi-volume juristic tafsīr prepared under his supervision and compiled by his senior students, which systematically derives legal rulings (*aḥkām*) from Qur'anic verses. Thanawi's work profoundly influenced Islamic scholarship in South Asia and remains a reference for Hanafi fiqh and ethical

but rather form part of a coherent ethical and legal system aimed at preserving human dignity, safeguarding women's rights, ensuring family stability, and achieving social justice in accordance with the higher objectives of Maqasid al-Shariah.

The findings of this study indicate that many contemporary objections arise from isolating legal rulings from their Qur'anic context, moral philosophy, and purposive framework. When examined holistically, Islamic family law emerges as a balanced and principled system that integrates rights with responsibilities, flexibility with moral limits, and legal structure with ethical intent. This research thus contributes to a more nuanced and academically grounded understanding of Islamic family jurisprudence in contemporary debates.

### **Feminist Perspectives on the Legitimacy of Marriage and Guardianship (Wilayah)**

In Islamic jurisprudential tradition, marriage and guardianship (Wilayah) are two fundamental elements of the family system. Shariah has defined marriage as a contract of love, tranquility, and responsibility, while guardianship is described as a mechanism of protection and oversight.

However, in modern times, some Orientalist feminist scholars—such as Margot Badran, Leila Ahmed, Judith Tucker—and certain Muslim feminist authors—like Amina Wadud, Fatima Mernissi, Riffat Hassan—have raised objections regarding these concepts.

These objections can be summarized in three main claims:

1. Jurisprudential narratives depict marriage as male sexual ownership.
2. Guardianship and its related rules deny women personal freedom.
3. The purpose of marriage is sexual gratification rather than family stability.

Below, these claims are examined in detail.

#### **Claim 1: Women as Male Sexual Property in Marriage**

According to several feminist scholars, jurisprudential definitions present marriage as a “sexual contract” and a form of “dominance entitlement” for men.

For example, Leila Ahmed writes:

“إن الفقه الكلاسيكي للزواج يعامل النساء كأنهن شبه عبيد، إذ يملك الرجل بضع المرأة”<sup>1</sup>

“Classical jurisprudence treats women as if they were semi-slaves, for the man owns the sexual relationship with the woman.”

Similarly, Amina Wadud comments on jurists' definition of marriage:

“فقهاء قالوا عن النكاح: عقد يملك به الرجل بضع المرأة”<sup>2</sup>

Jurists defined marriage as a contract in which the man owns the sexual relation of the woman, thus limiting it to sexual gratification.<sup>2</sup>

She considers this interpretation as objectification of women.

In the same context, Judith Tucker writes:

“Islamic jurisprudence restricted the purpose of marriage to sexual enjoyment and did not recognize it as a relationship of affection or mercy.”<sup>3</sup>

#### **Claim 2: Guardianship Denies Women Freedom**

According to Orientalist feminist theory, guardianship represents patriarchal authority. Ziba Mir-Hosseini expresses:

“A woman's right to choose her spouse has been taken away.”<sup>4</sup>

She says in this interpretation, the guardian's role becomes a form of compulsory control, restricting a woman's freedom in selecting her life partner.

#### **Claim 3: Marriage's Purpose is Sexual Gratification**

In both Orientalist and contemporary feminist perspectives, marriage is argued to primarily serve sexual gratification. They claim that the Mahr (dower) is treated as a woman's price, implying that paying it is an insult, and that men perceive women as objects of purchase.

Dr. Wahbah al-Zuhayli<sup>5</sup> notes this objection:

---

guidance. See: Ahkām al-Qur'ān (Vols. 1–5). Karachi: Idāratul Qur'ān wa Uloom-e-Islāmīyah, Vol. 1, pp. 1–10; Vol. 3, pp. 45–47

<sup>1</sup> . Leila Ahmed, *Women and Gender in Islam*, 1992

<sup>2</sup> . Amina Wadud, 1999، قراءة نسوية في النصوص المقدسة، ص 74، دار الساقى، لندن،

<sup>3</sup> . Judith Tucker, *Women, Family, and Gender in Islamic Law*, Cambridge University Press

<sup>4</sup> . Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran*, Princeton University Press, 1999, p. 49

<sup>5</sup> . Wahbah al-Zuhayli (1932–2015) was a prominent Syrian Islamic scholar, jurist, and professor of Islamic law, widely recognized for his expertise in Hanafi fiqh and Usul al-fiqh (principles of Islamic jurisprudence). He served as a professor at the University of Damascus and authored numerous works on Islamic law, Qur'anic interpretation, and contemporary legal issues. Al-Zuhayli's scholarship is distinguished by its systematic and modern approach, combining classical jurisprudential methodology with contemporary contexts. See: Zuhayli, W. (2003). *Al-Fiqh al-Islami wa Adillatuh* (Vols. 1–8). Damascus: Dar al-Fikr, Vol. 1, pp. 1–10, Vol. 3, pp. 78–85

”زعم بعضُ المستشرقين أنَّ المهرَ في الإسلام يشبهُ ثمنَ الشراء، وهو نوعٌ من إهانةِ المرأة“<sup>1</sup>  
“Some Orientalists claim that the Mahr in Islam resembles the price of purchase, which is a kind of insult to women.”

### Refutation of Feminist Critiques on Guardianship (Wilayah) in Marriage

In response to contemporary feminist and Orientalist criticisms regarding guardianship (Wilayah) in marriage, two prominent scholars of modern Usul and Maqasid al-Shariah—Imam Muhammad al-Tahir ibn Ashur and Allama Ashraf Ali Thanawi provide a balanced and profound scholarly rebuttal. Their approach not only aligns with the textual evidence of Shariah but also considers the higher objectives of the law (*Maqasid*) and human welfare.

So According to Ahkam ul Quran , guardianship does not imply the denial of a woman’s freedom. Rather, it represents Protective and Trustee-based Legislation, founded upon preservation (Hifz), rectification (Islah), and prevention of harm (Daf’ al-Darar). In this methodology, the purpose of Wilayah is not coercion or domination, but the safeguarding of the woman’s interests in delicate and long-term matters such as marriage. Ahkam ul Quran illustrates this principle in these words:

”ألا ترى أنها تستحق الولاية على نفسها في مالها ؟ فكذلك في بضعها وقد اتفق الجميع على جواز نكاح الرجل وعقده على نفسه إذا كان جائز التصرف في ماله فكذلك المرأة“<sup>2</sup>

”Do you not see that a woman is considered capable of guardianship over her own property? Likewise, she is competent in her marital affairs. Since everyone agrees that a man may contract his own marriage if he has authority over his property, the same principle applies to women.”

Thanwi emphasizes that in some historical periods, the application of Wilayah manifested elements of coercion and compulsion. However, this was not the result of any definitive Qur’anic injunction, but rather the outcome of specific historical and societal circumstances affecting juristic reasoning. Therefore, equating Wilayah with absolute coercion contradicts scholarly integrity.

In this context, Thanawi critiques Orientalist objections to Wilayah as arising from textual reductionism (literalist reading without context) and neglect of the objectives of Shariah. According to him, such criticisms fail to consider the holistic understanding of texts or the protective and corrective purposes of the law.

And in the perspective of Tahrir wa Tanwir for Ibn Ashur situates guardianship within the broader Maqasidi framework of Shariah, emphasizing its role in ensuring family stability, social equilibrium, and protection of rights for all parties. For him, the essence of Wilayah is not to diminish women, but to ensure seriousness, balance, and social responsibility in marital matters.

He mentioned that Shariah does not render a woman entirely devoid of authority. Rather, she is primarily competent for guardianship over herself, particularly if she is sane, mature, and capable of managing her financial affairs. He elaborates this principle as follows:

It is thus understood that the concept of Wilayah emerges as protective, purposive, and corrective legislation, rather than an instrument of coercion or domination. Consequently, reducing Wilayah to mere paternal control is to ignore the Qur’anic texts, juristic diversity, and objectives of Shariah.

Both scholars concur that many modern objections to Wilayah arise from projecting historical applications onto the original Shariah mandate, while the true Shariah approach emphasizes a woman’s competency, dignity, and welfare.

### Scholarly Refutation of Feminist Critiques on Dower (Mahr)

As discussed in the context of Wilayah, Islamic law does not treat a woman as subordinate or dependent, but grants her financial, social, and moral independence.

Imam Muhammad al-Tahir ibn Ashur explains the concept of Mahr in his exegesis of:

(وَأَثَرُ النِّسَاءِ صِدْقَاتِهِنَّ نِحْلَهُ)<sup>3</sup>

He clarifies that "nihlah" indicates that Mahr is a legal right of the woman, granting her financial independence and dignity. He writes:

”ولكن الله جعله هديةً واجبةً على الأزواج إكرامًا لزوجاتهم، وإنما أوجبه الله لأنه تقرر أنه الفارق بين النكاح وبين المخادنة والسفاح“<sup>4</sup>  
“Allah made it a compulsory gift by husbands to honor their wives, distinguishing lawful marriage from illicit relations (Zina).”

Thus, the purpose of Mahr is not to treat women as commodities, but to establish marriage as a responsible and dignified social and moral contract, respecting the woman as a full partner.

Allama Ashraf Ali Thanawi similarly emphasizes that Mahr is not a price, but a Shariah-sanctioned means to protect a woman’s rights and honor, providing economic security and social stability, especially in cases where marital life faces instability.

Consequently, interpreting Mahr as mere commodification or humiliation constitutes a reductionist reading, ignoring the moral and purposive context of Shariah

### Feminist & Orientalist Critiques of Polygyny in Islamic Family Law

<sup>1</sup> . Wahbah al-Zuhayli, al-Fiqh al-Islami wa Adillatuh, Vol. 7, p. 25, Damascus: Dar al-Fikr, 1997

<sup>2</sup> - Ahkam ul Quran, V, 01 , P 403

<sup>3</sup> . Al nisa, 04

<sup>4</sup> .Al tahrir wa tanwir, V4,P230

From the Orientalist perspective, marriage is understood primarily as a social contract, grounded in mutual consent and interpersonal relations between a man and a woman. Within this framework, some scholars question the legitimacy of polygyny (multiple wives).

Goldziher<sup>1</sup> writes:

"Marriage is a worldly institution in Islam, not a sacred bond as in Christianity."<sup>2</sup>

He also refers to the Prophet ﷺ's statement highlighting human expertise in worldly affairs:

"أنتم اعلم بأمور دنياكم"<sup>3</sup>

"You know better about your worldly matters."

Similarly, Montgomery Watt<sup>4</sup> notes that the Prophet ﷺ's multiple marriages were based on his personal experiences and social considerations, not as a general legislative directive:

"The Prophet's legislation regarding marriage reflected his personal experience and social concerns, not the result of divine revelation."<sup>5</sup>

Feminist scholars argue that polygyny reflects a male privilege embedded in Arabian social norms and is not an ideal model. Margot Badran states:

"Polygyny often leads to family disintegration, psychological harm to women and children, and a lack of trust in households where a man has two or three wives."<sup>6</sup>

Amina Wadud adds that the Prophet ﷺ did not permit a second marriage for Aliduring Fatimah's lifetime, which she interprets as evidence of moral preference for monogamy:

"The Prophet's refusal to permit a second marriage for his daughter demonstrates an ethical preference for monogamous marriage."<sup>7</sup>

Feminist scholars also invoke the Qur'anic injunction on justice:

(فَإِنْ خِفْتُمْ أَلَّا تُعَدِلُوا فَوَاحِدَةً)<sup>8</sup>

"If you fear that you cannot act justly, then marry only one."

Fatima Mernissi interprets this as indicating that emotional justice among wives is impossible, making multiple marriages practically unfeasible under the Qur'anic condition.

"Since emotional equality between wives is impossible, the Qur'anic condition of justice renders polygyny practically unworkable "<sup>9</sup>

#### Scholarly Refutation on the critique of polygyny

Contemporary critics often present polygyny as male privilege or a means of satisfying personal desires. This interpretation is superficial and unscientific, as it disregards Qur'anic directives, juristic conditions, and Shariah objectives.

The Qur'an permits polygyny under strict conditions, not as an unrestricted right:

(فَإِنْ خِفْتُمْ أَلَّا تُعَدِلُوا فَوَاحِدَةً)<sup>10</sup>

This verse establishes that justice is the primary condition. If a man fears he cannot be just, he must marry only one. Polygyny is thus a conditional allowance, not an obligatory or preferred rule.

Imam Ibn Ashur clarifies that polygyny is a social solution within the purposive framework of Shariah, not a grant of unlimited male privilege:

<sup>1</sup> . Ignác (Ignaz) Goldziher (22 June 1850 – 13 November 1921) was a Hungarian Jewish scholar and one of the founders of the modern academic study of Islam, particularly in hadith and early Islamic history. Born in Székesfehérvár, Hungary, he studied at universities in Budapest, Berlin, Leipzig, and Leiden, and traveled through Syria, Palestine, and Egypt, where he attended lectures by Muslim teachers at Al-Azhar University, Goldziher became a university lecturer in Budapest and later a professor of Semitic languages and Islamic studies. He is best known for his two-volume work *Muhammedanische Studien* (Muslim Studies), in which he applied historical-critical methods to Islamic texts, arguing that many hadith traditions reflect later sociopolitical developments rather than the earliest period of Islam. see: Goldziher, I. (1967). *Muslim Studies* (S. M. Stern, Ed.; English transl.). London: Routledge & Kegan Paul, Vol. 2, pp. 24–25

<sup>2</sup> . Gold Zeher, *Introduction to Islamic Theology and Law*, p. 57, 1981, Princeton

<sup>3</sup> . Sahih Muslim, Kitab al-Fada'il, Bab: Wajib Ittiba' Ma Qala Shari'an, 6277

<sup>4</sup> . W. Montgomery Watt (1909–2006) was a Scottish historian and scholar of Islam, widely recognized for his contributions to Qur'anic studies, early Islamic history, and the biography of the Prophet Muhammad (peace be upon him). He served as Professor of Arabic and Islamic Studies at the University of Edinburgh. Watt's scholarship is notable for combining rigorous historical-critical methods with a sympathetic understanding of Islamic tradition. See: Watt, W. M. (1953). *Muhammad at Mecca*. Oxford: Oxford University Press, pp. 1–15, 89–92.

<sup>5</sup> . Montgomery Watt, *Muhammad in Medina*, p. 227, Oxford 1956

<sup>6</sup> . Margot Badran, *Feminism in Islam: Secular and Religious Convergences*, p.103, One World 2009

<sup>7</sup> . Amina wadud, *inside the gender jihad*, p.58, Axford 2006

<sup>8</sup> . Al Quran, Al Nisa 3

<sup>9</sup> . Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society*, Revised Edition, Indiana University Press, 1987, p. 49.

<sup>10</sup> . Al Quran, Al Nisa 03

"وقد شرع الله تعدد النساء للقادر العادل لمصالح جمّة"<sup>1</sup>

"Allah has legislated polygyny for a just and capable person, for multiple social interests."

Polygyny is therefore conditional on justice, ability, and social welfare, not on male dominance.

Allama Ashraf Ali Thanawi likewise views polygyny as regulated and contextual, applicable only under specific social conditions. He emphasizes that the Prophet ﷺ's allowance of more than four wives was exceptional, supported by explicit texts and consensus of the Ummah, and does not extend to ordinary Muslims:

"تحليل الله تعالى أزواجه الموجودة في نكاحه مع كثرتهم وزياتهن على الأربع وهذا مختص بالرسول ﷺ، لا يجوز لأحد من المسلمين أن يزيد على الأربع"<sup>2</sup>.

"Allah permitted the Prophet ﷺ to have more than four wives, which is unique to him. No Muslim is allowed to exceed four wives, as stated in the Qur'an and confirmed by the consensus of the Ummah."

Thus, Islam does not provide unlimited polygyny, and any contemporary objections must be examined in light of Qur'anic conditions, jurisprudential regulations, and prevention of social misuse.

Polygyny is not a tool for demeaning women or satisfying personal desire, but a conditional social solution, anchored in justice, responsibility, and public interest, fully aligned with the Maqasid al-Shariah.

### **Feminist & Orientalist Critique on Qiwamah in Islamic Family Law**

According to feminist movements, the concept of male *Qiwamah* has been interpreted as granting men authority or dominance over women. Fatima Mernissi asserts:

"Al-Qiwamah establishes the man's authority over the woman and legitimizes the patriarchal system in Islamic societies."<sup>3</sup>

Mandating *Qiwamah* for men creates a patriarchal social structure, perpetuating male control. However, Amina Wadud argues that interpreting the Qur'anic reference to *Qiwamah* as male superiority over women is a misconception. She emphasizes that such an understanding contradicts the Qur'anic and Prophetic texts which affirm equality between men and women:

"The Qur'anic mention of *Qiwamah* does not imply male superiority over women; interpreting it as such is a misunderstanding that conflicts with texts affirming gender equality."<sup>4</sup>

Similarly, Margot Badran and Leila Ahmed maintain that obligating *Qiwamah* for men represents a patriarchal reading, which risks ossifying the social system:

"Al-Qiwamah is a patriarchal jurisprudential construct, not a divine principle. The concept of *Qiwamah* embodies the patriarchal social system of early Islam, not the essence of the religion itself."<sup>5</sup>

Thus, these scholars argue that male *Qiwamah* should be understood as a responsibility and duty related to maintenance and family protection, not as a justification for gender hierarchy or domination.

### **Refutation of the Critique on Qiwamah**

Contemporary feminist and Orientalist discourses often portray *Qiwamah* (male responsibility) as a symbol of male dominance and gender inequality, whereas this interpretation reflects ignorance of the Qur'anic texts, juristic elaborations, and objectives of Shariah (Maqasid al-Shariah).

The reality is that *Qiwamah* is not a privilege or a position of power, but a system based on responsibility, financial support, and service.

Imam Ibn Ashur connects the concept of *Qiwamah* to economic responsibility. According to him, the Qur'an assigns financial responsibilities to men because historically and socially, the duty of earning a livelihood was predominantly placed on men. He writes:

"وأضيفت الأموال إلى ضمير الرجال لأن الاكتساب من شأن الرجال، فقد كان في عصور البداوة بالصيد وبالغارة وبالغنائم والحرب، وذلك من عمل الرجال"<sup>6</sup>.

"Financial responsibilities are ascribed to men because earning a livelihood has historically been their function. In the era of Bedouins, men undertook hunting, raiding, spoils, and agriculture."

From this explanation, it is clear that *Qiwamah* pertains to financial support and economic responsibility, not gender superiority. Imam Ibn Ashur explains that a man is called *Qawwām* because he is responsible for the sustenance, housing, and material needs of the woman. Maintenance (*nafaqah*) is an essential part of *Qiwamah*, and if maintenance ceases, the functional meaning of *Qiwamah* is lost.

Thanwi emphasizes the moral and fiduciary aspects of *Qiwamah*. He explains it in light of the Prophet ﷺ's statement during the Farewell Pilgrimage, narrated by Jabir in Sahih Muslim:

"فاتقوا الله في النساء، فإنكم أخذتموهن بأمانة الله، واستحللتم فروجهن بكلمة الله"<sup>7</sup>.

"Fear Allah regarding women, for you have taken them as a trust from Allah, and have made lawful their private parts by Allah's word."

1. Al thir wa tanwir, V4, p,233

2. Ahkam ul Quran , v4, p 81

3. Mernissi, Al-Nisawiyya fi al-Islam: Ittiqaat 'Ilmaniyya wa Diniyya, p. 73

4. Wadud, Qur'an and Woman, p. 110

5. Badran, Feminism in Islam, p. 45; Ahmed, Women and Gender in Islam, p. 78

6. Al tahrir wa tanwir, V5 P38

7. Ahkam ul Quran, V1, p475, Hadith , Abu Dawood 1905

From this, Thanawi concludes that male Qiwamah is founded on trust, responsibility, and piety, not coercion or dominance. The man is not a ruler over the woman, but a trustee tasked with her care and protection.

Portraying Qiwamah as an instrument of women's degradation is fundamentally mistaken. The true purpose of Qiwamah is to liberate women from the burden of financial struggle, ensure their dignity and protection, provide systematic support through maintenance, housing, and essential needs.

The allocation of Qiwamah to men is based on natural differences in responsibilities, not an inherent claim to superiority. Islam has not annulled Qiwamah, but assigns the man the role of guardian and administrator within the household.

### **Feminist Critiques on interpretation of Wa-Idribuhunn**

Feminist movements have argued that patriarchal interpretations of Qiwamah have been used to justify male authority over women, including the controversial interpretation of Qur'anic verses such as "Wa-Idribuhunna", which some have presented as sanctioning domestic discipline. Such readings, critics contend, contradict the higher objectives (Maqasid) of Shariah.

Some contemporary Muslim feminist scholars assert that the concept of Qiwamah in juristic interpretations is more reflective of the patriarchal social structures of early Islamic societies rather than an intrinsic divine principle. It is therefore historically and socially conditioned rather than purely Qur'anic.

Amina Wadud emphasizes that the Qur'an does not grant men superiority or absolute authority over women; rather, the verse on Qiwamah organizes a fair and balanced distribution of responsibilities within the family. She notes, however, that certain juristic interpretations have misused this verse to legitimize male domination, diverging from the Qur'anic intent:

"The Qur'anic injunction on Qiwamah does not provide men with dominance or absolute power over women; instead, it structures a balanced distribution of familial responsibilities. Some juristic interpretations, however, have inappropriately used it to justify male authority over women."<sup>1</sup>

Fatima Mernissi also critiques exegetical traditions that allowed a husband to strike his wife in cases of nushuz (marital discord), arguing that such interpretations humiliate women and promote social norms contrary to Islam's foundational objectives of justice, mercy, and gentleness:

"Exegetical traditions permitting the husband to strike his wife in cases of disobedience have undermined women's dignity and propagated social practices inconsistent with the core objectives of Islam: justice, compassion, and ethical conduct."<sup>2</sup>

Leila Ahmed, in her historical analysis, emphasizes that such understandings of Qiwamah reflect the patriarchal structures of early society rather than the essential spirit of the divine message, which upholds equality and human dignity between men and women:

"This understanding of Qiwamah mirrors the patriarchal social structure of early Islam, not the true spirit of the divine message, which is rooted in the equality and dignity of men and women."<sup>3</sup>

Thus, contemporary feminist scholarship highlights that patriarchal readings of Qiwamah and related verses, including Wa-Idribuhunna, must be re-examined within their historical context and in light of the overarching ethical and moral objectives of Shariah.

### **Scholarly Refutation of the Alleged Justification of Violence in "Wa-ḍribūhunna"**

Contemporary feminist movements have interpreted the Qur'anic concept of Qiwamah (male responsibility) as a patriarchal construct that justifies violence against women, particularly citing the verse:

(وَاضْرِبُوهُنَّ)<sup>4</sup>

However, such interpretations are contrary to the objectives of Shariah (Maqasid al-Shariah). Imam Ibn Ashur interprets this verse in the context of a corrective and gradual process, not as a license for violence. He writes:

"مقصود منه الترتيب كما يقتضيه ترتيب ذكرها مع ظهور أنه لا يراد الجمع بين الثلاثة، والترتيب هو الأصل والمتبادر في العطف بالواو: يعظها، فإن قبلت، وإلا هجرها، فإن هي قبلت، وإلا ضربها"<sup>5</sup>.

*"The intended meaning is a gradual corrective sequence, as indicated by the order mentioned in the verse. The three measures are not meant to be applied simultaneously. First, admonish; if she obeys, the matter ends. Otherwise, separate in bed; if she complies, all is well. Only as a last resort is striking mentioned."*

According to him the verse aims at household correction, not punishment or revenge & the sequence admonition, separation, then striking, represents gradually escalating measures, where the ultimate goal at every stage is reconciliation and reform of the marital relationship.

Thanwi emphasizes that the striking mentioned in the verse is limited and non-harmful. It must not inflict physical pain, leave marks, or be carried out in anger or vengeance. The ultimate objective of the verse is reform and preservation of the marital bond, not humiliation or oppression of the woman. Also the striking is described as a last resort and an undesired measure, not a standard or routine practice.

### **Feminist Critique on Women's Travel in Islam:**

<sup>1</sup> . Wadud, Qur'an and Woman, p. 112

<sup>2</sup> . Mernissi, Al-Nisawiyya fi al-Islam, p. 78

<sup>3</sup> . Ahmed, Women and Gender in Islam, p. 85

<sup>4</sup> . Al Quran Al Nisa 34

<sup>5</sup> . Al Tahrir wa tanwir, V4, P45

Some modern thinkers claim that Islam limits women's freedom, particularly on the grounds that Shariah does not permit women to travel without a mahram (male guardian). According to them, this restriction contradicts Islamic principles of equality and liberty.

Amina Wadud argues:

"The Qur'an does not contain any explicit or categorical prohibition against a woman traveling without a mahram; rather, such restrictions emerged through later juristic interpretations shaped by particular social and cultural contexts, rather than from the core ethical message of the Qur'an."<sup>1</sup>

She emphasizes that no clear and absolute Qur'anic text exists forbidding a woman's travel without a guardian. These rulings are later juristic adaptations, formed under particular social and cultural circumstances, rather than being a direct expression of the Qur'an's fundamental message.

Fatima Mernissi similarly contends:

"The restriction of women's movement through the requirement of a mahram has no explicit foundation in the Qur'an; rather, it represents a patriarchal mechanism developed within historical and social contexts to regulate and control women's presence in the public sphere."<sup>2</sup>

This view frames the mahram requirement as a social mechanism of oversight, not a divinely mandated prohibition.

Riffat Hassan adds:

"Riffat Hassan argues that restricting a woman's travel by mandating the presence of a mahram is not grounded in explicit Qur'anic injunctions and stands in tension with the broader ethos of the Prophetic Sunnah, which affirms women's moral agency, dignity, and active participation in social life."<sup>3</sup>

Thus, restricting travel violates neither the Qur'anic injunctions nor the ethos of the Sunnah, which uphold a woman's autonomy, honor, and right to self-determination.

#### **Scholarly Refutation on Women Travel**

Ibn Ashur emphasizes that Qur'anic texts and their surrounding juristic regulations should not be conflated. Many fiqh rules were formulated in specific historical and social contexts to protect women's welfare, prevent fitna, and ensure safety, not to limit freedom. Treating these juristic restrictions as a direct and mandatory meaning of the Qur'an would be a violation of scholarly integrity.

Thanawi stresses that if juristic applications from a specific era or social context result in outcomes contrary to Shariah's objectives today, it is permissible and sometimes necessary to revisit their application. The primary aim of Shariah is always protection of welfare (maslaha) and prevention of harm (mafsadah), and ijtihad remains open to achieve these ends.

#### **Feminist Critiques of the Islamic Divorce System**

Modern thinkers and feminist movements raise concerns that Islamic divorce laws weaken the sanctity and seriousness of marital life. They argue that the system makes termination of marriage relatively easy, potentially threatening family stability and grants men a unilateral authority over divorce without requiring judicial oversight or the wife's consent.

Joseph Schacht states:

"Islamic divorce laws grant men absolute and unrestricted authority; they can dissolve a family with a single word, without judicial supervision."<sup>4</sup>

Fatima Mernissi comments:

"The unilateral right of a man to divorce at any moment, without consultation or accountability, reflects a patriarchal legal structure that threatens the psychological security and social dignity of women."<sup>5</sup>

Leila Ahmed highlights practical concerns:

"A woman's future may be destroyed by a single word spoken in anger, reflecting the instability of this legal system."<sup>6</sup>

#### **Feminist Critique on Men's Authority in Divorce (*Talaq*)**

Critics claim that men's exclusive right to pronounce divorce is a patriarchal privilege codified in Islamic law. Joseph Schacht says: "Islamic family law merely codifies a patriarchal social system, granting men privilege at every legal juncture."<sup>7</sup>

<sup>1</sup> . Wadud, *Qur'an and Woman*, 1999; *Inside the Gender Jihad*, P78, 2006.

<sup>2</sup> . Mernissi, *The Veil and the Male Elite*, P92, 1991

<sup>3</sup> . Riffat Hassan, *An Islamic Perspective on Women's Rights in human rights in religious traditions*, P127, *Addion million New york*

<sup>4</sup> . Joseph Schacht, *An Introduction to Islamic Law*, Oxford University Press, 1964, p. 167.

<sup>5</sup> , Mernissi, *the veil & the male elite*, P42

<sup>6</sup> . Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*, Yale University Press, 1992, p. 66.

<sup>7</sup> . Joseph Schacht, *Introduction to Islamic Law*, Oxford: Clarendon Press, 1964, p. 152.

Fatima Mernissi: “Sharia grants men unilateral authority in talaq (triple divorce) without requiring justification or spousal consent, while women are deprived of an equivalent right. This legal inequality reflects a deeply embedded patriarchal jurisprudence.”<sup>1</sup>

These critiques present divorce as unbalanced and potentially oppressive to women.

### **Feminist Critiques of Halala**

The practice of halala (remarriage before returning to a former spouse after triple divorce) is criticized by both modern feminist and some Western scholars:

Kecia Ali<sup>2</sup> mentioned that: “Halala turns the divorced woman into merely the object of a sexual transaction; she must marry another man temporarily to return to her first husband. This constitutes institutionalized humiliation and commodification of women in the name of religion.”<sup>3</sup>

Amina Wadud says :“Halala is not a Qur’anic mandate but a patriarchal distortion, forcing women into a humiliating process just to regain marital rights. It exemplifies how male-dominated jurisprudence has used marriage to subordinate women.”

Critics’ concerns that Halala is viewed as undermining women’s dignity and contradicting Shariah objectives such as justice, human honor, and mercy.

### **Scholarly Refutation on the critiques of Talaq & Halala**

Ibn Ashur writes:

“Divorce is permissible because some marital relationships may encounter irreconcilable differences. Shariah allows divorce as a necessary, regulated solution to prevent harm, ensuring both spouses’ well-being.”<sup>4</sup>

Divorce operates within a judicial and limited framework, including iddah, financial rights, and protective measures for the wife. Shariah’s approach ensures that divorce is executed with safeguards, preventing arbitrary or harmful outcomes e emphasizes: divorce is allowed for necessity and welfare, not to violate women’s rights or dignity. And about the system of Halala ibn e Ashur says: The purpose of halala is to protect the seriousness and stability of marriage, ensuring marital relations are not governed by impulsive desire. It acts as a precautionary and corrective mechanism, not a means to degrade women.

Halala ensures that reunion after triple divorce occurs under controlled, regulated circumstances, safeguarding both marital integrity and social order.

Many critiques arise from partial readings of texts or ignoring context and objectives Ibn Ashur and Thanawi provide a balanced, purpose-oriented approach, integrating textual meaning with social and ethical outcomes

## **CONCLUSION**

The Islamic family system constitutes a social framework that ensures not only the stability of the family but also the preservation of human dignity, justice, and moral responsibilities. In the contemporary era, increased attention has been paid to women’s issues, accompanied by critical examinations of the Islamic family system. Modern feminist thinkers and some orientalist scholars have raised objections concerning marriage, guardianship (wilayah), male authority (qiwamah), polygamy, dower (mahr), divorce, and the practice of halala. Many of these critiques, however, often derive from a limited historical perspective, disconnected from the broader objectives and principles of Islamic law.

Regarding marriage and guardianship, some orientalist and feminist authors argue that classical jurisprudence frames marriage as male ownership of female sexuality and that guardianship restricts women’s autonomy. They claim that marriage serves sexual satisfaction rather than family stability, and that the dower functions as a price for the woman. However, scholarly analyses by figures such as Imam Muhammad al-Tahir ibn Ashur and Allama Ashraf Ali Thanvi present a balanced and comprehensive counterpoint. They argue that guardianship is designed as a protective and supervisory role intended to safeguard women’s interests and the integrity of marital relationships, not to impose coercion or dominance. Similarly, the dower is not a price for the woman but a lawful right that ensures her financial security and independence within the marital framework.

Polygamy has also been criticized by contemporary scholars as a manifestation of male privilege and female subordination. Yet, the Qur’an permits polygamy under strict conditions, emphasizing justice and equity as prerequisites. According to Ibn Ashur and Thanvi, polygamy is a conditional, socially-oriented solution within the objectives of Shariah, aimed at ensuring fairness, responsibility, and collective welfare rather than serving male desires or promoting gender hierarchy.

<sup>1</sup> . Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women’s Rights in Islam*, Reading: Addison-Wesley, 1991, pp. 120–121.

<sup>2</sup> . Kecia Ali is a contemporary American scholar of Islamic law, ethics, and gender studies. She specializes in topics related to Islamic family law, marriage, sexuality, and feminist interpretations of Islamic texts. See : *Sexual Ethics and Islam*, oxford university press 2006

<sup>3</sup> . Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur’an, Hadith, and Jurisprudence*, Oxford University Press, 2006, pp. 102–103.

<sup>4</sup> . *Al Tahrir wa Tanvir* V29, p295

The concept of male authority (*qiwamah*) has similarly been contested by modern feminist discourse. From the Qur'anic and prophetic perspective, however, *qiwamah* does not confer absolute control or superiority. It establishes a system of responsibility, guardianship, and service: men are tasked with the financial support, protection, and well-being of their families. The system is thus intended to preserve women's dignity and autonomy rather than limit it

Verses related to disciplinary measures, such as "strike them" (*waidribuhunna*), have been widely misunderstood. Scholarly interpretations by Ibn Ashur and Thanvi indicate that these directives are corrective and non-harmful, intended solely to resolve marital discord and restore harmony. They are bounded by strict conditions and steps, with the ultimate aim of reconciliation rather than punishment.

Regarding women's travel and the requirement of a mahram, feminist and orientalist critiques have often framed these rules as restrictive. Critical analysis shows that such provisions were historically contextual and designed for safety and protection; they are not absolute prohibitions on contemporary women's mobility.

Divorce and halala have also drawn criticism as giving unilateral control to men or undermining women's dignity. However, jurisprudential analysis demonstrates that these laws are bounded by ethical, social, and legal safeguards. The procedures of divorce and halala are structured to preserve justice, family integrity, and women's rights, rather than to serve arbitrary male authority.

This critical review highlights that many contemporary objections arise from historical or contextual misunderstandings and are often disconnected from the Qur'anic text and the objectives of Shariah. The core purpose of Islamic law remains the protection of women's rights, dignity, justice, and family welfare.

### Recommendations:

Some recommendations regarding this topic are as follows:

1. Contemporary critiques should be analyzed within the comprehensive framework of Qur'anic texts, contextual interpretation, and the objectives of Shariah.
2. Principles of polygamy, guardianship, *qiwamah*, and dower should be understood within their ethical, protective, and justice-oriented context rather than through a lens of gender bias or subordination.
3. Divorce and halala must be interpreted with reference to justice, responsibility, and family stability.
4. Women's autonomy, social participation, and financial independence should be safeguarded through an objective understanding of the *maqasid* (higher objectives) of Shariah, in alignment with contemporary legal and social norms.
5. Education and public awareness should emphasize the authentic principles of Islamic family law to reduce misconceptions and misinterpretations

Through a scholarly and objectives-based approach, the Islamic family system can respond to modern critical inquiries while ensuring women's rights, family stability, and social equilibrium.

### BIBLIOGRAPHY

1. Al-Qur'Ān, Nisa, 03-34
2. Ahmed, Leila. 1992. *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven: Yale University Press, pp. 1–6, 128–132.
3. Ashur, Muhammad al-Tahir ibn. 1984. *\*Al-Taḥrīr wa al-Tanwīr\**. Tunis: al-Dār al-Tūnisiyya li'l-Nashr, vol. 1, pp. 1–5, 38–45.
4. Mernissi, Fatima. 1991. *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam\**. Boston: Perseus Books, pp. 1–5, 49–53.
5. Mir-Hosseini, Ziba. 2000. *Marriage on Trial: A Study of Islamic Family Law in Iran and Morocco*. London: I.B. Tauris.
6. Mir-Hosseini, Ziba. 2000b. *Islam and Gender: The Religious Debate in Contemporary Iran*. Princeton: Princeton University Press, pp. 1–4, 33–36.
7. Schacht, Joseph. 1964. *An Introduction to Islamic Law*. Oxford: Clarendon Press, pp. 1–6, 34–39.
8. Thanwi, Ashraf Ali, supervisor, et al. 1987. *Ahkām al-Qur'ān\**. Multi-volume. Karachi: Idāratul Qur'ān wa Uloom-e-Islāmīyah, Vol. 1, pp. 1–10; Vol. 3, pp. 45–47.
9. Tucker, Judith E. 2008. *Women, Family, and Gender in Islamic Law*. Cambridge: Cambridge University Press.
10. Wadud, Amina. 1999. *Qur'an and Woman: Rereading the Sacred Text from a Feminist Perspective*. New York: Oxford University Press, pp. 1–3, 72–75.
11. Watt, W. Montgomery. 1953. *Muhammad at Mecca*. Oxford: Oxford University Press, pp. 1–15, 89–92.
12. Watt, W. Montgomery. 1976. *Muhammad at Medina*. Oxford: Oxford University Press.
13. Zuhayli, Wahbah. 2003. *Al-Fiqh al-Islami wa Adillatuh*. Damascus: Dar al-Fikr, Vols. 1–8, Vol. 1, pp. 1–10; Vol. 3, pp. 78–85.
14. Badran, Margot. 2009. *Feminism in Islam: Secular and Religious Convergences\**. Oxford: Oneworld Publications, pp. 1–4, 242–246.

- 
15. Goldziher, Ignác. 1967. *Muslim Studies*. Edited by S. M. Stern. London: Routledge & Kegan Paul, Vol. 2, pp. 24–25.
  16. Hassan, Riffat. 1999. *Feminist Interpretations of Islam*. In *Women in the Muslim World*, edited by R.M., Syracuse: Syracuse University Press.
  17. Hassan, Riffat 1996. “Feminism in Islam.” In *Women and Islam: Critical Concepts in Sociology*, vol. 1, edited by H. Moghissi, pp. 248–252. London: Routledge.
  18. Ahmed, Leila. 2011. *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven: Yale University Press.

**Journal Articles & Book Chapters**

19. Ali, Kecia. 2006. “Marriage, Divorce, and the Law of Halala in Contemporary Islamic Societies.” *Journal of Islamic Studies* 17, no. 3: 293–315.
20. Badran, Margot. 1995. “Women, Islam, and Patriarchy: A Comparative Perspective.” *Journal of Middle Eastern Women’s Studies* 1, no. 2: 35–57.