

Women, Gender, and Islamic Law

Key texts

This short list is meant to serve as a starting point for an exploration of women and Islamic law, especially family law. It includes primary sources, comparative essays, and monographic studies, both contemporary and historical.

Awde, Nicholas, trans. and ed. *Women in Islam: An Anthology From the Qur'an and Hadiths*. New York: St. Martin's Press, 2000.

Esposito, John L. with Natana J. DeLong-Bas. *Women in Muslim Family Law*. Syracuse, N.Y. : Syracuse University Press, 2001.

Mir-Hosseini, Ziba. *Marriage on Trial: A Study of Islamic Family Law, Iran and Morocco Compared*. London and New York: I.B. Tauris & Co., 1993.

Moors, Annelies. "Debating Islamic Family Law: Legal Texts and Social Practices." In Margaret L. Meriwether and Judith E. Tucker, eds. *Social History of Women and Gender in the Modern Middle East*. Boulder (CO): Westview Press, 1999.

Sonbol, Amira El Azhary, ed. *Women, the Family, and Divorce Laws in Islamic History*. Syracuse, N. Y.: Syracuse University Press, 1996.

Spectorsky, Susan A. *Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh*. [Selections from *Masa'il Ahmad ibn Hanbal*] Austin: University of Texas Press, 1992.

Tucker, Judith E. *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*. Berkeley: University of California Press, 1998.

Primary Legal Sources

Determining which legal texts are "canonical" in Islamic law is a subjective exercise; to present exhaustive coverage would be impossible and, more likely than not, the result would prove frustrating for the non-specialist. This list includes early texts, from the formative period of each Sunni school, as well as later authoritative texts from the classical period, and a few modern items. Because some of the Arabic texts have been published many times, I have not included information on specific editions. The texts are generally, but not always, divided into "books", with the relevant information included in a "Book of Marriage" (*Kitab al-Nikah*) and "Book of Divorce" (*Kitab al-Talaq*). Many, especially later, texts include further topical subdivisions, such as "Book of Maintenance" (*Kitab al-Nafaqa*) and "Book of the Waiting Period" (*Kitab al-Idda*).

The first group of texts is those available in English translation; the second group is comprised of Arabic texts. The English translations are not necessarily of the most important texts for each school, but their accessibility makes them a useful resource for those non-Arabic readers seeking to gain some familiarity with the jurists' style and process of reasoning as well as their substantive doctrines. There are texts for each of the four surviving schools of Sunni law, but no Shi'i text available in translation.

1. English texts

Ibn Baz, Abd al-Aziz ibn Abd Allah et. al. *Islamic Fatawa Regarding Women: Shariah Rulings Given by the Grand Mufti of Saudi Arabia Sheikh Ibn Baz, Sheikh Ibn Uthaimin, Sheikh Ibn Jibreen and Others on Matters Pertaining to Women*. Riyadh: Darussalam Publishers & Distributors, 1996.

Ibn Rushd. *The Distinguished Jurist's Primer: A translation of Bidayat al-Mujtahid*. 2 volumes. Nyazee, Imran Ahsan Khan, trans. Reading, UK : Centre for Muslim Contribution to Civilization : Garnet Publishing, 1994-1996.

al-Misri, Ahmad ibn Naqib. *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law* [Umdat al-Salik]. Revised edition. Keller, Nuh Ha Mim, trans. and ed. Beltsville (MD): Amana Publications, 1999 [1991]. *Has parallel Arabic text and commentaries; care is needed in distinguishing commentaries*

from original text.

Malik ibn Anas (Imam Malik) Aisha Abdurrahman At-Tarjumana and Yaqub Johnson, trans. Idris Mears, ed. *Al-Muwatta*. Norwich (England): Diwan Press, 1982. *Other translations are also available, but none with a full scholarly apparatus.*

Marghinani, `Ali ibn Abi Bakr, d. 1196 or 7. *The Hedaya, or Guide; a commentary on the Mussulman laws*. [Al-Hidayah] Charles Hamilton, trans. 2d ed., with pref. and index, by Standish Grove Grady. Lahore : Premier Book House, 1975. *This translation is sometimes a bit idiosyncratic.*

Spectorsky, Susan A. *Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh*. [Selections from *Masa'il Ahmad ibn Hanbal*] Austin: University of Texas Press, 1992. *Includes useful comparative introduction to marriage in Sunni Islamic law, though without reference to Hanafi jurisprudence.*

2. Arabic texts

Classical Law: History and Method

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh*. Cambridge: Cambridge University Press, 1997.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. (Revised edition) Islamic Texts Society.

Masud, Muhammad Khalid, Brinkley Messick, and David S. Powers, "Muftis, Fatwas, and Islamic Legal Interpretation." In Masud, Messick, and Powers, eds. *Islamic Legal Interpretation: Muftis and Their Fatwas*. Cambridge (MA) and London: Harvard University Press, 1996.

Classical Law: Doctrine and Analysis

Fadel, Mohammad. "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought." *IJMES*, 29, 1997, pages 185-204.

Gribtez, Arthur. *Strange Bedfellows -- Mut'at Al-Nisa' and Mut'at Al-Hajj: A Study Based on Sunni and Shi'i Sources of Tafsir, Hadith and Fiqh*. Berlin: Klaus Schwarz, 1994.

Hawting, G.R. "The Role of Qur'an and *Hadith* in the Legal Controversy about the Rights of a Divorced Woman during her Waiting Period (*Idda*). *JSOAS*, 52:3, pp. 430-445.

Marmon, Shaun E. "Domestic Slavery in the Mamluk Empire: A Preliminary Sketch." In Marmon, ed. *Slavery in the Islamic Middle East*. Princeton: Markus Wiener Publishers, 1999.

Reinhart, Kevin A. "Impurity/No Danger." [On menstruation] *History of Religions* (1990).

Sanders, Paula. "Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law." in Nikki R. Keddie, and Beth Baron, eds. *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender*. New Haven and London: Yale University Press, 1991.

Siddiqui, Mona "The Defective Marriage in Classical Hanafi Law: Issues of Form and Validity." In G.R. Hawting, J.A. Mojaddedi, and A. Samely, eds. *Studies in Middle Eastern Texts and Traditions in Memory of Norman Calder*. Oxford: Oxford University Press (on behalf of the University of Manchester), 2000.

———. "Mahr: Legal Obligation or Rightful Demand?" *Oxford Journal of Islamic Studies*.

———. "Law and the Desire for Social Control: An Insight into the Hanafi Concept of *Kafa'a* with Reference to the Fatawa 'Alamgiri." In Mai Yamani, ed. *Feminism in Islam: Legal and Literary Perspectives*. New York: New York University Press, 1996.

Historical Studies: Courts, Law, and Jurisprudence

Masud, Muhammad Khalid, Brinkley Messick, and David S. Powers, editors. *Islamic Legal Interpretation: Muftis and Their Fatwas*. Cambridge (MA) and London: Harvard University Press, 1996.

Moors, Annelies. *Women, Property, and Islam: Palestinian Experiences, 1920-1990*. Cambridge: Cambridge University Press, 1995.

Shaham, Ron. *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Shari'a Courts, 1900-1955*. Leiden and New York: E. J. Brill, 1997.

———. "A Woman's Place: A Confrontation With Bedouin Custom in the Sharia Court." *The Journal of the American Oriental Society* 113, no. 2 (1993).

Sonbol, Amira El Azhary, ed. *Women, the Family, and Divorce Laws in Islamic History*. Syracuse, N. Y.: Syracuse University Press, 1996.

Toledano, Henry. *Judicial Practice and Family Law in Morocco: The Chapter on Marriage From Sijilmasi's Al-'Amal Al-Mutlaq*. Boulder (CO): Social Science Monographs, 1981.

Tucker, Judith E. "Muftis and Matrimony: Islamic Law and Gender in Ottoman Syria and Palestine." *Islamic Law and Society* 1, no. 3 (1994).

Welchman, Lynn. "The Development of Islamic Family Law in the Legal System of Jordan." *International and Comparative Law Quarterly* 37 (1988): 868-86.

Women and the Family in Contemporary Legal Systems: Muslim and Non-Muslim Societies

Abdullah, Ustaz Yoonus. *Sharia in Africa*. Ijebu-Ode, Nigeria: Shebiotimo Publications, 1998.

Al-Hibri, Azizah Y. "Islamic Law and Muslim Women in America." in Marjorie Garber, and Rebecca L. Walkowitz, eds. *One Nation Under God? Religion and American Culture*. New York and London: Routledge, 1999.

Bara-Acal, Amer M., and Abdulmajid J. Astih. *Muslim Law on Personal Status in the Phillipines*. Quezon City, Phillipines: Central Professional Books, 1998.

Cachalia, Firoz. *The Future of Muslim Family Law in South Africa*. London: Centre for Applied Legal Studies and Johannesburg, University of the Witwatersrand. South African Constitutional Studies Centre, Institute of Commonwealth Studies, 1991.

Charrad, M. M. "Cultural Diversity Within Islam: Veils and Laws in Tunisia." In Herbert L. Bodman, and Nayereh Tohidi, eds. *Women in Muslim Societies: Diversity Within Unity*. Boulder (CO): Lynne Reiner Publishers, 1998.

El-Alami Sudqi, Dawoud and Doreen Hinchcliffe. *Islamic Marriage and Divorce Laws of the Arab World*. London and Boston: Kluwer Law International, 1996.

Haeri, Shahla. *Law of Desire: Temporary Marriage in Shi'i Iran*. Syracuse (NY) Syracuse University Press, 1989.

Hassan, Sharifa Zaleha Syed, and Sven Cedroth. *Managing Marital Disputes in Malaysia: Islamic Mediators and Conflict Resolution in the Syariah Courts*. Nordic Institute of Asian Studies Monograph Series, 75. Surrey: Curzon Press, 1997.

Hoodfar, Homa, editor. *Shifting Boundaries in Marriage and Divorce in Muslim Communities*. Montpellier, France: Women Living Under Muslim Laws, 1996.

Layish, Aharon. *Divorce in the Libyan Family: a Study Based on the Sijils of the Shari'a Courts of Ajdabiyya and Kufra*. New York: New York University Press and Jerusalem: Magnes Press, Hebrew University of Jerusalem, 1991.

Mahmood, Syed Tahir. *Personal Law in Islamic Countries: History, Text, and Comparative Analysis*. New Delhi; Academy of Law and Religion.

Matin, Abdul. *Bangladesh: The Muslim Personal Laws*. Dhaka: Palok Publishers, 1989.

Nakamura, Hisako. *Divorce in Java: A Study of the Dissolution of Marriage Among Javanese Muslims*. Yogyakarta, Gadjah Mada University Press.

Pearl, David and Werner Menski. *Muslim Family Law*. London : Sweet & Maxwell, 1998.

Shaheed, Farida. "Controlled or Autonomous: Identity and the Experience of the Network, Women Living Under Muslim Laws." *Signs* 19 (1994): 997-1019.

Hassan, Sharifah Zaleha Syed and Sven Cedroth. *Managing Marital Disputes in Malaysia: Islamic Mediators and Conflict Resolutions in the Syariah Courts*. Richmond, England: Curzon, 1997.

Contraception, Family Planning, and Abortion: Legal Issues

Al-Hibri, Azizah Y. "Family Planning and Islamic Jurisprudence." In *Religious and Ethical Perspectives on Population Issues*. Washington, D.C.: The Religious Consultation on Population, Reproductive Health and Ethics, 1993.

Musallam, Basim. *Sex and Society in Islam: Birth Control Before the Nineteenth Century*. Cambridge: Cambridge University Press, 1983.

Nazer, I.R., et. al., eds. "Sterilization and Abortion From the Point of View of Islam." In *Islam and Family Planning, II*, Beirut: ?, 1972.pp. 263-85.

Omran, Abdel Rahim. *Family Planning in the Legacy of Islam*. London New York: Routledge, 1992.

Rispler Chaim, Vardit. "The Right Not to Be Born: Abortion of the Disadvantaged Fetus in Contemporary Fatwas." *Muslim World* 89, no. 2 (1999).

Rogers, T. "The Islamic Ethics of Abortion in the Traditional Islamic Sources." *Muslim World* 89, no. 2 (1999): 122-29.

Rape Law in Pakistan

Haeri, Shahla. "The Politics of Dishonor: Rape and Power in Pakistan." in Mahnaz Afkhami, ed. *Faith and Freedom: Women's Human Rights in the Muslim World*. Syracuse (NY): Syracuse University Press, 1995.

Mehdi, Rubya. "The Offence of Rape in the Islamic Law of Pakistan." *International Journal of the Sociology of Law* 18 (1990): 19-29.

Quraishi, Asifa. "Her Honor: An Islamic Critique of the Rape Laws of Pakistan From a Woman-Sensitive Perspective." in Gisela Webb, ed. *Windows of Faith: Muslim Women Scholar-Activists in North America*. Syracuse (NY) : Syracuse University Press, 2000.

Zia, Afiya Shehrbano. *Sex Crime in the Islamic Context: Rape, Class, and Gender in Pakistan*. Lahore, Pakistan: ASR, 1994.

Shah Bano Case: Religious and Civil Law in India

These works all approach, from various angles, the controversial case of Shah Bano, an Indian Muslim woman divorced by her husband after many years of marriage. The controversy in this case centered on whether she

was limited, as generally agreed by Muslim law, to three months of support by her husband after he divorced her or whether she was entitled, as she asserted, to claim the significantly more liberal support envisioned for divorced women by Indian civil law. This case raised important questions about the interaction between religiously-based legal systems and civil law. A number of these books (and there are others on the subject) contain the text of court rulings or reproductions of press coverage, as well as analysis and argumentation.

Akhtar, Saleem. *Shah Bano Judgement in Islamic Perspective, a Socio-Legal Study*. New Delhi: Kitab Bhavan, 1994.

Awn, Peter J. "Indian Islam: The Shah Bano Affair." in John Stratton Hawley, ed. *Fundamentalism and Gender*. New York and Oxford: Oxford University Press, 1994.

Baxamusa, Ramala M. *A Historic Perspective on Muslim Personal Law in India*. Bombay: Research Unit on Women's Studies, Vithaldas Vidya Vihar, SNDT Women's University, 1984.

Bhatnagar, J. P. *Commentary on the Muslim Women: Containing the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Muslim Women (Protection of Rights on Divorce) Rules, 1986, Maintenance, Etc., Etc.* Allahabad: Ashoka Law House, 1992.

Gani, H. A. *Reform of Muslim Personal Law: the Shah Bano Controversy and the Muslim Women (Protection of Rights on Divorce) Act, 1986*. New Delhi: Deep & Deep Publications, 1988.

Iqbal, Safia. *Woman and Islamic Law*. Delhi: Adam Publishers and Distributors; 1991.

Jai, Janak Raj. *Shah Bano*. New Delhi: Rajiv Publications; 1986.

Khan, Muniza Rafiq. *Socio-legal status of Muslim women*. New Delhi; New York: Radian Advent Books (Distributor); 1993.

Maitra, Sunil. *Muslim Women's Act: Deathknell of Secularism*. New Delhi: Communist Party of India (Marxist), distributed by National Book Centre; 1986.

Nasir, Jamal J. *The Islamic Law of Personal Status*. London and Boston: Graham & Trotman; 1990.

Sewlani, Pratap. *The Muslim women: Protection of Rights on Divorce Act, 1986 with rules and full text of judgments*. Jalgaon: Universal Law House; 1992.

Tanzil-ur-Rahman. *Muslim Family Laws Ordinance: Islamic and social survey*. Karachi: Royal Book Company; 1997.

Wani, M. A. *Maintenance Rights of Muslim Women: Principles, precedents and trends*. New Delhi: Genuine Publications; 1987.

Veiling

To veil or not to veil: These studies of women's veiling and dress address the issue of connections between modesty and proper comportment. Topics include women's employment, gender stereotypes, Islamist doctrine, and Western influence.

Baron, Beth. "Unveiling in Early Twentieth-Century Egypt: Practical and Symbolic Considerations." *Middle Eastern Studies*. 1989 Jul; 25(3).

Charrad, M. M. Cultural Diversity within Islam: Veils and Laws in Tunisia. Bodman, Herbert L. and Tohidi, Nayereh, editors. *Women in Muslim Societies: Diversity within Unity*. Boulder, CO: Lynne Reiner Publishers; 1998.

- El Guindi, Fadwa. *Veil: Modesty, Privacy and Resistance*. Oxford and New York: Berg.
- Gole, Nilufer. *The Forbidden Modern: Civilization and Veiling*. Ann Arbor: University of Michigan Press; 1996.
- MacLeod, Arlene Elowe. *Accommodating Protest: Working Women, the New Veiling, and Change in Cairo*. New York: Columbia University Press; 1991.
- . "Hegemonic Relations and Gender Resistance: The New Veiling as Accommodating Protest in Cairo." *Signs: Journal of Women in Culture and Society*. 1992; 17(3).
- Sequeira, Debra Tina. *The Political Veiling Game: A study of veiling trends in Turkey, Iran, and Egypt*. 1989.
- Zuhur, Sherifa. *Revealing Reveiling*. 1993.

Menstruation

- Reinhart, Kevin A. "Impurity/No Danger." *History of Religions*. August 1990.
- Spellberg, D. A. "Writing the Unwritten Life of the Islamic Eve: Menstruation and the Demonization of Motherhood." *International Journal of Middle East Studies*. August 1996, 28(3).

Anthropology, Sociology, History: Muslim Women in North America and the West

- Anway, Carol. *Daughters of Another Path: Experiences of White Women Choosing Islam*.
- Aswad, Barbara. "Attitudes of Immigrant Women and Men in the Dearborn Area Toward Women's Employment and Welfare" in *Muslim Communities in North America*. Yvonne Yazbeck Haddad, and Jane Idelman Smith, eds. 501-19. Albany: State University of New York Press, 1994.
- Khan, Shahnaz. *Muslim Women: Crafting a North American Identity*. Gainesville: University of Florida Press, 2000.

Anthropology, Sociology, History: Muslim Women in Muslim Societies

- Badran, Margot. *Feminists, Islam, and Nation: Gender and the Making of Modern Egypt*.
- Bodman, Herbert L., and Nayereh Tohidi, eds. *Women in Muslim Societies: Diversity within Unity*. Boulder, CO: Lynne Reiner Publishers, 1998.
- Chowdry, Prem. *The Veiled Women: Shifting Gender Equations in Rural Haryana, 1880-1990*. Delhi and New York: Oxford University Press, 1994.
- Cole, Juan R. I. "Feminism, Class, and Islam in Turn-of-the-Century Egypt." *Middle Eastern Studies* 13, 1981.
- Davis, Susan Schaefer. 1983. *Patience and Power: Women's Lives in a Moroccan Village*. Cambridge, MA: Schenkman.
- Friedl, Erika. *Women of Deh Koh: Lives in an Iranian Village*. Smithsonian Institution Press, Washington, D. C.
- Gocek, Fatma Muge, and eds. Shiva Balaghi. 1994. *Reconstructing Gender in the Middle East: Tradition, Identity, and Power*. New York: Columbia University Press, 1994.
- Jehangir, K. N. *Muslim Women in West Bengal: Socio-Economic and Political Status*. Calcutta: Minerva, 1991.
- Moors, Annelies. 1995. *Women, Property, and Islam: Palestinian Experiences, 1920-1990*. Cambridge: Cambridge University Press, 1995.

Saiyid, Dushka. *Muslim Women of the British Punjab: from seclusion to politics*. New York: St. Martin's Press, 1998.

Utas, Bo, editor. 1983. *Women in Islamic Societies: Social Attitudes and Historical Perspectives*. London: Curzon, 1983.

Fundamentalism

Ask, Karin, and Marit Tjomsland, eds. Oxford and New York: Berg, 1998.

Gerami, Shahin. *Women and Fundamentalism: Islam and Christianity*. New York: Garland Publications, 1996

Lawrence, Bruce B. 1994. Woman as Subject/Woman as Symbol: Islamic Fundamentalism and the Status of Women. *The Journal of Religious Ethics* 22(1), 1994.

Moghadam, Valentine M. ed. 1994. *Identity Politics and Women: Cultural Reassertions and Feminisms in International Perspective*. Boulder: Westview Press.

Religious Texts and Interpretation

The Qur'an: Numerous English renderings are available, and they vary tremendously in how accurately and usefully they translate the verses discussing marriage and divorce. The relevant verses have been excerpted by Nicholas Awde (*Women in Islam: An Anthology from the Qur'an and Hadiths*, New York: St. Martin's Press, 2000), along with selections from the collections of prophetic traditions known as hadith. He is generally accurate, but fails to include some hadith that present more "woman-friendly" perspectives and interpretations. As with any translation, his depend to a certain extent on subjective interpretations of the Arabic. For those who wish to explore the collections themselves, there are numerous English translations of the two most respected collections of Sunni hadith: *Sahih Bukhari* and *Sahih Muslim*.

Awde, Nicholas, translator and editor. 2000. *Women in Islam: An Anthology from the Qur'an and Hadiths*. New York: St. Martin's Press.

Stowasser, Barbara. 1994. *Women in the Qur'an, Traditions, and Interpretation*. New York and Oxford: Oxford University Press.

Wadud, Amina. *Qur'an and Woman*. Kuala Lumpur: Penerbit Fajar Bakti Sdn. Bhd, 1992; republished by Oxford University Press.

Muslim Women's Civil, Political, and Human Rights

Afkhani, Mahnaz ed. *Faith & Freedom: Women's Human Rights in the Muslim World*. Syracuse, N. Y.: Syracuse University Press; 1995.

Ali, Shaheen Sardar. *A Comparative Study of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, Islamic Law and the laws of Pakistan*. Peshawar: Shaheen Press; 1995.

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Kandiyoti, Deniz. *Women, Islam and the State*. Philadelphia: Temple University Press; 1991.