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Equal Before God but Not Equal Before His Law? Sharia Law and Women's Right to Interpretation in the Light of the Human Rights Debate

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Abstract: Over the last couple of decades, the subject of women's rights in Islam has emerged as the central tension point in discussion about the (in)compatibility of Islam with the modern concept of universal human rights. This topic has drawn significant attention from both liberal and Muslim theorists, who have questioned the source of gender inequality and discrimination against women evident in various Muslim societies. These issues are particularly pronounced in certain provisions of Islamic family law, which appear to conflict with both Islamic principles and the concept of a just and merciful God. Simultaneously, another discussion is unfolding within inner-Muslim debate where Muslims are sharply divided over an important question: *Is Sharia divinely created or humanly constructed?* Within this debate, Islamic female theorists argue that not only is Sharia man-made law, but one constructed dominantly through the interpretations of male jurists, theologians, and thinkers, whereas female voices and experiences were marginalized, silenced, and excluded. This profoundly influenced the construction of Sharia and embedded hierarchical gender-power dynamics within its provisions. This article explores the topic through three key points: first, the question of the creation or construction of Sharia is examined, emphasizing the unquestionable interpretative role of humans in deciphering God's Will; second, it argues that the construction process of Sharia was dominated and monopolized by male interpreters, who have read the Qur'an through the lens of the historical context of eighth- and ninth-century Arabia, where gender inequality was a norm; third, it highlights the voices of Islamic female theorists and their egalitarian interpretations of the Qur'an, which reflect the core Islamic message of a just and merciful God.



Academic Editor: Roberto Cipriani

Received: 14 January 2025

Revised: 26 February 2025

Accepted: 27 February 2025

Published: 13 March 2025

Citation: Čustović, Ajla. 2025. *Equal Before God but Not Equal Before His Law? Sharia Law and Women's Right to Interpretation in the Light of the Human Rights Debate*. *Religions* 16: 362. <https://doi.org/10.3390/rel16030362>

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Keywords: Islam; Sharia; human rights

1. Introduction: Why Is Sharia Reform Necessary for Women's Rights in Islam?

The contemporary debate about the (in)compatibility of Islam and the modern idea of universal human rights has its roots in 1948, when the UN General Assembly proclaimed the Universal Declaration of Human Rights and Saudi Arabia refused to vote in favor of the Declaration.¹ While other Islamic countries² voted in favor of the Declaration, international human rights reports in these countries have indicated that there is still a significant disparity between universal human rights as understood by the Declaration and internationally accepted as a normative standard, and universal human rights as prescribed by Sharia, which the vast majority of Muslims still consider to be the direct law of God, automatically overriding all laws constructed by man.³ For example, annual reports by

non-governmental organizations such as Amnesty International and the Human Rights Watch depict the dire state of the practice and protection of women's rights in some Islamic countries. According to Amnesty International for 2023.

In Algeria and Iraq, the law allows rapists to escape prosecution by marrying their victim. Morocco rejected UPR recommendations to criminalize marital rape. 'Honor killings' of women and other femicides continued including Algeria and Tunisia. In Iran, authorities intensified their crackdown on women and girls who defied compulsory veiling by introducing new policies severely violating their social, economic, cultural, civil, and political rights. In Yemen, . . .restrictions were imposed on women's movement and banned them from traveling without a male guardian and their guardian's written approval.⁴

The Human Rights Watch report draws attention to the first codified Personal Status Law that entered into force in Saudi Arabia in June 2022. The law was announced in the media and public discourse as progressive, yet the report warns that it "formally enshrines male guardianship over women and includes provisions that facilitate domestic violence and sexual abuse in marriage".⁵ This law introduces some positive changes such as the ban on marriage for children under 15 years of age, while everyone under 18 will need prior permission from a specialized court. However, it did not abolish the male guardianship that a father has over a daughter, and when she gets married, the same guardianship passes from her father to her husband. It should be pointed out that only women have guardians while only men can perform that role, and women "must have consent of a male legal guardian to get married and for the marriage contract to be validated".⁶

According to reports, women continue to be discriminated against in matters of marriage, divorce, child custody, and inheritance. The courts that deal with these issues are still male-dominated domains, and women are tried under laws that men have equally interpreted and constructed. With the Taliban's return to power in Afghanistan in 2021 and the restrictions they introduced by implementing their version of Sharia, women's humanity, dignity, independence, and equality have come under relentless assault, all in the name of God and plain sight of the world. Among other restrictions, women are prohibited from pursuing education beyond primary school, working outside their home, appearing on television, visiting gyms, participating in sports, going to parks, or seeking medical care without a male chaperone. According to the Amnesty International report from March 2024, there is "a reasonable basis to believe that many of the violations committed against women and girls in Afghanistan by the Taliban may amount to a crime against humanity".⁷

The previously mentioned disparity has triggered academic and public debates that have branched out and intertwined into several different spheres, encompassing theology, history, political theory, philosophy, international relations, and many other sub-fields, making this issue exceedingly complex, multidimensional, and multidisciplinary. In addition to the controversies and events⁸ that have polarized this already heated debate, it has become obvious that this is also an extremely sensitive topic, which even most Muslims do not dare to address academically, for fear of being labeled and discredited either as "apologetics" in the name of Islam or as traitors who, under the influence of other people's values, have rejected the values of their tradition.

Through theoretical debates and controversies that have occupied the public, three legal values have crystallized around which these two understandings of human rights diverge, namely: freedom of expression (versus the criminalization of blasphemy), freedom of religion (versus the death penalty for apostasy), and women's rights. However, in 1979, with the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), women's rights were pushed to the fore as the greatest stumbling block in human rights debates between members of the Islamic and liberal moral traditions, but also in the inner-Muslim debate around which the Islamic moral tradition was divided

into countless discourses and directions. The process of acceptance and ratification of this international agreement showed that the issue of (in)equality of women is something that troubles the international community, not only Islamic countries, because “more reservations of a kind to nullify treaty obligations have been entered to CEDAW than to any other human rights convention” (Mayer 1998, p. 27). However, CEDAW was a subject of reservations from Muslim states in such a substantial manner that human rights discourse was then introduced with a new phrase “Islamic reservation”.

The Islamic reservation refers to all those reservations in which countries clearly or vaguely referred to Islam, Islamic principles, and/or Sharia. For instance, some Islamic countries explicitly mentioned Islam in their reservations, such as Bangladesh⁹, Saudi Arabia¹⁰, Kuwait¹¹, and Qatar¹². In contrast, other countries, like Algeria, subtly avoided such references by invoking family law¹³, though many remain unaware that family law represents the essential core of Sharia and that numerous provisions within it are discriminatory against women. The Islamic countries that raised the Islamic reservation, in their objections, refused to be bound by regulations and articles that they deemed contrary to Sharia, thereby “placing Islamic law above international law. . .they treat Islamic law as if it were a binding supranational religious law that was beyond their power to alter” (Mayer 2013, p. 104). After international pressure, some countries have withdrawn their reservations, only because in most cases those countries do not want to act as if they are deviating from the international normative standard in human rights. The fact that they have done so and/or that they have signed and ratified the convention does not necessarily imply that they adhere to what the convention prescribes.

Probably the biggest reason lies in the fact that countries ratifying such international documents “agree to comply with certain reporting procedures. This opens them to multi-lateral scrutiny. It does not, though, provide international enforcement or implementation of human rights” (Donnelly and Whelan 2020, p. 9). Countries thus retain the right to interpret their obligations in implementing the convention, aligning its regulations with Sharia, which, as an immutable divine law, they undoubtedly consider superior to man-made laws. Even if we pay attention to the instructions of the CEDAW commission, which is in charge of supervising the application of the convention regulations, they explain that the commission “continues to express its concerns over these reservations, and urge State parties to remove them and thereby comply with general principles of international law”.¹⁴ But reports on the practice and respect of human rights that fight against discriminatory laws and practices against women indicate that just because the countries are “urged” to do it, does not mean they will comply. This will be the case as long as such documents are not legally binding in the full sense of the word. It should also be noted that Islamic countries mostly had reservations about Articles 2, 16, and 29, respectively. Article 2 deals with the elimination of all forms of discrimination against women, Article 16 focuses on the elimination of discrimination against women in all matters concerning marriage and family relations, while Article 29 states that if a peaceful agreement cannot be reached between the countries regarding the interpretation and application of the convention, a third party will make the final decision. This can be, and has proven to be, a misleading concept because there is no single universal version of Sharia that all Islamic countries uniformly practice and apply. As a result, such reservations allow each Islamic country to arbitrarily interpret and apply the convention in the way they choose.

However, apart from this dangerous relativization of the international document, referring to Sharia in the context of human rights is still problematic for several reasons, and here I will focus on those that are essential for this paper. When states reference Sharia in the process of signing or ratifying international agreements, they often portray it as a fixed, immutable, and transcendent divine law that holds authority over all human legal

frameworks, including international law. This puts Sharia beyond the reach of human reason, thought, reflection, and mental efforts, which is one of the main, natural, and innate processes that ultimately led to the construction of Sharia in the eighth and ninth centuries. This negates human mediation, and by denying human intercession in reading and interpreting God's word, it is easy to fall into the trap of people speaking in the name of God, which is a "formidable power that is easily abused" (El Fadl 2009, p. 136) as demonstrated by the previously cited examples from non-governmental organization reports. Sharia thus easily becomes a tool in the hands of not only religious but also political leaders in Islamic countries—a dynamic that has been frequently observed, with women's rights consistently serving as a battleground for competition and power struggles. This rationale is directly connected to another justification, which is that Sharia is also taken as a source of human rights.¹⁵

Given the inherent complexity of this issue and the limited space at my disposal, this paper will not delve into the debate between Islamic and liberal traditions regarding whether the foundations of the Declaration are neutral or rooted in the specific social, historical, and cultural context of the West. I have dealt with this debate in detail elsewhere. Here, I have focused on the inner-Muslim debate, specifically on women's voices within the debate, and on the necessity of reforming Sharia in the context of human rights and women's equality. Given that family law is an essential part of Sharia¹⁶ which regulates and governs the lives of Muslim women, but also justifies their discrimination in the name of God, this article approaches the topic from three aspects.

First, it reexamines the debate about God's creation or human construction of Sharia by emphasizing the interpretive role of human beings in deciphering the God's word. Second, it seeks to demonstrate that in Islam, as in the other two monotheistic religions, the question of religion, the interpretation of God's word, and jurisprudence itself have been dominated by men for centuries. Islamic jurisprudence was monopolized by male jurists, theologians, and intellectuals, while women's voices, reflections, and interpretations were silenced and marginalized. Given that many regard Sharia as God's law, and since it contains provisions that discriminate against women, it leads me to a delicate question: *If we are equal before God, why are we not equal before His law?*¹⁷ Third, it calls attention to women's voices in inner-Muslim debates that advocate gender equality and egalitarian interpretations of the Qur'an as a mandatory step toward Sharia reformation. This process of Sharia reformation must include the interpretative right of women as an inevitable element of equality since men do not possess a unique relationship with God that grants them exclusive access to His word. The equality of men and women before God must be reflected not only in their equality before His law but also in their equal access to His word, which forms the foundation of this law, because "part of Islamic ethos is that Islam rejects elitism and emphasizes that truth is equally accessible to all Muslims regardless of race, class, or gender" (El Fadl 2001, p. 34).

As for the research methodology and analytical framework of this paper, few things should be noted. First, given the complexity of the subject, methodology follows interdisciplinary and multidisciplinary approach integrating political theory, theology, intellectual history, and ethical critique. Second, given my academic background in political theory with a specialization in human rights, I analyze this subject primarily through the framework of political theory. This perspective establishes the conceptual framework for a critical engagement with the subject, wherein the analysis is grounded in the foundational principle of universal human rights, which upholds the inherent equality of all individuals. In the context of this paper, this principle encompasses equality of Muslim men and women in the interpretation of God's word which is regarded as a source of human rights in Islam. By adopting a political theory perspective, this research critically examines established norms

and gendered power structures within the Islamic legal tradition. Furthermore, it advocates for reconsidering how the inclusion of women and their voices in Islamic jurisprudence can contribute to challenging existing gender hierarchies. Third, it needs to be emphasized that I am not a theologian, nor this is research paper in theology, but since human rights in Islam have the word of God as the main source, dwelling into theology is not only necessary but also inevitable. In this approach, I do not engage in the interpretation process myself, as I firmly maintain that pursuit of understanding and interpreting the meaning of God's word should be undertaken by individuals who are adequately educated and qualified to do so, regardless of their gender. Although this is not a theological study, this research does engage with some theological principles as they intersect with human rights. In this context, engaging with theology is essential for understanding the human rights within the framework of Islam, particularly in relation with equal participation of women in interpretation of God's word.

The main arguments presented in this research are as follows: 1. Sharia Law is not a direct and immutable word of God but rather a human construct, product of human interpretation, reasoning, and intellectual effort to understand the God's will. Except for certain Sharia provisions, Sharia was not revealed explicitly to humans in the Qur'an but was developed and constructed gradually over the time, with human mediation being a central element in its formulation. Denying the role of human agency in interpreting the Qur'an dangerously blurs the line between God's word and human understanding of it, which are inherently distinct. This often leads to manipulation of God's word to justify inequality and injustice read into the text by humans themselves. As a product of human reasoning and interpretation, Sharia is open to reform, refinement, and adaptation, allowing it to be flexible and responsive to the contemporary needs of Muslims as well as to evolving human rights standard. 2. Islamic jurisprudence and the gradual process of human interpretation and reasoning that led to the construction of the Sharia has historically been dominated by Muslim men. Their experiences, thoughts, interpretations, and understandings shaped the very construction of Sharia, resulting in the systematic exclusion of Muslim women and their experiences, thoughts, interpretations, and understandings. This gendered exclusion led to the construction of Sharia based almost exclusively on male interpretations, which were influenced by the historical context of their time, when gender inequality was a prevailing norm. 3. Muslim women have inherent right to equally participate in the Islamic jurisprudence and in the interpretation of God's word. This argument is grounded not only in the fundamental principle of universal human rights which asserts the equality of all humans but also in the core Islamic principles of justice, equality, and human dignity.

These arguments and methodological approach applied, provide the foundation for addressing the central question of this article given in the headline: *Equal before God but not equal before His Law?* While God created all humans equal, it is the human interpretation of God's word that read inequality in the text thus creating the evident disparity that contradicts both Islamic principles of justice and the universal human rights.

2. The Interpretative Role of Humans in CONSTRUCTING SHARIA

Alongside the debate between Islamic and Western liberal theorists regarding the understanding of human rights and their compatibility, there is also a separate discussion in the inner-Muslim debate, a near-theoretical split in the Islamic moral tradition emerging in response to the question: *is the Sharia God-given or constructed by man?* Accordingly, the importance and role that human beings themselves have in interpreting the Holy Text is questioned, as well as *ijtihad* as one of the key sources of Sharia, because the very assumption that God revealed Sharia to people directly in the Qur'an ignores human efforts in reading the word of God and denies human mediation. However, by engaging this

aspect of the inner-Muslim debate, it is important to make a clear distinction to ensure that concepts are not misinterpreted, and to avoid any misunderstanding in an already sensitive topic. The distinction that should be clearly defined is between Sharia as a concept of Divine truth, the right path, and the ideal that every Muslim should strive for, and *fiqh*, i.e., human understanding of that ideal. Additionally, Sharia in the legal context must also be recognized, which has been understood and practiced as the law governing the private and public lives of Muslims from the eighth century to the present.

Sharia¹⁸ as a word “occurs only once in the Qur’an and it literally means a way to the watering-place or a path apparently to seek felicity and salvation” (Kamali 2008, p. 2). Although later in the Islamic moral tradition it became a term for Islamic Law and was perceived as God’s law, linguistically the word itself has no connection with law, legislation, or legal code. Also, at the time this verse of the Qur’an was published, Sharia which we know today as the “cumulative body of legal determinations and system of jurisprudential thought of numerous interpretative communities and schools of thought” (El Fadl 2014, p. xxxii), did not exist. The only time the Qur’an refers to Sharia is in a context to “indicate a clear path by which God leads people to the truth” and (...) the moral and spiritual implications associated with the term” (Lumbard 2015, p. 1220).

On the other hand, Sharia as a human-made law, unlike Sharia as divine truth contained in the Qur’an, is only a potentially correct human understanding and in that legal context “a fallible and imperfect attempt by Muslims over centuries to understand and implement the divine norms, to explore right and wrong, and to achieve human welfare” (El Fadl 2014, p. xxxii). Since one of the main premises of this paper is that Sharia is in dire need of reform, it is important to emphasize that this refers to human-made law, to the ‘cumulative body of legal determinations’ that emerges through human mediation and human interpretation of sources. In addition to the fact that the Qur’an only refers to the Sharia once, and not in a legal context, there are several other arguments for viewing Sharia as a human-made law, in which the human element can and should play a central role in its reformation. The very fact that Islamic jurists and theologians have had to rely on other sources to read and interpret the word of God indicates that the entire corpus of Sharia is not directly dictated in the Qur’an. When Muslims encountered legal questions that the Qur’an did not address, they primarily turned to the Sunnah of the Prophet Muhammad (SAW). However, as the community rapidly expanded and new legal issues arose that could not be answered by these two primary sources, additional sources were developed, including *ijtihad*.

Even though jurists also relied on the Sunnah in search of answers to legal questions, it should be pointed out that both sources mostly deal with moral and spiritual instructions, not legal issues, and even though “the Qur’an and Sunna are where Muslims look for guidance in developing their social and political relations, legal and ethical norms; (...) these sources are not legal codes as such” (An-Na’im 2010, p. 5). This is supported by the fact that “approximately 350 out of a total of over 6200 verses”, which is only five percent of the entire subject matter of the Qur’an, are dedicated to legal issues, regulating human relationships such as marriage, divorce, inheritance, and prescribing some explicit punishments such as the punishment for theft.¹⁹

In addition, it should be noted that Islam is based on five fundamental pillars²⁰, i.e., the basic duties of every Muslim, among which we do not find either a legal code or adherence and/or following of a legal code, therefore it should be established that “following a legal code is relative and subsidiary to the original call and message of Islam” (Kamali 2008, p. 5). When it comes to Sharia in the legal sense, the human factor is simply inevitable, because apart from man being the main subject of Sharia, all its sources, except the Qur’an as the direct word of God, are the “result of human, not divine, effort” (Aslan 2011, p. 169).

The following point is particularly delicate here: the Qur'an is the word of God, but every reading and interpretation of it automatically becomes a human interpretation, because man is not a robot who will just read the text but a rational human being who will assign that text a particular meaning, which will largely depend on countless factors of its historical and social context. Denying the human role in the construction of Sharia simultaneously denies *fiqh* and rejects the entire Islamic interpretive tradition. If God had directly revealed and defined Sharia in a legal context within the Qur'an, there would have been no reason for the emergence or development of Islamic legal science, which using reason, allowed Islamic theologians, lawyers, and scholars to construct, elaborate, and define Sharia regulations and norms. Sharia, in its legal sense and what is understood today by the term Sharia, is a "product of a very slow, gradual, and spontaneous process of interpretation of the Qur'an, and the collection, verification, and spontaneous process of interpretation of Sunna" (An-Na'im 2008, p. 325), and it is a process that begins only after the death of the Prophet after the Revelation had ended.

Furthermore, human beings are an indispensable element of Sharia in the legal sense for another reason, which is that Sharia, which regulates the behavior of the human community, would not even exist if men themselves did not exist. Sharia as Divine truth exists independently of human beings, but Sharia in the legal sense in which we understand it today simply has no meaning or purpose without human. Therefore, Sharia in the legal sense is permeated with the human factor and only if men understand and accept the importance of their role in interpreting the word of God, can they be truly committed to creating a just community of equal men and women. Of course, it should be tirelessly emphasized that this role is only the interpretative, conceivably correct one and by no means a role in which any man can claim a monopoly over the meaning of the word and speak in the name of God because "men's exegesis of the Qur'an is not equivalent to the Qur'anic text" (Hidayatullah 2014, p. 111). Now, returning to the question posed in the introduction: *if we are equal before God, how come we are not equal before His law?* The answer is quite simple, and that is that Sharia is not the law of God. Sharia in its legal sense is a human-made law that has the Divine Word as one of its sources, it represents the human understanding and reflection of God's law and as such is only potentially correct because "as human readers, we can speculate on what Allah knows" (Wadud 2013, p. 66).

In the Islamic moral tradition, reason is valued as the greatest gift that God bestowed upon humans. Reason is what distinguishes us from animals and sets us apart from other God's creatures. Reason has been considered and discussed in the philosophical, theological, legal, and political discourses of the Islamic moral tradition, with a focus on the role of human reason in interpreting the word of God. The interpretation of the Word of God is an active, live, ongoing process in which individuals, through new experiences, knowledge, insights, discoveries, and the evolving realities of our constantly changing societies, use their reason to provide answers to the challenges of today. Thus, the word of God affirms its universality by providing Muslims of the past, present, and future with answers through the adaptability of human reason in applying new knowledge and insights, while upholding these fixed Truths. Reason is given to people "in order that they might use it to gain knowledge, knowledge about life and the earth and people and science and Allah. Knowledge is the highest form of worship for a Muslim believer" (El Saadawi 2015, p. 266). Sharia regulations that govern society must be open to new reflections, refinements, and modifications because societies and circumstances change and what was valid in the eighth century does not have to and often cannot be valid in the modern time, "since human affairs are in a state of constant change and evolution, there is thus a need for new interpretations of these rulings in line with the realities of time" (Mir-Hosseini 2003, p. 11). Our reality is such that the understanding of gender equality and its implications

has radically changed, even within the context of religion—an area that has for centuries been predominantly reserved for men and their interpretations, as well as their views on the role of women, which they have ascribed to her both in religion and society.

Moreover, our reality examines and confirms the connection between monotheistic religions and the oppression of women in the social, economic, and political spheres, often revealing how the roots of the systemic oppression of women stem from the deep religious beliefs of societies centuries before ours, which were interpreted and read into the texts themselves. It is interesting, however, as an introduction to the next chapter, to highlight that women who seek the reasons behind the hierarchical gender power relations present in Sharia and the Islamic interpretative tradition do not find the roots of oppression in the word of God, but rather in those who have held an interpretative monopoly over the process for centuries. This suggests that interpretation cannot be neutral and that, among other factors, it is also influenced by the gender of the reader. The construction of Sharia through the interpretation process and “production of Qur’anic exegesis is not isolated or independent of the context in which it was produced” (Mubarak 2004, p. 267), implying that the interpretation process should be critically reexamined in the context of the realities of our modern age, and Sharia regulations discriminatory against women should be reformed.

Only this time, the process will include female jurists and theologians who, exercising their right to interpret the Revelation, will include women’s experiences and perspectives in the creation of Sharia regulations that will reflect gender equality as one of the fundamental messages and values of the Qur’an.

3. (Wo)men Interpreting the Word of God

Muslims, regardless of their differences, agree that one of the essential messages of the Qur’an is that of a just and merciful God,²¹ the Creator of all people (being equal), but how is it possible that this message is absent from the construction of Sharia regulations, especially those focused on family law, which concerns women’s rights and their equality? Bearing in mind the distinction from the previous chapter about Sharia as an ideal and just path and Sharia in the sense of human-made law, it should be emphasized that there is an evident disproportion between the Qur’anic principle of justice and the agonizing violations of human rights in the name of Islam that we witness in Islamic societies. Contemporary Islamic female theorists, whose ideas form the basis of this chapter, argue that the approach to this issue should primarily rely on the previously mentioned distinction between God’s word and its human interpretation, because “the Qur’an does not discriminate against women (. . .) but it clearly and consistently affirms women’s equality with men and their fundamental right to actualize the human potential that they share equally with men” (Hassan 2005, p. 57). Despite the differences in their approach to this issue, for them the problem lies in the fact that in Islam, as in the other two monotheistic traditions, matters of religion and jurisprudence were for centuries the domain of male theologians, jurists, and scholars, while the voices of women were silenced and marginalized.

In her research, Islamic theorist Riffat Hassan reveals that in all three monotheistic traditions, three main theological assumptions are used to prove the alleged superiority of men over women, an opinion that she believes still has many supporters in the Islamic moral tradition today. It is reflected, among other things, in certain Sharia laws in some Islamic countries that violate the basic human rights of women. The first assumption is that man is God’s primary creation. Since there is a strong belief that God created woman subsequently from a man’s rib, she thus becomes ontologically secondary, i.e., only a derivative of the primary human being. The second assumption is that in all three monotheistic traditions, a woman is considered responsible for the “fall” of the human race

from paradise to Earth after Eve, the first woman, disobeyed God's command and bit into the apple from the forbidden tree. The third assumption is that a woman, in addition to being created "from" a man, was also created "for" a man, "which makes her existence merely instrumental and not of fundamental importance" (Hassan 1991, p. 70).

Hassan finds the reason for the apparent discrepancy between the essential message of the Qur'an and the real injustice faced by Muslim women in some Islamic societies in the theology through which "women are deprived of their basic human right in the name of Islam" (ibid., p. 69).

In all three monotheistic traditions, women were pushed out of the religious sphere. Their voices were silenced, marginalized, and often neglected, which led to women being perceived and represented exclusively through a man's interpretation of their role and purpose. Theorists argue that the absence of women's voices during the developmental stages of Sharia resulted in an exclusively male perspective on matters that directly concern women. Furthermore, as the construction of Sharia occurred during the eighth and ninth centuries, the jurists of that period incorporated the norms and attitudes of patriarchal societies into their interpretation of the text. Ultimately, this resulted in male perspectives leaving "its mark upon the nature of the Qur'anic articulation and continued to do so for centuries with interpretation and implementation" (Wadud 2013, p. 52). As already pointed out in the previous chapter, human agency is a key element of mediation and interpretation of God's word in the construction of Sharia. Considering that people are not *tabula rasa* independent of the specific social, economic, political, and religious context they live in, in a way we become "products of our own culture" (Walton 2009, p. 12). As products of their own culture, in this case, the patriarchal society of eighth-century Arabia, Islamic jurists, and theologians were molded by a series of factors that ultimately influenced how they understood and interpreted the text. Factors such as the political situation, social status, economic, and religious background, education, but also gender are filters through which the mind perceives and interprets the text, often unconsciously loading the norms and attitudes of its specific context into the text itself. In classical and post-classical texts in the Islamic interpretation tradition, "gender inequality is taken (...) as a principle. It reflects the world in which the authors of these texts lived, a world in which inequality between men and women was the natural order of things" (Mir-Hosseini 2003, p. 3). Therefore, it is reasonable to conclude that the classical understanding of women's equality within the Islamic interpretative tradition does not align with contemporary conceptions of gender equality.

This does not mean that the text itself is patriarchal, but that it can be read in different ways, including patriarchal, and what we must not do is "confuse the Qur'an with a specific reading of it, ignoring that all texts, including the Qur'an, can be read in multiple modes" (Barlas 2002, p. 4). Similarly, this does not mean that the word of God is relative, but rather that its interpretation is relative, and that the interpretation of God's word must never be identified with Revelation itself. Often precisely those who speak in the name of Islam fail to mention that their opinion and interpretation is just one of many and that the fact that there are numerous legal schools and directions speaks in favor of how diverse and rich the Islamic interpretation tradition is. Many interpretations of the text that form the basis of Sharia regulations reflect the patriarchal pre-modern concept of (in)equality of the time in which the theologians and jurists lived and when, accordingly, men and women had different rights.

Asma Barlas believes that the Qur'an can be read in an anti-patriarchal way, explaining that the Qur'anic epistemology is anti-patriarchal because it rests on "a view of a God who is neither father nor son nor husband nor man nor male and nor even created. This God is, therefore, beyond affinity with males and hatred for females" (Barlas 2006, p. 132).

As Muslims agree that God is just and God's justice is an integral part of the central message of Islam, any misogyny in the Islamic interpretation tradition does not and cannot reflect God or His divine will, it can only reflect men and their will. Considering the indisputable justice of God, which Muslims universally uphold, the only logical conclusion is that God "would not permit or promote acts that inflict oppression (injustice) upon any human being" (Mubarak 2004, p. 264). Furthermore, Barlas explains that patriarchal interpretations result from a conceptual error based on the assumption that since "it treats women and men differently it treats them unequally" (Barlas 2001, p. 20). According to patriarchal interpretations, a man has a special relationship with God, and although in Islam there is no mediator between God and people in the sense of a priest, here man acts as a mediator between God and a woman. Besides the fact that "among the sacred duties of the wife is complete obedience to the husband" (El Saadawi 2015, p. 289), the vast majority of theologians and jurists of the classical and post-classical period held that "since men possess more reason and wisdom than women it has become their right (...) to occupy the positions of ruler, legislator, governor, etc. One of the primary conditions in Islam to become a religious or political leader (Imam) or governor (Wali) is to be a 'male'" (ibid., p. 295).

Within the Islamic interpretative tradition, which has been historically monopolized by male jurists and theologians, women's experiences "were either excluded or interpreted through the male vision, perspective, desire or needs of a woman" (Wadud 2013, p. 2). This gave men the opportunity to define the social, ontological, and religious status of women through various Sharia regulations, which is not only very different from the equality advocated by the Qur'an but also contradictory to it. Patriarchal interpretations that give men priority over women and exalts men to a privileged position in which, unlike women, they have direct access to God, are not only contradictory to the principles of the Qur'an but also "violate (...) the principle of the Qur'an" universality" (Mubarak 2004, p. 262). Following the earlier argument that the Qur'an is the word of God, and human interpretation is only a potentially correct interpretation of that word, the gender inequality advocated by some Sharia regulations for Islamic female theorists has its roots in "secondary religious texts, the Tafsir (Qur'anic exegesis)" and the Ahadith (s. hadith) (narratives purportedly detailing the life and praxis of the Prophet Muhammad)" (Barlas 2002, p. 3). Since this is a matter of human reflection and not the word of God, they argue that the patriarchal interpretations that became part of Sharia, "can and must be challenged at the level of *fiqh*, which is nothing more than the human understanding of the divine will" (Mir-Hosseini 2006, p. 633), because as it deals with regulating a society that is constantly changing, human-made law must be able to keep up with these changes.

In the broader context of this debate, in the context of Islam and human rights, Islamic female theorists maintain that secular concepts cannot be used to empower women in Islam but must come from the Islamic paradigm itself and that women themselves must participate in this empowerment. In the narrower context of this discussion, in the inner-Muslim debate, Sharia reform must take place as an element of empowerment, through a process in which the voices of Muslim female theorists and lawyers will now participate. The key argument is that women, given that they are equal to men, have the same interpretive rights and access to the Revelation, and the step towards Sharia reform "is to build a solid Muslim feminist jurisprudential basis which clearly shows that Islam not only does not deprive them of their rights but demands their rights for them" (al-Hibri 1997, p. 3). Otherwise, man stays in a privileged position and then acts as an intermediary between the Revelation and the woman, while in Islam not only is there no intermediary but "that would mean that the Qur'an is not universal. It would mean the Qur'an is guidance for men as fully

human agents and women are relegated to a moral subcategory incapable of fulfilling agency before Allah" (Wadud 2004, p. 318).

4. Conclusions

At the heart of the issue of Islam and women's rights is not the word of God, but the human interpretation of God's word. The problem is not Sharia as God's law, but Sharia as a human understanding of God's law, which as such is only potentially correct. If the regulations contradict one of the core principles and messages of the Qur'an—namely, the equality of men and women—they are not only wrong and infringe upon fundamental human rights but also contravene the Qur'an's foundational teachings. Patriarchal, misogynistic, and sexist interpretations must be reexamined and rejected as unsuccessful human attempts to understand the will of God. This does not imply that the egalitarian interpretation of the Qur'an is necessarily correct, nor that those who advocate for such an interpretation hold exclusive authority over its meaning. Rather, it suggests that these interpretations embody the essence of the divine attributes celebrated at the beginning of 113 out of the 114 surahs in the Qur'an: "In the Name of God, the Compassionate, the Merciful". The Compassionate, Merciful, and Most Just God does not show favoritism toward men, nor does He maintain a unique relationship with them or appoint them as intermediaries between His Revelation and women. When God addresses believers in the Qur'an, he addresses both men and women.²² He does not address men asking them to mediate to convey His message to women. Therefore, patriarchal attitudes loaded into interpretations and incorporated into Sharia regulations that violate women's rights are not only incompatible with the modern idea of universal human rights but also with the very concept of a just God who creates people equal. Equality before God entails equality before the law, which derives from His word, as well as the equal interpretive rights of both men and women to understand His Will and contribute to the construction of the law regarded as His. A genuine reform in Islam begins with Sharia, a reform that will eliminate all those practices within the Islamic framework—whether norms, provisions, or laws—that discriminate against women and reduce them from an equal creation of God to a secondary creature with contested mental capacities. The true reform will transform the hierarchical gender-power relations and becomes possible only when it will equally include women's right to interpretation and the voices of Muslim women, their perspectives, and experiences in the religious domain that have been and continue to be dominantly male. Rejecting the facts and arguments that support the claim that Sharia is truly a human-made law has resulted in the manipulation of God's word and the discrimination of women in the name of God because the line between God's word and its interpretation is often deliberately blurred. Human errors must not, and cannot, be ascribed to God; inequality and discrimination represent flaws in human interpretation. As a Muslim and a woman, I refuse to believe that God created me unequal to man. My God is just, my God is merciful, my God is compassionate, and every time people enforce a law that treats women differently, I attribute it to our imperfect human nature. The history of humanity, marked by the crimes and atrocities we have inflicted upon one another, serves as further evidence of our imperfection, ignorance, and fallibility. Reform in Islam will not happen if it denies the equally important role of women in the social, economic, political, and religious spheres of Islamic society. For a very long time, the Muslim woman has been a subject of discussion, shaped and represented through the lens of others' experiences and perspectives—either as someone to be "rescued" from Islam and Muslim men or "protected" from the perceived corrupting influences of the West. In this process, the Muslim woman is once again rendered voiceless, relegated to the margins of Islamic discourse and reality.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: No new data were created or analyzed in this study. Data sharing is not applicable to this article.

Conflicts of Interest: The author declares no conflict of interest.

Notes

- 1 While forty-eight countries voted in favor of the Declaration, Saudi Arabia abstained primarily because of Article 18, which refers to freedom of religion and includes the right to change one's religion or belief (and the right to abandon the religion). While their objection to Article 18 may not be evident, it relates to the fact that, under Sharia law in Saudi Arabia, apostasy is punishable by death. In an attempt to modernize the criminal justice system, Saudi Arabia replaced the death penalty with prison sentences. One recent example is the 2021 case of Ali Abu Luhum who was sentenced to 15 years in prison for comments on Twitter promoting apostasy.
- 2 In this article, the term "Islamic country" refers to countries that designate Sharia as the sole or primary source of legislation in their constitutions and those that derive their criminal and family laws from Sharia. This includes countries like Algeria, which do not explicitly mention Sharia in their constitutions but base their family laws on it.
- 3 Considering that Sharia will be discussed in the following chapters, in the introductory part the readers need to know that Sharia is the normative aspect of Islam and has five sources. The two primary ones are the Qur'an as the direct word of God and the Sunnah as the tradition of Prophet Muhammed a.s. assembled into Hadith collections. Other sources of sharia are *qiyas* (analogical reasoning) and *ijma* (juridical consensus). As for *ijtihad* (independent legal reasoning), the fifth source of Sharia, it is accepted only by some schools of law in Islamic jurisprudence (*fiqh*). The very fact that Islamic jurists had to rely on other secondary sources besides God's word for interpretation for many represents an argument that Sharia is not God's law that was revealed to Muslims directly in the Qur'an. Also, given that Sharia is considered the sole or main source of legislation in many Islamic countries and as a source of universal human rights, the fifth source of Sharia—*ijtihad*—is of indispensable value for this discussion.
- 4 Available at: <https://www.amnesty.org/en/location/middle-east-and-north-africa/report-middle-east-and-north-africa/>. Retrieved 21 November 2024.
- 5 Available at: <https://www.hrw.org/world-report/2024/country-chapters/saudi-arabia#d91ede>. Retrieved 24 November 2024.
- 6 Available at: <https://www.amnesty.org/en/documents/mde23/6431/2023/en/>. Retrieved 21 November 2024.
- 7 Available at: <https://www.amnesty.org.uk/resources/afghanistan-talibans-war-women-2023>. Retrieved 21 November 2024.
- 8 I will highlight only a few examples to clarify my point. One is the 1989 Rushdie Affair when Ayatollah Khomeini issued a fatwa urging all Muslims to kill Salman Rushdie following the publication of his novel *The Satanic Verses*; another example is the protests in Denmark in 2009 after the newspaper *Jyllands Posten* published a caricature of the Prophet Muhammad with a bomb in his turban; a third instance involves the recent Qur'an burnings in Norway (2022) and Sweden and Denmark (2023). Each of these events sparked academic and public debates on whether the right to freedom of expression guaranteed by the Declaration was misused to label and demonize Muslims, as well as discussions on the criminalization of blasphemy in certain Islamic countries as infringements on freedom of thought and expression. These controversies and their ensuing debates evolved into a broader antagonistic discourse often described as the "clash of civilizations".
- 9 The government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of article 2[... and ...] 16 (1) (c) as they conflict with Sharia law based on the Holy Quran and Sunna. (Available at: <https://treaties.un.org>. Retrieved: 5 November 2024).
- 10 In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention (*ibid.*).
- 11 The Government of the State of Kuwait declares that it does not consider itself bound by the provision contained in article 16 (f) inasmuch as it conflicts with the provisions of the *Islamic Shariah*, Islam being the official religion of the State (*ibid.*).
- 12 Of six reservations to the convention, Qatar clearly refers to Islam in four of them: "Article 15, paragraph 1, in connection with matters of inheritance and testimony, as it is inconsistent with the provisions of Islamic law; Article 15, paragraph 4, as it is inconsistent with the provisions of family law and established practice; Article 16, paragraph 1 (a) and (c), as they are inconsistent with the provisions of Islamic law; Article 16, paragraph 1 (f), as it is inconsistent with the provisions of Islamic law and family law" (*ibid.*).

- ¹³ The Government of the People’s Democratic Republic of Algeria declares that the provisions of Article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code (*ibid.*).
- ¹⁴ The whole text is available at: <https://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq>. Retrieved 10 September 2024.
- ¹⁵ There have been several attempts to provide an Islamic response through an official, alternative human rights document. In 1993, in Vienna, at Iran’s suggestion and with the support of other Islamic countries, the Cairo Declaration on Human Rights in Islam (1990) was recognized by most Islamic countries as an Islamic alternative to the Universal Declaration. However, the Cairo Declaration, in Articles 24 and 25, cites Sharia as the source of human rights. “Article 24: All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah; Article 25: The Islamic Shari’ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration” (Available at: <http://hrlibrary.umn.edu/instree/cairodeclaration.html>). Retrieved 6 November 2024).
- ¹⁶ Global movement for equality and justice in the Muslim family and maternity laws Musawah in their policy belief #01 *Why Muslim Family Law Reform? Why Now?* states 12 principal issues of concern: unequal legal framework on family law, unequal capacity to enter into marriage, forced marriage, child marriage, polygamy, violence against women in the family, unequal rights to transfer nationality to spouses/children, unequal right to inheritance, unequal divorce rights, lack of financial rights at the time of divorce, no right to guardianship of children, unequal right to custody of children (Available at: <https://www.musawah.org/resources/policy-brief-1-why-muslim-family-law-reform-why-now/>). Retrieved 6 November 2024). However, in addition to these 12 principal issues of concern, one should also add the lack of legal recognition of marital rape, rape laws according to which in some countries the perpetrators can avoid punishment by marrying their victim, laws on mandatory coverage, and unequal rights to work.
- ¹⁷ By using masculine pronoun “He” to refer to God, I do not attribute a specific gender to God nor do I imply the maleness of God as I strongly believe that God transcends all human attributes, including gender. I use pronoun “He” solely as a conventional linguistic tool, acknowledging grammatical structure of language while also recognizing its limitations.
- ¹⁸ Then We placed thee upon a clear path from the Command; so follow it, and follow not the caprices of those who know not“(45:18).
- ¹⁹ Several offenses known as *hadd* crimes and their penalties are mentioned in the Qur’an. For example, for the offense of theft, the Qur’an prescribes amputation of the hand. Other *hadd* crimes include apostasy, adultery, slander, highway robbery, revolt against the ruler, and drinking alcohol. It is important to point out that although the traditional interpretive tradition holds that the Qur’an explicitly prescribes unquestionable punishments for *hadd* crimes, many contemporary theologians and jurists question this. For example, for apostasy, contemporary theologians argue that the punishment has no roots in the Qur’an, but rather that every time the punishment for those who have apostatized is mentioned, the Qur’an calls for leaving the apostates to God’s judgment. Furthermore, some punishments prescribed by the Qur’an for *hadd* crimes, such as amputation of the hand for theft, are questioned by contemporary Islamic thinkers in the context of today’s world. They point out that during the period when such regulations were established and considering the nomadic lifestyle of the Arabs, who often had to move in search of grazing areas for their livestock, a prison, as we understand it today with four walls, would have been impractical and impossible to carry on such journey. For contemporary Islamic thought, God addressed people in terms that those He addressed would understand in their social context, so in His address, He “adopted the language of the culture to communicate in terms they understood” (Walton 2009, p. 16). However, this also means that today, when Muslims no longer live a nomadic lifestyle and prisons exist as a practical solution to crimes such as theft, there is no social need or social context for cutting off hands.
- ²⁰ Declaration of faith, prayer, fasting, pilgrimage, and almsgiving.
- ²¹ Muslims believe that Allah has 99 names, which represent his most prominent, beautiful attributes. All His names are considered sacred, some were revealed in the Qur’an and some to his prophets. One of Allah’s names is “the Most Just” but two attributes are essential to this argument, namely that “He is al-Rahman” (“the Infinitely Good”) and “al-Rahim” (“the All-Merciful”) (Nasr 2003, p. 62).
- ²² “For submitting men and submitting women, believing men and believing women, devout men, and devout women, truthful men and truthful women, patient men and patient women, humble men and humble women, charitable men and charitable women, men who fast and women who fast, men who guard their private parts and women who guard (their private parts), men who remember God often and women who remember (God often), God has prepared forgiveness and a great reward” (33:35).

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