



musawah

For Equality in the Muslim Family

Muslim Legal Tradition and the Challenge of Gender Equality **Ziba Mir-Hosseini**

In this chapter, Ziba Mir-Hosseini addresses the crisis in Muslim legal tradition resulting from the challenges posed by the emergence of the notion of gender equality in the early twentieth century. Mir-Hosseini first highlights the genealogy of gender inequality in *fiqh*, which she traces to classical jurists' construction of unequal marital rights and duties based on interpretations of Qur'anic verse 4:34. Next, she highlights particular developments that have transformed the politics of religion, law and gender in Muslim contexts, such as the rise of nation states, higher rates of literacy among women and men, and rapid growth in mass media. These changes have also transformed the production and dissemination of knowledge, revealing a contradiction between different notions of justice: those that inform the classical *fiqh* rulings sanctioning discrimination on the basis of gender, status and belief; and those inspired by ideals of human rights, equality and personal freedom.

Mir-Hosseini then examines reform efforts that have been underway over the past century to produce new and transformative knowledge. She focuses on three texts produced at historical moments when there were changes and debates regarding Muslim legal tradition, its relationship with the state, and its relevance for the issue of women's rights. The first, *Women in the Shari'a and in Our Society* by the Tunisian scholar Tahir al-Haddad, was published in 1930 as national debates about codification of family laws and the 'status of women in Islam' were taking place in the larger context of Western colonialism and nation-building. Al-Haddad proposes a two-pronged approach that distinguishes eternal Qur'anic ethical norms from context-bound legal injunctions, and identifies gradualism as the underlying principle for Qur'anic injunctions. In 'The Status of Women in Islam: A Modernist Interpretation', published by the prominent Pakistani scholar Fazlur Rahman at the zenith of political Islam in 1982, Rahman also highlights the centrality of the Qur'an's ethical principles. He proposes a methodology for a contextual two-tier reading of the text and its injunctions. The third text, 'The Status of Women between the Qur'an and *Fiqh*', was written by the Egyptian scholar Nasr Hamid Abu Zayd in 2010 at a time when gender activism had been strengthened by international conventions and the emergence of Islamic feminism, but the rights of Muslim women remained entangled with the politics of the 'War on Terror'. Mir-Hosseini explicates Abu Zayd's theory of the five domains of Qur'anic discourse, which implies the need for a holistic integrated reading to provide a nuanced understanding of the text's underlying principle of justice.

These works paved the way for contemporary Muslim feminist scholars, who are taking reformist thought onto new ground by insisting on gender as category of analysis and

inserting women's concerns and voices into the production of religious knowledge and legal reform. They are dissolving ideological dichotomies such as 'secular' versus 'religious' feminism, or 'Islam' versus 'human rights'. These dichotomies, to which Muslim women's quest for equality and dignity have for too long remained hostage, have masked the real site of battle, which is between patriarchal and authoritarian structures, on the one side, and egalitarian and democratic forces on the other. In order to achieve meaningful change in our religious, cultural and political realities, Mir-Hosseini stresses, we must reclaim the egalitarian ethos in Islam's sacred texts, and expose the relation between practices of power and the production of knowledge.