GENDERJUSTICE IN ISLAM: AN EVALUATION OF ZIBA MIR-HOSSEINI’S RELIGIOUS EPISTEMOLOGY BY EXAMINING HER INTERPRETATION OF QUR’AN 4:34

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# **Abstract**

# This thesis examines Mir-Hosseini’s hermeneutical strategies to reinterpret how Islam understands gender equality by evaluating whether she allows the text to speak or uses specific hermeneutical methods to create the desired egalitarian meaning. I argue that her strategies fail to succeed by examining her understanding of Qur’an 4:34, which she considers the linchpin to furthering gender oppression in Islam, by utilizing Aysha A. Hidayatullah’s work as a framework of examination. I evaluate the interpretive choices she uses to recover gender equality in the Qur’anic and the hadith texts and show that her effort fails to show that the Islamic texts teach the gender equality she purports that they teach.

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# **Chapter 1. Introduction**

**The Background**

The objective of this dissertation is to evaluate Ziba Mir-Hosseini’s understanding of gender justice. This will be done by examining the hermeneutic she uses to interpret gender justice in Islam and the epistemology that informs it to achieve her gender-egalitarian mandate that she says the Qur’an espouses. I will do this by identifying and then evaluating the movements and people that have shaped how she conceives a Qur’anic interpretation of justice, namely the feminist movement, the human rights movement, and male scholars and their hermeneutics. I will also examine how those influences affect how she understands her egalitarian interpretation of Qur’an 4:34 and how that understanding furthers her effort to bring about a gender-egalitarian meaning of justice.

**Statement of the Problem**

Islam claims to have had gender justice always in mind, even at the beginning of its existence. For instance, Qur’an 4:135 states,

O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do. (Qur’an 4:135 Usuf Ali translation)

So, it is not a question as to whether Islam considers itself to have a call to further justice in general or even gender justice in particular. The problem that needs an answer is this: Can the interpretive choices Mir-Hosseini uses to understand gender justice be reconciled with the text? Islamic scholars hold a diversity of opinions on this question, as there is no unified theory. Since the Islamic tradition believes that God has made known his will through revelation, it plays the principal role in determining what Islam teaches about gender justice. Any theory offered must be grounded in the Qur’an and the Sunna.

           Therefore, there needs to be a comparison of Mir-Hosseini’s work in light of a classical Islamic perspective versus her feminist perspective. One of two things is true. The first possibility is that her assessment regarding classical Islamic teaching on women and family is accurate. In this scenario, Mir-Hosseini offers a fresh way of interpreting the Qur’an in our contemporary times, by showing that a sociologically constructed fiqh reflects the views of seventh-century Arabia and that family law indeed needs to change, that ethics is not static but develops over time according to the needs of society. The second possibility is that Mir-Hosseini uses hermeneutical methods that cannot be reconciled with the text.

**Purpose Statement**

My goal in this dissertation is to contrast Mir-Hosseini’s view of gender justice with the classical understanding of gender justice. My assumption in this study is that traditionally, Islam has promoted graded equality and not absolute equality. What I mean here is that traditionally, Islam has seen men and women as ontologically equal, but serving in different roles. For example, Qur’an 16:97 (Sahih International) communicates an ontological equality when it says, “Whoever does righteousness, whether male or female, while he is a believer - We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do.” Thus, the same rewards are available to men and women without discrimination.

## However, does the Qur’an teach that men and women serve identical roles? Are some leadership roles only filled by men? Mir-Hosseini believes that “gender roles are neither fixed, given, nor absolute.” (Mir-Hosseini, 1998) For there to be absolute equality, as she claims represents Islam, leadership roles in the family and the mosque would need to be equally available to both genders. There are many reasons to be skeptical of this possibility of absolute equality as the Qur’an, Sunna, and tafsir seem to confirm that men and women serve different roles in marriage, family, and the ummah. For example, in the roles of husband and wife, the husband is to be the breadwinner in Qur’an 4:34. Regarding inheritance, men receive twice as much inheritance as women. With that said, these interpretations may have been incorrect. These injunctions may have been meant to be temporary and no longer relevant in contemporary society. Mir-Hosseini may be correcting centuries of misinterpretation of these critical issues. However, given that her ideas of gender justice are very late ideas in Islamic history, as she rejects centuries of Islamic scholarly work, the burden of proof is on her. Therefore, she will need to provide convincing arguments to establish her position.

# **Research Methodology**

I also do not come to this study wanting to reform Islam to reflect a more progressive worldview, though many scholars in the West, Muslim and secular, want to do just that. Nor do I come to the study wanting to uphold classical Islamic understanding of the faith. I wish to be accurate in my analysis, and, to the best of my ability, offer an objective analysis, while acknowledging my theistic bias on how I approach this subject. Mir-Hosseini believes there is an epistemological crisis in Islam when it comes to understanding women and their role in their religion, family, and society. She desires to help replace it with a new epistemology, one that employs gender justice. Therefore, it is essential to deconstruct her presuppositions to see if those presuppositions lead to either erroneous or accurate interpretations.

I examine the presuppositions of her feminist and human rights commitments, and the hermeneutics that she draws from male scholars. Then I evaluate her ideas in light of those presuppositions. My evaluation focuses on how these presuppositions affect her understanding of Qur’an 4:34. I will draw from the work she has written and books she has edited that address the subject matter. This objective will be achieved by examining her arguments, and the hermeneutics that inform her arguments, to see if she allows the text to speak or if she seeks to superimpose on the text, an egalitarian agenda.

**Limitations of the Research**

The linchpin of Mir-Hosseini’s argument is that faulty interpretations of Qur’an 4:34 further gender inequality. In that text, two key words justify patriarchal beliefs, namely “wilayah” and “qiwamah.” Since she has done most of her work examining these ideas through her anthropology discipline, most of this dissertation focuses on interpreting these words and the hermeneutics that informs those interpretations. Therefore, I will also draw on books Mir-Hosseini has edited, like *Men in Charge?* and *Gender and Equality in Muslim Family Law,* books that further advance Mir-Hosseini’s ideas, to provide further understanding on how these words should be understood using the interpretation of feminist textual scholars.

**Chapter 2. Literature Review**

**Mir-Hosseini’s Work**

Mir-Hosseini’s relevant works include *Marriage on Trial: A Study of Islamic Family Law;* *Islam and Gender;* and *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts.*Her book *Marriage on Trial* focuses on marriage and divorce in Iran and Morocco and examines this subject through the lens of law, anthropology, sociology, and women’s studies to show how women can create change in their favor and achieve semi-just results in family law through the law system already established. In *Islam and Gender,*she attempts to determine whether women can achieve justice in society by interviewing several Iranian Shi’a clerics from various theological views. Then in *Control and Sexuality,*written with Vanja Hamzic, she explores Zina laws and their effect on women in Muslim countries. These books provide an overview of the subject the books deal with and an understanding of the conceptual framework she uses to deal with gender justice issues.

      On top of the fifty articles in numerous academic journals she has published, Mir-Hosseini has edited two other books that show her ability to bring together scholars to write about gender justice. The books are *Men in Charge?: Rethinking Authority in Muslim Legal Tradition*and *Gender and Equality in Muslim Family Law: Justice and Ethics in Islamic Legal Tradition.*These books’ significance lies in their ability to address specific issues that promote gender inequality, like the interpretation of Qur’an 4:34, which is a crucial text for Islamic feminists to reinterpret, particularly the words qiwamah and wilayah, which cement patriarchal narratives in the minds of Muslims, by drawing on each scholar’s expertise to offer alternative interpretations. These books’ value is that they specifically offer cogent arguments that attempt to refute centuries of arguments by Islamic scholars that still hold sway. The arguments also further legitimize Mir-Hosseini’s central thesis that Islamic scholars and jurists have furthered patriarchal interpretations inconsistent with Islam.

**Feminism**

Since feminism is the paradigm Mir-Hosseini uses for her critique, an analysis of feminist presuppositions is in order to evaluate her work properly. Muhammad Legenhausen (n.d.) argues that “Islam and feminism have contradictory views on the most fundamental issues in metaphysics, ethics, social and political philosophy, and theology.” Therefore, a theoretical understanding of feminism is needed to understand Mir-Hosseini’s overall goals and objectives. To evaluate Legenhausen’s statement, Deborah Cameron’s book titled *Feminism:* *A Brief Introduction to the Beliefs, Ideas, and Politics of the Movement* (2019) helps to evaluate introductory feminist ideals to see if they contradict Islamic ideas. This book offers a much-needed clear definition of feminism and how feminists understand issues like sex, work, and justice, to name a few, doing so by summarizing the diversity of feminist views on each subject.

Then, to offer a more in-depth analysis of feminism, understanding the work of Michel Foucault, a significant contributor to feminist theory, is essential. His contributions include his view that gender is not rooted in biology but is a social construct that has contributed to the feminist critique of essentialism, which is essential to Mir-Hosseini’s work. Mir-Hosseini believes these essentialist ideas did not begin with Islam but with Aristotle, thus prescribing hard and fast roles in the home, mosque, and society based on gender. Another contribution by Foucault is his analysis of how power structures develop. Mir-Hosseini’s tools of analysis regarding Islam and gender point back to these ideas. There are two helpful books to analyze his thinking: *Foucault and Feminism* (1992) and *Foucault: A Critical Analysis* (1994), both authored by Lois McNay.

As feminism relates to Islam, the literature is replete with information on this topic from different perspectives, by many authors and scholars. Some of the foundation books in the field that deal with how Islamic feminism intersects with history and secular culture are reflected in several works, three of which I will summarize. In *Feminism in Islam: Secular and Religious Convergences,*Margot Badran attempts to counter the resistance to Islamic feminism by attempting to reconcile the terms “Islam” and “feminism” by showing how these two schools of thought have coalescing ideas that help to bring about gender justice ideas in Islam.

Fatima Mernissi, on the other hand, addresses one of the resistances toward Islamic feminism from the West in general, and Muslims in particular, which is whether Islam is compatible with the West, particularly when it comes to women. In *Islam and Democracy*, she addresses the fear of some Muslims to being influenced by the West. This book is essential because of the tendency to dismiss gender justice ideas because of the fear of tainting the faith.

Mernissi’s ideas are also criticized by Raja Rhouni, who wrote another essential book titled *Secular and Islamic Feminist Critiques in the Work of Fatima Mernissi,* who critically engages with Mernissi’s work. Mernissi’s book sheds light on Mir-Hosseini’s quest to appeal to Western ideas to inform Islam, whereas Rhouni’s work helps the reader understand how secular feminist critique helps make sense of the quest by Islamic feminists to reconcile Islam with feminism.

      Amina Wadud and Karen Bauer have written other foundational books that deal with issues on women and the Qur’an. For example, *Inside the Gender Jihad* and *Qur’an and Woman* by Wadud further an Islamic feminist critique of the classical understanding of gender by using the tools of exegesis. Her books are essential because of fourteen centuries of Islamic scholarship, women wrote none. Thus, the significance of her work lies in the willingness to offer a woman-centered interpretation of the Qur’an.

On the other hand, Bauer wrote the book *Women and Gender in Islam: Historical Roots in a Modern Debate.*She, too, deals with the historic male interpretations of male scholars and jurists in her book *Gender Hierarchy in the Qur’an: Medieval Interpretations and Modern Realities*. These books are essential for understanding Mir-Hosseini’s claim that classical male scholars and jurists interpreted the Qur’an, making misogynistic claims on the text that are not consistent with Islam. The feminist interpretations contained in this book help to counter such claims.

Countering scholars like Wadud and to some degree, Bauer, is Aysha A. Hidayatullah, who wrote *Feminist Edges of the Quran*. Hidayatullah addresses a sorely needed critique of feminist hermeneutics in the field. Her work undermines some of the Islamic feminist interpretations of the Qur’an and even sheds light on how Islamic feminists interpret the Qur’an. She outlines the hermeneutical approaches Islamic feminists use. I use her work as an interpretive framework to evaluate Mir-Hosseini’s work.

Adis Duderija’s book, written together with Alina Isac Alak and Kristin Hissong, titled *Islam and Gender,* is indispensable to the study of Islamic feminism. The book begins by explaining how feminists understand gender and religion from their paradigm. It then describes how Muslims in a pre-modern context understood masculinity and femininity as well as patriarchal honor and its negative manifestations. The book also covers how the Qur’an and Sunna understand gender and how it is perceived. Other topics considered include an Islamic understanding of divorce, inheritance, adultery, sexual violence, gender, and sexual diversity. The book ends by showing how gender and sexual diversity are understood, and Muslims’ lived realities.\*[[1]](#footnote-1) This book provides the necessary background knowledge that has shaped Mir-Hosseini’s ideas.

**Male Scholars and Their Hermeneutics**

While I deal later in this dissertation with other male scholars who figure very prominently in Mir-Hosseini’s work, two are essential to providing the initial framework for an Islamic feminist hermeneutic. Thus, it is necessary to examine the reformist scholars that Mir-Hosseini stipulates are foundational to her thinking, who are al-Thahir al-Haddad and Fazlur Rahman, as they “bridged the gap between classical fiqh and modern notions of justice by providing a framework for an egalitarian interpretation of Islamic sacred texts.” (Z. Mir-Hosseini et al. XXXX) The book by al-Haddad, titled *Muslim Women in Law and Society,* deals with Muslim women’s role in society at the beginning of the twentieth century. Rahman’s works are twofold, namely *Revival and Reform in Islam: A Study of Islamic Fundamentalism* and his other book, titled *Islam and Modernity*. These two resources explain his rationale for his reformist beliefs.

**How Mir-Hosseini’s Epistemology Will Be Evaluated**

To evaluate Mir-Hosseini’s beliefs regarding how to achieve gender justice, some insightful books further that understanding. *The Imperative of Progressive Islam* by Adis Duderija offers an understanding of the various perspectives of progressive Islam. Also, it offers an analysis of critical thinkers in the movement, such as Muhammad Shahrur, Khaled Abou El Fadl, Abdolarim Soroush, Ali Ashgar Engineer, Farid Esack, Hassan Hanafi, Shabbir Akhtar, M. Abed Al-Jabiri, Abdulaziz Sachedina, and Ebrahim Moosa. Most of these authors, in one way or another, have informed Mir-Hosseini’s views.

      An excellent paper written by Duderija titled *Contemporary Muslim Male Reformist Thought and Gender Equality Affirmative Interpretations of Islam*offers an analysis of crucial scholars on gender equality such as Nasr Abu Zayd, Mohsen Kadivar, and Khaled Abou El Fadl. These authors intend to help achieve gender equality by providing a hermeneutic that will allow for a contemporary interpretation.

      The subject of justice and family law is also a part of the Islamic feminist discourse, so this subject also needs attention because the brunt of Mir-Hosseini’s critique is of the classical views of Islam and their views on family law. She believes that it reflects the seventh-century Arabian understanding of gender and justice. Therefore, a resource was needed to help navigate the challenging project of understanding gender justice, Islamic law, and, more specifically, family law. Consequently, I draw from *Islamic Family Law in a Changing World: A Global Resource Book* edited by Abdullahi A An-Na’im (1988), and *The Qur'an and the Just Society* (2019) by Ramon Harvey. An-Na’im outlines the difficulties of living out one’s faith in the contemporary world and offers advice on navigating that challenging terrain. Conversely, Harvey’s book offers an Islamic understanding of justice by using theological and hermeneutical tools, drawing on classical and contemporary sources, to formulate a contemporary understanding of justice. Both of these works are important for providing a framework for understanding the Muslim family and justice.

**Chapter 3**

Mir-Hosseini’s views on gender and Islam began to take shape shortly after the Iranian Revolution, when Ayatollah Khomeini took power and implemented an Islamic state in Iran (1979). Western ideas of women, implemented by Mohammed Reza Shah, were dismantled in favor of Khomeini’s understanding of gender and Islam. At first, Mir-Hosseini was very supportive of the Revolution until she realized the effects of the Republic’s understanding of fully implementing a classical understanding of Sharī ah law. (Z. Mir-Hosseini, 2007) She concluded that there could be no justice for her in the land of her birth. Consequently, to implement gender justice, there had to be a challenge to the patriarchy in Islam. (Z. Mir-Hosseini, 2008) The motivation for her future work was beginning to formulate.

This chapter will begin by outlining my methodology to examine Mir-Hosseini’s beliefs that impact her epistemology. Mir-Hosseini is clear as to what she would like to accomplish. She believes that the idea of gender equality created an epistemological crisis. (Z. Mir-Hosseini, 2013) As an early Islamic feminist, scholar and activist voice, she has sought to influence a new epistemology opposing the classical fiqh jurists’ epistemic commitments. Then I will examine the movements that have shaped her thinking: the feminist movement, the human rights movement, and Muslim male modernist and postmodernist scholars, and how I will determine how these movements impact her epistemology and understanding of Qur’an 4:34.

**My Methodology**

In my analysis, I assume that God is the primary source of all knowledge and guidance and directs men and women’s affairs to achieve his will. Given this assumption, my position is that the Qur’an also offers a theory of knowledge, one that is God-centered and not human-centered. Therefore, revelation reflects God’s wisdom to guide and direct the affairs of men and women. Because of human frailty and weakness, God has made his revelation clear and designed for humans to understand in ways they can readily apply. However, given human beings’ fallibility, God never intended them to comprehend things like justice entirely on their own. They needed clear divine guidance. Therefore, gender justice communicated by God through revelation trumps any understanding of justice developed by using human reason to create a theory of justice. This commitment means that, despite what one’s modern culture may dictate, God’s guidance on justice is best, and any proper interpretation does not place the human experience above God’s revelation.

      To evaluate Mir-Hosseini’s view of gender justice, I will compare my assumptions just mentioned with her understanding of gender justice in Islam. This analysis will examine her use of the feminist movement, the human rights movement, modern male scholars, and their hermeneutics, summarized below. To evaluate these views, I will first evaluate the epistemology, or sources of knowledges she uses to inform her hermeneutics and her position on gender justice. I will determine if her epistemology allows her to give primacy to the Qur’anic revelation. Here I will examine qiwamah as an exegetical construct, an alternative rereading of khilafah, wilayah, qiwamah, and an argument for gender egalitarianism in Islamic law. My response to the argument will follow each point.

While my methodology does not offer a definitive analysis, I hope to offer a much-needed comparison between two classical views on gender justice and Mir-Hosseini’s view. Often, classical scholars’ response has avoided this type of analysis, and instead attempted to refute Islamic feminist arguments by using just textual and juristic methods. Below, I interact with Mir-Hosseini’s three epistemological strategies.

**Feminist Movement**

Feminism begins with a certain presupposition, which is that society’s understanding of gender has been socially constructed to undergird patriarchy. One reason for this, says Deborah Cameron (2019), is that “for most of human history almost all women were excluded from advanced learning and so played little part in the creation of knowledge.” As a response to this, feminism became an academic study in the early 1970s in the form of gender studies. “One of the aims of gender studies at its most general is to develop language and concepts necessary to comprehensively examine the use of gender as the major culturally organising principle.” (Duderija 2014) They put what they saw as patriarchal structures under the microscope. As a result of their ongoing analysis, feminists concluded that at the heart of the problem is duality, where hierarchical structures are created that organize all of life, dividing things and people into superior and inferior categories. For example, men are always superior to women because men are stronger than women.

Feminists believe that society has followed this model, almost universally, in a variety of cultures, worldwide. They believe that religion has been one of the greatest forces in establishing male/female binary relationships. Adis Duderija (2014) says that “[r]eligion ... as a concept, can be viewed as the result of socio-cultural interactions that … produces certain kinds of socio-cultural systems through processes of domination, subordination, inclusion, and exclusion.” The point of Mir-Hosseini’s work is to deal squarely with these forces and replace it with an epistemology that will topple the patriarchy furthered by classical fiqh.

In her article titled *Islamic Law and Feminism: The Story of a Relationship*, Mir-Hosseini (2002-2003) shows the quandary that Muslim women were in prior to the emergence of Islamic feminism. Before, it was thought that Islam was incompatible with modernity, as things like “secularism, democracy, pluralism, civil society, religious tolerance, and gender equality” were not reconcilable with this religion. According to Mir-Hosseini, Muslim women had nowhere to turn as Muslims were tightly wedded to a classical understanding of Islamic law when it came to modernity and women’s issues. However, with the emergence of modernist and progressive voices, this no longer was the case. There has been a considerable effort to change the Islamic anti-modern paradigm, to adopt new hermeneutics that allows Muslims to interpret their faith, with Mir-Hosseini being one of the Muslim women leading the way.

Before the emergence of the Islamic feminist movement, Muslim women had a limited voice for justice as feminist ideas had yet to address Muslim women’s issues. While first-wave feminism emancipated women from common interpretations of religious texts, they were still the subject of the critique. In the 1960s, with second-wave feminism, the focus shifted from women being at the center of the subject studied to women being the epistemological authority in various academic discourse areas. As a result of feminist scholarship, “new explanatory terminology was invoked in decoding the universal oppression of women. Misogyny and patriarchy, a ubiquitous all-male power ‘structure that enabled the elaborate expression of misogyny across a wide range of cultural, political, and intellectual systems’, were basic categories of analysis.” (Duderija, 2014) This provided the impetus for a whole host of deconstruction strategies.

While secular feminists dismiss the idea that people can reform religion from patriarchal and oppressive superstructures, others, like Mir-Hosseini, believe that religion, in particular Islam, can be reformed from within. She believes that gender equality lies in the legal tradition not with the Qur’an, but with the tafsir, and how classical jurists translate key ideas of the faith. For example, Mir-Hosseini believes that it is wrong to understand the words qiwamah (husband’s authority) and wilayah (guardianship) in this way. She says that “[t]hese two concepts underlie the logic of most contemporary Muslim family laws and are manifested in legal provisions that regulate spousal and parental duties and rights, … and continue to play a central role in institutionalizing, justifying, and sustaining gender inequality in Muslim contexts.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani,](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani) and Rumminger 2015, p. 1) She charges that women are seen as inferior to men because they are said to be deficient in intellect and religion.

As a result, Muslim modernist scholars began to counter these ideas and construct new responses to modernity’s Islamic law objections. However, Mir-Hosseini believes modernist scholars did not go far enough.[[2]](#footnote-2) What was needed was a revolution in Islam’s understanding of fiqh in general and Muslim family law. Some Muslim women believed the time had come to look to feminism to help establish the revolution in Muslim family law and gender equality. Like other Islamic feminists, Mir-Hosseini’s “aim is to demystify [classical fiqh] concepts and reinterpret them through feminist knowledge grounded in the Muslim legal tradition.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani,](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani) and Rumminger 2015, p. 5) In the Muslim world, her voice is helping to change “the terms of the relationship between Islamic law and feminism - a relationship that was marked until recently by antagonism and distrust.” (Mir-Hosseini, 2002-2003) Her goal is to influence Muslim women and men to reject the patriarchal attitudes that underlie classical Islamic jurisprudence.

One of the key areas of focus for Islamic feminist scholars is developing a women-centered hermeneutic, which contains the following elements: a hermeneutic of suspicion, a hermeneutic of retrieval, and a hermeneutic of reconstruction. Duderija (2014, p. 23) summarizes these elements by stating,

… the hermeneutics of suspicion, which critiques and deconstructs past androcentric religious traditions, was completed by hermeneutics of retrieval that recovered the lost history of women. Especially in the third wave of feminism, hermeneutics of reconstruction recreated and reformulated not only the basic theological categories, but also the academic framework and epistemology involved.

This hermeneutical method begins this investigation by assuming a particular view of equality and justice. From there, any teaching that is not in concert with this view should be treated with suspicion and subsequently deconstructed and then reconstructed with a contemporary understanding of justice. I ask this: Does this hermeneutical method let the text speak, or does the reader create the desired meaning based upon an a priori assumption of a new view of justice? Mir-Hosseini believes that the correct understanding of the Qur'an’s teaching on the subject is in concert with feminist and human rights ideals. The question that I seek to answer is whether this hermeneutical method accomplishes the ideals that she espouses.

**Human Rights Movement**

In an article by Mir-Hosseini titled *Human Rights and the Islamic Legal Tradition: Prospects for an Overcoming Consensus* (2019), she states the following:

The encounter between Islam and human rights has been the subject of impassioned and tangled debate. This debate is nowhere more intense and polarized than in the area of women’s rights, which in most Muslim-majority countries continues to be regulated by the patriarchal ethos of established interpretations of the Shari‘a. With the expansion of human rights discourses in the 1970s and 1980s, and the concurrent rise of Islamist political movements, adherents of the two viewed each other with growing distrust and contempt; they seemed destined to clash. But was this clash inevitable? Can we find a way of reconciling these two polarized forces? Is there common ground on which they can engage in productive debate?

Mir-Hosseini ends her statement with a few essential questions, which can be summarized in one statement: Does a human-rights understanding of justice cohere with an Islamic understanding of justice? To answer that question, one must begin by asking what a human rights understanding of justice is? In 1948, the United Nations created the *Universal Declaration of Human Rights* to outline what they believed should be a universal understanding of human rights. According to the United Nations:

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination. (United Nations n.d.)

Mir-Hosseini (2019) points out that “[p]roponents of both Islam and human rights … claim [to represent the] universality and the aim of ensuring justice and proper rights for all humanity.” While their end goal is the same, justice for all humanity, do Islam and the proponents of human rights have the same vision for all humanity’s justice and rights? Louis Henkin, who was one of the original participants in writing this declaration, believed that this human rights as proposed “claimed no philosophical foundation, nor do they reflect any clear philosophical assumptions; they articulate no particular moral principles or any single comprehensive theory of relations of the individual to society.” (Mir-Hosseini 2019) He seemed not to understand that philosophical presuppositions are governing the statement, namely Western liberal democracy.

  John Rawls (d. 2002), coming from the liberal tradition, was a moral and political philosopher who was tremendously influential in defining human rights and social justice in the United States beginning in the 1970s. He reflected similar views on human rights that the UN resolution and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have done until his death. In the book *John Rawls and Christian Social Engagement: Justice as Unfairness*, the authors critique his view, and that critique is useful as a framework for investigating the presuppositions of human rights ideas. It is valuable because the authors are coming from a theistic background and a belief in divine revelation, albeit from a Christian point of view.

Rawls based his ideas on the premise of “justice as fairness” attempting to create a system of justice based upon “common ground” and making no attempt to ground his understanding in divine revelation, as “the people themselves choose ethics.” (Bradley, 2014) He believed that politics should accommodate religion but should not advocate a particular religious point of view. In essence, he created a “civil religion,” where one is not asked to renounce one’s religion, but to have one’s religion accommodate this point of view.

He boiled down his understanding of human rights and justice to fairness and equality. However, does fairness measure up to God’s standard of justice? If fairness or equality is simply the all-encompassing standard that defines justice, what happens when one compromises other standards of God’s moral law to pursue fairness and justice? For example, what if the ideals of human rights legislation do not undergird Islamic inheritance laws? Should they be dismissed because they do not give equal rights to men and women? It seems there would need to be additional evidence to overturn that law.

The first possibility is that Mir-Hosseini’s assessment regarding classical Islamic teaching on women and family is accurate. In this scenario, Mir-Hosseini offers a fresh way of interpreting the Qur’an in our contemporary times, by showing that a sociologically constructed fiqh reflects the views of seventh-century Arabia and that family law indeed needs to change, that ethics is not static but develops over time according to the needs of society.

The other option is that her feminist and human rights goals and presuppositions undermine Islamic teaching. There needs to be an examination of Mir-Hosseini’s definition of equality. Classical Muslims, modernist Muslims, and postmodern Muslims, including Islamic feminists, say that they believe in equality. The question to ponder is what is meant by the principle of equality? For example, in varying degrees, the classical Islamic point of view and the modernist view believe that men and women serve a complementary role. This view of equality is what I will call graded equality. On the other hand, Mir-Hosseini believes in absolute equality, where men and women do not serve complementary roles.

**Male Scholars and Their New Hermeneutics**

The male modernist scholars emerged in the latter part of the nineteenth century, seeking to make the Islamic faith relevant to modern culture. These male scholars had a considerable effect on Mir-Hosseini’s thinking. Therefore, I will briefly examine the work of Abdolkarim Soroush, Al-Tahir al Haddad, Fazlur Rahman, Nasr Abu Zay, and Muhammad Khalid Musud in order to identify their ideas and how they impacted Mir-Hosseini’s thinking, which will assist in examining their ideas in light of traditional Islamic epistemology.

Abdolkarim Soroush, an Iranian intellectual, was once a part of Ayatollah Khomeini’s regime that ushered in the Iranian Revolution. When the revolution’s tumultuous effects became evident, Sourish began to change his thinking, offering an epistemological counter geared toward making Islam relevant to the modern era. He believed that modernity posed a significant challenge to Islam, having made “religious life in the contemporary world impossible.” This decision resulted in him constructing an “epistemological theory” of Islam “worthy of the modern age.” Key points in his epistemic theory are reflected in his book *Reason, Freedom, and Democracy in Islam: Essential Writings of Abdolkarim Soroush,* where Soroush outlines his thoughts on this matter.

To overcome the errors espoused in Islamic fiqh, one needs to distinguish between religion and religious knowledge. One of the problems with classical fiqh was that it was perceived to be, in effect, the very words of God on a matter, as cultural presuppositions played no role in ascertaining the truth. Soroush countered this idea by saying that religious knowledge was “time-bound” and “cultural bound,” so he came up with “the theory of contraction and expansion.” This theory saw the collection of religious knowledge as a collective endeavor, not just relying on revelation, but also relying on human reason and other sources of human knowledge, thus drawing religious truth from disciplines such as anthropology, sociology, and the like, which serve as instruments in understanding a religion. For Soroush, “Muslim scholars have always been drawing on their extra-religious knowledge in their attempts at understanding their religion.” (Soroush, 1994) What Soroush was attempting to do was to make religious knowledge cohere with human knowledge.

While Soroush never applied his theory to advance gender equality, at least in the way Mir-Hosseini understands it, his theory did offer her another way of interpreting Islam. For an egalitarian interpretation, she would need to appeal to other sources. In his book *Our Women in the Sharia and Society,* one key source isAl-Tahir al-Haddad,who provided a framework for rethinking key concepts in Muslim family law. (Mir-Hosseini et al., 2013 p. 13) His framework for understanding gender and the Qur’an was instrumental to Mir-Hosseini’s thinking. He advocated the idea that fiqh rulings were time and context-bound, (Mir-Hosseini et al., 2013 p. 14) and that the Qur’an intended to bring about gender equality in “what he calls a ‘policy of gradualism’ (siyasa tadrijiyya), which he argues governs the whole process of legislation in the Quran and the Sunnah.” (Mir-Hosseini et al., 2013 p. 15) For him, equality should be achieved in all Muslim life areas, making his desire for gender equality unprecedented, being well ahead of his time.

Muslims have a very high view of their holy book, the Qur’an, seeing it as God’s divine word to humanity, offering the most comprehensive guidance for humanity. Given their view of this holy book, interpreting it correctly is of the utmost importance. Therefore, having a hermeneutic that can faithfully exegete the Islamic texts and meet the interpretive goals of gender equality was paramount. However, al Haddad’s desire to bring gender equality in Islam was not undergirded with a sufficient hermeneutic to accomplish the task. For that, Mir-Hosseini would turn to Fazlur Rahman. Rahman was not an advocate for gender justice, but his “double movement” hermeneutic has shaped the work of Mir-Hosseini and the discipline of Islamic feminism as a whole.

Rahman’s “double movement” hermeneutic begins by first understanding the historical situation of the text. Under this hermeneutical model, the interpreter discovers what is taking place in the historical situation at the time of the revelation and finds out what situation Muhammad was getting a revelation to address. The interpreter seeks to locate the meaning of the situation dealt with in the passage under examination. Then the interpreter establishes the construction of a general moral and social obligation conveyed in the overall message of the Qur’an. Rahman argued that some things mentioned in the Qur’an were answers given to address that particular situation and never intended to be examples to be continually followed. According to Rahman (1979, p. 5), the Qur’an records the divine response given to Muhammad from God regarding questions people asked of Muhammad. Rahman concludes, then, that “[t[he Qur’an is the divine response, through the prophet’s mind, to the moral-social situation of the Prophet’s Arabia.”

Other male scholars took his ideas and expanded them to apply to gender justice. Three other scholars who helped shape Mir-Hosseini’s views are Nasr Abu Zayd, Mohsen Kadivar, and Khaled Abou El Fadl.

Nasr Abu Zayd (d. 2010) appropriated a literary approach to the Qur’an, in which he considered it to be “a socio-culturally produced, ‘linguistic text’ (nass lauhawi) and a created speech of God.” He argued that there exists a “dialectical relationship (alaqa jadaliyya) between the Qur’an as a text and the culture and reality to which the text belongs and which it embodies.” (Duderija 2020, p. 64) Thus, he echoes Rahman’s hermeneutical approach in that the interpreter first locates the historical meaning of the Qur’an and the cultural context in which it arose. The purpose of the text may change over a period of time because the socio-cultural context changes, resulting in “an endless process of interpretation and reinterpretation which cannot but differ in time.” (Duderija 2020, p. 165) There are issues in Muslim family law, like inheritance and divorce laws, that did not begin with the Qur’an, so they were not originally a Qur’anic imperative as the Qur’an did not initially establish them. These were laws already established before the Quran’s revelation, which the Qur’an either altered drastically or merely modified. Therefore, gender justice issues that seemed not to be affirmed by the Qur’an, like male favored divorce laws, can be dismissed in our current age because these were injunctions meant for that period.

The next male scholar who helped develop a hermeneutic to achieve gender justice is Kadivar, a former high-ranking Shi’a and Iranian scholar who serves as a professor in Islamic Studies at Duke University. (Duderija 2020, p. 168) His contribution to the debate on women-friendly hermeneutics entails differentiating between traditional Islam and what he calls “Islam as an end in itself.” (Duderija 2020, p. 168) He sees the traditional understanding of Islam rooted in premodern ideas developed under “special circumstances of the Age of the Revelation as the immutable, sacred, and idealized framework for Islamic thought,” concepts which are not compatible with the modern era. (Duderija 2020, p. 168) This epistemology allows only adaptations that “mimic these conditions.” (Duderija 2020, p. 168) What is needed is an Islamic epistemology, which “goes well beyond the ‘temporal and spatial conditions of the age in which the religion arose,’ and views religiosity through the cognition and realization of the spirit of religion and the goals of Islam.” (Duderija 2020, p. 168) This view sees the fundamental teachings of Islam coincide with the view of justice and equality which governs the thinking of our modern age. It seeks to establish, in this system of Islam, “a very strong emphasis on the idea of objectives goals of Islam,” which espouses ideas consistent with feminist and human rights epistemologies. (Duderija 2020, p. 168)

To fully realize “Islam as an end in itself,” Kadivar believes that a new judicial system needs to be established, one which allows Islam to become fully compatible with the modern age. This same quest is a theme that Mir-Hosseini calls for throughout her work, which is an Islam that is not informed by seventh-century ideals of gender and family life. To do this, Kadivar calls for a replacement of the “theocentric model” offered by traditional Islam “with a human-centered exegesis modeled in the image and spirit of a ‘modern conception of human’,” where one emphasizes the felt needs of humanity, a view of humanity that bases its existence not on duties, but individual rights. Thus, “Kadivar re-reads the textual evidence of legal differentiation between the sexes from the perspective of egalitarian justice to argue that the rulings on women in traditional Islam are subject to change because they are no longer just, ethical, or reasonable.” (Duderija 2020, p. 171)

The final male scholar that has impacted the thinking of Mir-Hosseini is Khaled Abou El Fadl, who, according to Duderija “is one of the most distinguished scholars of Islamic law today and a prominent scholar in the field of human rights.” (Duderija 2020, p. 172) His view of religious texts echoes that of scholars mentioned above in their belief that religious texts addressed issues during their historical period and were not meant to convey truth designed to be continually applied. He adheres to the principle of gradualism whereby the Qur’an was dealing with issues of justice in piecemeal, making the Qur’an a document that deals with justice issues in an “evolutionary rather than revolutionary [way], and [is] mitigatory rather than abolitionist [in] character.” (Duderija 2020, p. 173) The Quran is “forward-looking” and progressive and has moral objectives in mind, which means that if Islamic jurisprudence is to promote justice, it has to progress forward to achieve the moral objectives of human rights and gender justice and the overall primary objective. (Duderija 2020, p. 173) Thus, “social laws and norms in the Qur’an and sunna must be historically contextualized: in other words, they must be seen as products of prevailing socio-cultural and economic realities and customs that the Qur’an confronted and addressed, paving the way for a more just system.” (Duderija 2020, p. 173)

Another prevailing theme from his work is the distinction he makes between Sharī ah and fiqh. He believes Sharī ah is “the Divine potential fulfilled in Divine reality,” that is embodied law in its pristine perfection as it exists in God’s mind – the ideal, immutable, and eternal laws of goodness, justice, beauty, and ultimately Divinity as conceived in God’s mind.” (Duderija 2020, p. 173) Fiqh, on the other hand, is fallible, instead of being immutable, interpretations of men, and not divine revelations from God. This theme is one of the most fundamental elements of Mir-Hosseini’s thinking.

Chapter 4

In this chapter, I will access Mir-Hosseini’s work by first summarizing the classical Islamic epistemology to inform the reader of the system she is criticizing. Her criticism of classical Islam has merit, given the classical assumptions of “textual rigidity” and the effort to immortalize the “sacred past.” Second, I will evaluate her alternative principles of Islam by examining her views on what Adis Duderija calls the (1) “poiesis imperative,” (2) fiqh, (3) the classical form of justice, and (4) how she looks at the Qur’anic text. Third, I will evaluate her epistemology. Considered here will be her use of feminism, human rights understanding, and modernist male scholars. Last, I will analyze her reading of Qur’an 4:34 by examining (1) qiwamah as an exegetical construct, (2) her rereading of khilafah, wilayah, qiwamah, and her argument for (3) gender egalitarianism in Islamic law.

**The Classical Epistemology**

The classical Islamic understanding of gender justice and Mir-Hosseini’s understanding of gender justice interpret the texts through an epistemic worldview. Both views begin their approach to the text with assumptions about what knowledge is, how one retrieves knowledge, and how one can determine what is right. (Duderija 2018) This assumption greatly informs their hermeneutics. I will begin this section by summarizing the classical epistemology, which leads to adopting certain hermeneutical choices to understand gender justice.

It is essential first to locate how the classical view of Islam establishes its epistemological boundaries. Duderija says that the classical epistemological boundaries are rooted in what he calls a Salafi worldview, a worldview developed at the end of the second Islamic century. This epistemology undergirds the classical Sunni jurisprudence and has a tremendous impact on how they understood gender justice in the classical context. He contends that several different factors contributed to it. However, for this dissertation, I will not address those factors. Instead, I will summarize this worldview and how it legitimizes Mir-Hosseini’s critique to a certain degree.

The Salafi worldview has three key components. First, this worldview, according to Duderija (2017), is “characterized by heavy textualism in at least two variant forms – madhhab and ahl-hadith based” literature. The madhhab refers to the four Sunni law schools, the Hanafi, Maliki, Shafi’i, and Hanbali schools of jurisprudence, each developed by an Imam, designed to furnish the knowledge needed to answer Muslims’ questions on how to understand the Sharī ah, including issues about Muslim family law. The information contained in these schools is considered fiqh or “Islamic law.”

The other source, ahl-hadith, represents the recorded written records of Muhammad’s words and deeds, which provide Muslims with the information needed to emulate the founder’s life. Muhammad is considered to be the guardian of God’s revelation because he was chosen and guided by God to fulfill this task. The hadith, then, are reports of Muhammad’s teaching and actions as well as his approval or disapproval of what was taught and practiced by other Muslims. If he approved of something, it qualified as a hadith. If he disapproved, it also qualified as a hadith, by offering advice of what not to do. Thus, the hadiths are an essential source of Islamic guidance for Muslims because they give essential explanations to questions about many areas not covered by the Qur’an, such as how to perform the salat properly. The instruction as to how to properly engage in this practice is only found in the hadith. The hadith is also a critical revelation because some things taught in the Qur’an are not clear and need clarification. These works, too, address family law and help to further seventh-century understanding of gender and family. Mir-Hosseini believes that the four law schools and the written records of Muhammad’s actions have immortalized seventh-century understandings of gender and family that are not relevant in today’s contemporary culture.

The second component of the worldview pertains to the developments that took place after Muhammad’s death when the need for a way to administer the teaching of the Qur’an arose because from the seventh to the ninth century, there was no unified system to understand the Sharī ah. Instead, Sharī ah law was characterized by a diversity of opinions usually depending on where one lived. Wael B. Hallaq, in his book *An Introduction to Islamic Law*, says regarding the law’s formulation, that “pre-modern Muslim rule was limited in that it did not possess the pervasive powers of the modern state.” (Hallaq, 2009, p. 7) Because of this limitation, it meant that “bureaucracy and state administration were thin, mostly limited to urban sites, and largely confined to matters such as the army of the ruler, his assistants, tax collection and often land tenure.” (Hallaq 2009, p. 7) Thus, Muhammad’s followers needed to make sense of the “various theological, political, moral, and social schisms.” (Duderija 2017) This need motivated his followers to develop and incorporate a “joint concept of the sacred past and a retrogressive nature of time and history” in order to combat those challenges. (Duderija 2017) They needed to establish some parameters around what they believed. To do this, they set up “doctrines, beliefs and practices considered to be in accordance to the Qur’an and the *Sunna* of the Prophet.” (Duderija 2017) What was set up was a set of dogmas that stemmed from challenges to the faith.

The third concept that developed immortalized Muhammad’s companions’ beliefs and led to the development of adalat al sahaba doctrine, which connotes the belief of the companions’ righteousness. (Duderija 2017) After Muhammad’s death, many of his companions scattered as Islam began to expand outside of Arabia. These same companions recorded his thoughts, words, and deeds as they observed how he lived his life. Upon Muhammad's death, he asked them to make the Hadith widely known as possible. Thus, “the mechanism that was developed to authenticate the Sunna depended entirely epistemologically on upholding the collective moral probity of all of the Prophet’s Companions.” (Duderija 2017) This mechanism meant that the ideas of the companions were seen as practically inerrant. Mir-Hosseini argues that there is a good chance that they read their ideas into what Muhammad said or did.

Thus, the Salafi worldview greatly informed how Muslims understood the truth, ethics, and gender justice. The classical view says the Qur’an offers a theory of knowledge and not just guidance for one’s life. This view gives heavy textualist readings primacy, believing that God gave clear dictates in the Qur’an, and one realizes those dictates by advocating literalist interpretations of the text. Muslims think that Islam teaches that God sent men and women prophets to offer guidance on how to relate to God and live their lives, including family life. He sent Muhammad with Islam’s final guidance for all humanity. If this is so, the classical view believes that Muhammad also offers guidance about the family and what kind of society is best.

While God has provided humans with the ability to discover the truth, the classical view holds that believers must be mindful of their human frailty to accurately access this knowledge, making them skeptical of their opinions. Therefore, people need a clear revelation about defining one’s ethical responsibilities, which serves as the rationale for the heavy textualist readings. If literalism is embraced, it prevents believers from adapting their beliefs to a modern paradigm. Therefore, there will be truth conveyed by sacralized early interpretations of the Qur’an in the form of fiqh, that might be controversial or even rejected in modern times, and may defy contemporary ethical norms, but are considered guidance to be followed.

**Mir-Hosseini’s Alternative Analysis**

For Mir-Hosseini to implement the changes she wanted to see made in Islamic family law, there needed to be an epistemological change to produce the fundamental shift on how Islam and gender were understood. She adopted what Adis Duderija calls the “poiesis imperative,” furthered by Ebrahim Moosa. (Duderija 2018, p. 10) He provides an analytic construct for Islamic feminists like Mir-Hosseini to form an alternative analysis of Islamic teaching on gender and the family. For Moosa, reformist Muslims needed to engage in the poiesis imperative by utilizing “critical, creative, and imaginative thought … when engaging with the Islamic tradition.” (Duderija 2018, p. 10) This position allows Muslims to cross traditional Muslim scholars’ traditional boundaries by reimagining their faith, using a methodological framework that will enable them to fit their religion in a contemporary context. This thinking approaches one’s understanding of faith differently by utilizing hermeneutical, epistemological, and methodological resources outside the traditional canon of resources used to interpret the Islamic texts. Such a broadened hermeneutical understanding allows one “to critically and creatively incorporate theoretical insights from the contemporary humanities and social science-based bodies of knowledge indigenous to the (late) modern episteme to engage and (re)interpreting the Islamic tradition.” (Duderija 2018, p. 11) Mir-Hosseini’s call is to utilize feminist and human rights frameworks to understand Islamic texts that allow her to reinterpret patriarchal interpretations and replace them with interpretations that reflect a contemporary understanding of society.

Mir-Hosseini also challenges the idea that only certain people can interpret the Islamic faith for the ummah. (Mir-Hosseini et al., 2013) For example, she believes that traditionalists’ glaring error was that only men could interpret the faith for the ummah, as the classical view thought that only a few qualified actors could understand the traditions. (Duderija 2018, p. 16) Moosa’s view, on the other hand, says that to interpret the faith correctly, one needs “a number of competing interpretations, a contested terrain in which numerous actors and agents with different motives, political agendas, interpretational approaches, and objectives are present.” (Duderija 2018, p. 16) Thus, understanding the Islamic tradition’s teaching is much more a community endeavor, even involving people outside of the Islamic tradition. Instead of just male scholars interpreting truth, one can add feminine voices to the cast of interpreters. Therefore, Moosa thinks that understanding the Islamic tradition should be the “result of a fluid exchange of ideas” that should acknowledge “a wide spectrum and interpretations” because it helps to curtail “the element of power and politics which shape it.” (Duderija 2018, p. 16) It is out of this foray of multiple inputs that the tradition should be interpreted and understood.

**Understanding Fiqh**

Now, with the tools just mentioned, it enables Mir-Hosseini to offer a critique of Islam’s classical understanding of gender. She believes that there needs to be a distinction between Sharī ah and fiqh, as Sharī ah represents God’s revealed law given to Muhammad via the Qur’an and his Sunna. In contrast, fiqh (Islamic jurisprudence) is man’s interpretation of that law, making Sharī ah eternal but not fiqh. Thus, only the Sharī ah represents the divine path that Muslims are to follow. Historically, traditionalist Muslim scholars conflate the two concepts as if fiqh were synonymous with Sharī ah.

The problem lies with the idea that fiqh made judgments relating to women and was considered synonymous with Sharī ah. Mir-Hosseini believes that Islam’s classical understanding of women lies not with Sharī ah, but with fiqh and rests on the “premise that gender rights are neither fixed, given, nor absolute. On the contrary, they are cultural and legal constructs that are asserted, negotiated, and subject to change.” (Mir-Hosseini 2003, p.2) In her paper titled *The Construction of Gender in Islamic Legal Thought and Strategies for Reform*, she offers insight as to why she has arrived at that conclusion by arguing “that conceptions of gender rights in Islamic law are neither unified nor coherent, but competing and contradictory.” (Mir-Hosseini 2003, p. 1) How can traditionalists argue that gender rights are taken from a classical understanding of Islamic law immutably if they have contradictions? This point is an important one to be explored. If her analysis is correct, it creates a problem that violates one of the most fundamental laws of logic, namely the Law of Non-contradiction, a law that says that if one proposition is true, the opposite proposition must be false. If there are contradictions in fiqh, how can fiqh be immutable?

Mir-Hosseini also believes that fiqh teaching on gender and the family was not absolute or immutable, but “cultural and legal constructs [that are] negotiated and subject to change.” (Mir-Hosseini 2003, p. 2) For example, when Muhammad was receiving revelations, he was responding to seventh-century cultural situations, and his responses were not meant to be carried out for all time but were responses meant for that situation. Mir-Hosseini believes that laws on gender should respond “to lived realities, in response to power relations in the family and society, by those who want either to retain or change the present situation.” (Mir-Hosseini 2003, p. 2) Hence, Islamic understanding on gender relies heavily on human reason and applies contemporary understandings as a result of the progression of knowledge, rather than simply just relying on responses meant for the seventh century.

Mir-Hosseini also advises not to use the tools of the fiqh jurists to inform one’s thinking on Islam texts. (Mir-Hosseini 2003, p. 3) Instead, she approaches “Fiqh rules and their underlining theories from a critical feminist perspective, examining their validity in the light of contemporary gender theories and realities.” (Mir-Hosseini 2003, p. 3) Her approach is not to interpret the text on gender with standard Islamic interpretation rules, but to deconstruct classical interpretations using a feminist hermeneutical lens.

**Classical Understanding of Justice**

Muslims universally say that Islam believes in justice, a truth that seems to be affirmed by the Qur’an and Sunna. However, Mir-Hosseini rejects the classical Islamic understanding of justice because it is rooted in an understanding of the Aristotelian, deserts-based notion of justice and instead adopts a contemporary understanding of justice. The deserts understanding of justice is based on graded equality so that “justice is maintaining everything in its proper place: men and women have their proper, essential places in family and society, and justice consists of keeping them in these places and giving them rights accordingly.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani,](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani) and Rumminger 2015) Mir-Hosseini finds this understanding as unacceptable in our current modern cultural milieu because it “perpetuates outmoded gender stereotypes that keep hierarchical power relations intact…” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani,](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani) and Runninger 2015) Instead, she adopts a modern understanding that sees absolute equality as its primary goal. She uses what she sees as a “holistic framework” to understand justice by integrating “Islamic teachings, universal human rights, national constitutional guarantees of equality, and lived realities of women and men.” (Musawah 2018) This way, a contemporary audience can accept gender justice.

**Understanding the Text**

Classical Muslims and Islamic feminists arrive at vastly different understandings of key Qur’anic passages that define a woman’s role in the home. This division accelerated during the 1980s when the political environment was ripe for change when Fazur Rahman’s article on Islam and gender began a debate among Muslim leaders. (Mir-Hosseini et al., 2013) Mir-Hosseini points out that this article appeared when the discussion that focused on human rights discourse was emerging.

The response to this new conversation was political Islam, which began in the late 1970s. As this movement became a significant force in the Islamic world, its extreme views helped shine the light on the teachings of classical fiqh texts, and thus provided Muslims concerned with women’s rights the motivation and the political capital to reexamine and reinterpret Islamic text. The result of such a revelation brought about a response that included “unprecedented critical scrutiny and public debate.” (Mir-Hosseini, Al-Sharmani and Runninger, p. 28)

The result was a new wave of reformist minded scholars, including Mir-Hosseini, who sought to reinterpret the text, by epistemically deconstructing classical Islamic understanding by focusing “on how [the] religion was understood, how religious knowledge was produced and how rights are constructed in Muslim legal tradition.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani,](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani) and Rumminger 2015, p. 28) This served as the basis to deconstruct the tradition away from its patriarchal biases.

**Rationale for Qur’an 4:34**

Mir-Hosseini sees Qur’an 4:34 as the primary way gender inequality is furthered, with a particular focus on two words used in this verse: qiwamah (husband’s authority over his wife) and wilayah (men’s guardianship over females). These two concepts were used by classical jurists to justify rigid duties assigned to men and women in Muslim family law, and even in some countries regulating women’s participation in society. According to Mir-Hosseini, “as constructed in classical fiqh (Islamic jurisprudence) and reflected in present-day laws and practices, these two concepts played and continue to play a central role in institutionalizing, justifying and sustaining gender inequality in Muslim contexts.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani,](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani) and Rumminger 2015, p. 1) This reason is why my dissertation focuses on this topic.

**Evaluating Mir-Hosseini’s Argument**

To evaluate Mir-Hosseini’s work, one must analyze her efforts to interpret the Qur’an and Sunna in a way that leads to her understanding of gender justice. My assessment has three parts. First, I will offer a critique of Mir-Hosseini’s approach to this subject by critiquing her feminist hermeneutics. Second, I will critique some of her central Islamic feminist arguments. These arguments include the interpretive legacy of qiwamah as an exegetical construct, an egalitarian reading of khilafah, wilayah, and qiwamah, and how to produce gender-egalitarian Islamic law. Third, after each critique is complete, I offer my response to the author’s points.

**A Critique of Mir-Hosseini’s Hermeneutics**

Mir-Hosseini desires to challenge interpretations of male jurists, whom she sees as those who have developed the patriarchal ideas found in Islam, by utilizing a feminist critique. A feminist critique of one’s religion is nothing new, as Islamic feminists have drawn from their Christian and Jewish predecessors. From the onset of a religious critique, religious feminists unite around fighting sexism and male normativity by setting up the absolute goal of equality. What Islamic feminists like Mir-Hosseini want to do is place women’s experience at the center of Qur’anic interpretation. In other words, what interpretation works best for women’s experience.

Mir-Hosseini utilizes what Aysha A. Hidayatullah calls the trajectory arguments to support her idea that the Qur’an promotes gender equality. Hidayatullah bases her argument on the idea that “because of the historical context of its revelation, the Qur’an could only lay out reforms promoting gender equality according to what was possible or intelligible in its own time.” (Hidayatullah 2014b, p. 121) Mir-Hosseini retrieves this idea from al-Haddad, who promoted what he termed gradualism. According to this argument, Islam did not accomplish these aims during Muhammad’s lifetime. The purpose of these changes was to gradually take place, like changes to divorce law, for instance. The Qur’an does not seem to support this argument. Hidayatullah says that this position taken by people like Mir-Hosseini goes far beyond the Qur’an in order to support the contemporary demand for gender equality fully. (Hidayatullah 2014b, p. 115)

The subject of divorce is something that Mir-Hosseini has written about extensively. She believes that God did not intend for these laws to transcend time but meant to reform them at some point in history. (Mir-Hosseini 2000) Historically the practice of divorce in Islam was based on Sharī ah law interpreted by Islamic jurists. The problem was that the rules of divorce favored men over women as men were privileged to divorce their wives any for any reason. Women, on the other hand, were only granted a divorce under certain circumstances. Mir-Hosseini argues that God intended the restrictions on divorce to be temporary, as the Qur’an was attempting to produce gradual change, intending to grant women full equality.

           However, history may tell a different story. For example, in *Arabia and the Arabs (Peoples of the Ancient World),* Robert Hoyland (2001)shares some fascinating details concerning the Arab world’s inhabitants before Muhammad. One of the issues he briefly tackles is the issue of divorce. His research shows that divorce laws before Muhammad received revelations were less restrictive and not more restrictive.

﻿They [Saracens] have mercenary wives [since they give the men a dowry, the husbands must be mercenary, ﻿mercenary, but this does not occur to Ammianus], hired under a temporary contract. But in order that there may be some semblance of matrimony, the future wife, by way of dowry, offers her husband a spear and a tent, with the right to leave him after a stipulated time, if she so elects. And it is unbelievable with what ardor both sexes give themselves up to passion. (Ammianus 14.4)

Therefore, this evidence seems to suggest that Muhammad brought more restrictions on women. If this is true, was he attempting to oppress women, or was he reflecting God’s guidance to offer something better? If the latter point is the case, then is Mir-Hosseini offering a divorce view in contradiction to God’s intended purpose? One can only speculate about the rationale for such a revelation, but one thing seems to be clear. Muhammad’s revelation had a different understanding of the family in mind. If Hoyland’s assessment is correct, this becomes one evidence against Mir-Hosseini’s interpretation of gender justice.

Mir-Hosseini believes that God has ordained equality between the sexes, which means any interpretation that supports inequality results from interpreting the text according to a faulty and patriarchal interpretation that could not come from God. (Hidayatullah 2014b) Utilizing one of these techniques, she divides verses into mutuality verses, which reflect her egalitarian position, and hierarchical verses, which deny her position. Mir-Hosseini does this by defining hierarchical verses as being descriptive verses describing the events taking place, and not prescribing an action to be carried out.

The example above is another example of how Mir-Hosseini disagrees with the classical position. Instead of privileging mutuality verses, it might be the case that there is no dissonance in holding the mutuality and hierarchical verses in tension. I appeal to the possibility of the Qur’an communicating graded equality and not absolute equality. In an understanding of graded equality, both genders are ontologically the same but may serve different roles in the family and even society.

Mir-Hosseini’s commitment to absolute equality drives her to reject the possibility of graded equality. The late Christian author C.S. Lewis offers some possible insight when addressing how to understand this principle of equality, reflected in his book *The Abolition of Man*. He contended that this view made equality “the sole source of all value judgments. If (absolute equality) is rejected,” for any reason, “all value is rejected.” (Lewis 1943, p. 44 Kindle) When applied to Mir-Hosseini’s view of gender in Islam, if any aspect of Islamic teaching does not reflect absolute equality, that aspect of its teaching should be reinterpreted to reflect how feminists and contemporary human rights groups view gender. Hence, I will need to evaluate her pursuit of equality to see if her view reflects evidence found in the Qur’an and Sunna.

**Assessing Mir-Hosseini’s Argument**

Now I will summarize Mir-Hosseini’s argument that dismisses historical interpretations of Qur’an 4:34. She has long since argued that traditional Islamic understanding of gender and family law was formulated by people who interpreted the text according to the gender norms of their time. The book *Men in Charge?: Rethinking Authority in Muslim Legal Tradition*, co-edited by Mir-Hosseini, provides a comprehensive refutation of classical interpretations of Qur’an 4:34. Since Mir-Hosseini’s training is in anthropology, she examines the gender in Islam through that lens. In *Men in Charge*, she and two colleagues gather several scholars to address the many interpretive nuances of the aforementioned verse. The other authors of the book will serve as an extension of Mir-Hosseini’s thought, as they employ expertise in each of the categories they were asked to address.

**Qiwamah as an Exegetical Construct**

Mir-Hosseini’s lament regarding how classical Islam understands gender indicts a traditional fiqh understanding. Her focus is on “interpretations of Islamic texts, as sources of authority and justification for a particular stand or ideology on women’s rights, gender roles, and relations, etc.” (Mir-Hosseini 1998, p. 45) Mir-Hosseini and Anwar Zainah point out that the word qawwamun is only used once and the word qiwamah, which is the word under examination, is never used in the Qur’an. (Mir-Hosseini and Anwar 2012) Conversely, there are two other terms, ma’ruf (good way, decent) and rahmah wa muwadah, (compassion and love), that are used multiple times. (Mir-Hosseini and Anwar 2012) The inaccurate meaning was embraced by jurists and used to justify inequality. She believes that the meaning of this word evolved as a result of the marriage contract used to further inequality. According to Mir-Hosseini,

﻿I suggest that the juristic construct of qiwamah, developed in the context of the marriage contract, provided the rationale for other legal disparities, such as men’s rights to polygamy and to unilateral repudiation, women’s lesser share in inheritance, and the ban on women ﻿being judges or political leaders. That is to say, women were not qualified to occupy positions that entailed the exercise of authority in society because they were under their husband’s authority and not free agents and they would thus be unable to deliver impartial justice. Similarly, since men provided for women, women’s lesser share of inheritance was just. These inequalities in rights were also rationalized and justified by other arguments, based on assumptions about innate, natural differences between the sexes, such as women being by nature weaker and more emotional, qualities inappropriate in a leader, and that they are created for childbearing, a function that confines them to the home, which means that men must protect and provide for them. (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 17)

To augment Mir-Hosseini’s analysis, I will look to a historical analysis of the term’s evolution, which gives credence to her claim. In *Men in Charge?*, Omaima Abou-Bakr reflects on “the interpretive legacy of Qiwamah as an exegetical construct.” (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 46) She also charges that there has been an evolution in the meaning of the word qiwamah.

Abou-Bakr believes this evolution took place in four stages, developing, over a period of time, patriarchal beliefs that characterize even modern understandings of gender. (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 46) The first stage was dramatically influenced by Abū Jaʿfar Muḥammad ibn Jarīr ibn Yazid al-Ṭabarī, whose work furthered the idea of male moral superiority. He believed in the husband’s right to discipline his wife, and the husband’s right to demand obedience because of his economic support. (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 46)

In the second stage, scholars “amassed reasons for the hierarchical construction of qiwamah.” For instance, Abū al-Qāsim Maḥmūd ibn Umar al-Zamakhsharī furthered the idea of men serving as rulers and women serving as subjects, believing that since God favors men, they should be in control, depicting men as superior in many ways, including being better in reason among a whole host of other reasons. Fakhr al-Dīn al-Rāzī, on the other hand, furthered ideas on inheritance that were based on al-Ṭabarī’s assumption of men’s rights to discipline and Zamakhsharī's of men being rulers, and justified his interpretation based upon “intrinsic characteristics,” “sharia rules,” and because husbands give wives “dower and sustenance.” (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 50) Other contributions to this patriarchal interpretive narrative included Abd Allah ibn Umar al-Baidwi’s influential commentary on Qur’an 4:34 and Abu Abdallah al-Qurtubi’s commentary titled al-Jami li-Ahkam al-Qur’an.

The first two stages laid the groundwork for the third stage, which furthered the expansion of men's superiority. This stage in the development was significantly influenced by Abu al-Fiḍā 'Imād Ad-Din Ismā‘īl ibn 'Umar ibn Kathīr (1301-73), the Syrian expert on the tafsir and faqih (jurisprudence). He utilized Abu-Bakara’s hadith about women in leadership to justify a stance against women judges, basing his decision on Qur’an 4:34. (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 52) His decision may have resulted from the rising of women in key leadership positions, as did Jalal al-Din al-Suyut’'s interpretation of the same verse of subservience by citing weak hadith to marshal his argument. (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 52) The fourth and last stage added the element of “domesticity and the justification of biological essentialism through the notion of women’s fitnah.” (Mir-Hosseini, Al-Sharmani and Rumminger 2015, p. 54)

**My Response to Qiwamah as an Exegetical Construct**

Mir-Hosseini argues that the Qur’an communicates an egalitarian message, whereas it is the tafsir that communicates a patriarchal one. She argues that it was male scholars who superposed a patriarchal message onto the text. Thus, it is up to feminist and progressive scholars to untangle the patriarchy web that was weaved by the classical Islamic jurists. I am afraid I have to disagree. In no way does the Qur’an communicate an “absolute” egalitarian view of women. Aysha A. Hidayatullah believes that feminists superposed this idea onto the text. She says that “feminist exegetical strategies [that] did not successfully rescue the Qur’anic text, in certain instances, from its sexist meanings. As the thinking goes, anyone who challenges the feminist narrative that all patriarchal interpretations resulted from faulty interpretations. (Hidayatullah 2014b, p. 116) Therefore, according to the Hidayatullah methodology, Abou-Bakr begins her article with a false starting point. She believes that the patriarchal beliefs regarding this word began after the Qur’an was written.

Mir-Hosseini’s chief charge is that understanding this word is at the heart of patriarchal attitudes that deem men superior to women. This argument has substantial merit. For example, Zeenath Kausar, in her article titled *Battle of Books! Diverse Trends in Muslim Thought on Women’s Issues,* points out the tendency among some Muslim scholars and jurists to deny women any economic participation in society. (Kausar 2014, p. 166) In comparing the work of softcore rejectionists like Sayyid Jalaluddin Umri and hardcore rejectionists like Mohammad Imran as to whether women can fully participate in society, she says Imran categorically rejects women having any economic participation in society. With this stance, the rationale becomes clear because Imran believes that the Qur’an teaches male superiority where men are to lead not just in the home, but in society as well. He goes so far as to deny women any economic participation because men are superior to women, basing his position on the Qur’an 4:34, which he interprets that men are to be “caretakers of women,” in every way. He even goes so far as to forbid “women not only from working outside, but also forbids them from walking in streets, going to cafes and even to mosques.” (Kausar 2014, p. 167) Yet, scholars like Muhammad Sharif Chaudhri refute such claims by citing verses such as “Qur’an 4:32, 28:23, and 58:39-41.” (Kausar 2014, p. 169) He also points to Prophetic traditions that show female companions of Muhammad earning money outside the home. (Kausar 2014, p. 169)

On the other hand, there seems to be quite a bit of evidence that there is maybe a somewhat softer patriarchal narrative within the Qur’an, but a patriarchal one, at least by Western standards, nonetheless. Even if a word has been added or misunderstood, it still doesn’t reconcile this problem. To me, the difference between the Qur’an and the tafsir is one of intensity or degree of patriarchy, and not that the Qur’an communicates something fundamentally different.

Islamic feminists typically believed that the Qur’an begins with wanting to further egalitarian ideas that had yet to be fully implemented. For them, patriarchal beliefs by male jurists after the compilation of the Qur’an corrupted that goal by making the religion patriarchal. While I think it is true that there was an increase in more severe patriarchal beliefs, patriarchy’s mere elevation in degree over the centuries does not prove her egalitarian point.

Despite Mir-Hosseini’s claim, one finds a general consistency over the centuries regarding the meaning of qiwamah. Rasheed Ekm points out that several classical and modern exegetes come to similar conclusions regarding the meaning of the word qiwamah. (Ahmad and Rasheed, 2018) While the definitions are somewhat nuanced, the general idea is maintained by such scholars as Al-Zamakh Shari, Al-Alusi, Al-Baldwa, and Ibn Kather. Therefore, before the modern era, scholars universally agreed that this verse was a prescriptive verse, meant to be carried out indefinitely.

The definition of qiwamah, just mentioned above, is maintained by Shi’a and Sunni scholars in antiquity. However, Muhammad Ismail thinks that it should not be mistaken for conveying male superiority. He believes that the husband’s role is just that, a role given by God “for the better running of the family; it is not a special distinction for the husband.” (Ismail, 2016) According to Nasir Makarim Shirazi, Qur’an 4:34 confirms this idea by pointing out that the verse ends with the phrase “Indeed, Allah is ever Exalted and Grand.” (<https://quran.com/4/34>) Thus, the Qur’an here is highlighting the greatness of God and not the greatness of man over women.

Nadzrah Ahmad and Muhammad Abdul Rasheed (2018) believe the word qiwamah refers to the man’s responsibility “to protect and manage the affairs of women,” not in an oppressive way, but to assume the leadership role in the home. Lois Lamya al-Faruqi argues that Islam advocates a dual sex rather than a unisex society. She believes that “[w]hile maintaining the validity of the equal worth of men and women, the Qur’an does not judge this equality to mean equivalence or identity of the sexes.” (Lamya al-Faruqi n.d.) She believes that the downfall of Western society’s idea of gender has cost women a true sense of womanhood. She says that “the idea that men and women are not only equal but equivalent and identical, has actually pushed women into imitating men and even despising their womanhood.” (Lamya al-Faruqi n.d.) Classical exegetes have always believed that there are social roles, ordained by God, that are to be carried out by Muslim men and women. In this way, the man’s role is to protect and manage the affairs of women.

In Mir-Hosseini’s understanding, the Quran is not held liable for promoting a Western understanding of patriarchy. Instead, she transfers blame to the tafsir tradition. In this way, modern hermeneutical tools help to reimagine the Qur’an, conveying something other than a patriarchal meaning. Her hermeneutical framework allows her to criticize ideas of complementary gender roles in the Qur’an and Sunna in order for her to recreate modern meanings of the text.

**Rereading Khilafah, Wilayah, and Qiwamah**

To arrive at an understanding of gender justice, Mir-Hosseini believes that one needs a rereading of khilafah, wilayah, and qiwamah, one that comports with a contemporary understanding of societal norms and one that does not capitulate to the patriarchal interpretations of classical scholars. For instance, wilayah occurs “in the Qur’an, in the sense of friendship and mutual support, but never as endorsing male authority over women, which is the interpretation of the term enshrined, alongside qiwamah, in juristic rulings on marriage.” (Mir-Hosseini and Anwar, 2012) Thus, the patriarchal narrative that is communicated by the tafsir and classical male scholars is incorrect. Instead, says Mir-Hosseini, the Qur’an pictures the husband and wife relationship to be one of mutual support and partnership.

The need for a Qur’anic rereading runs through Mir-Hosseini’s writing and is articulated by Asma Lamrabet. In her chapter in *Men in Charge?,* she outlines her case for an egalitarian rereading of these three words, rooting her rationale in the purpose as to why the Qur’an was revealed. In her estimation, God revealed the Qur’an in order to offer guidance to humanity, which included defining all humanity, regardless of race, class, and gender, as one essence.

This idea sets the egalitarian mandate, which is different from the classical position. For example, classical jurists employed an understanding of a collectivist society, where the emphasis was on creating a culture where the community needs are put ahead of individual needs. People are encouraged to do what is best for society by fulfilling their societal roles. When it comes to gender, both men and women have God-given roles they are to fill. The Qur’an seems to comport to this view.

On the other hand, Western culture is individualistic, where the needs of the individual are put ahead of society, and things like independence and individual rights are highly valued. Lamrabet desires to reread the Qur’anic text to accommodate this cultural mandate. She does this through “reapproach[ing] the Qur’anic text by reading it through the interpretative framework of equal universal human rights.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) She also points out that in doing so, she wasn’t simply capitulating to a contemporary cultural mandate but employing the standards set by “scholars … centuries ago, [who] took from the Qur’an what their own understanding and their historically and socioculturally conditioned ideas allowed them.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) ﻿

While there was no doubt some cultural contextualization taking place, especially as Islam expanded to non-Arab countries, there was nothing like a total reimagining of gender roles. Her point seems to be somewhat wanting here as she cherry-picks an idea that does not represent systemic change and superimposes an entirely different idea, one that calls for a complete systemic change.

With the egalitarian background now in place, I will summarize Lamrabet’s understanding of the three words mentioned above. First, there is the word khilafah, which connotes “managing the world.” Her egalitarian understanding of this word believes that everyone, regardless of gender, is to assume the God-given role of vicegerent, which calls for men and women to build human civilization by “managing what God has entrusted them with God's creation.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015). This call to manage the world is a call that men and women are to fulfill equally “in the responsibility and corresponding liberty to choose, to work, to manage and to participate in the progress of society and the world in which they live.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) What this definition has in mind is the Qur’an’s call for an egalitarian society, one that sees men and women fulfilling not complementary roles, but abolishing the idea of men and women serving only in specific positions.

The word wilayah is understood to mean guardianship referring to the legal authority to manage another person’s affairs who lacks the required capacity. Nevertheless, this is not the only way this word is understood. Lamrabet also points out that Qur’an 9:71 uses the term differently. This verse represents a “command that calls men and women to remain mutually supportive through a spiritual, emotional, and compassionate alliance based on a common belief in God and his Prophet.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) ﻿Such an interpretation allows Mir-Hosseini to reject the complementary argument of classical jurists and further the Qur’an’s egalitarian understanding. In a complementary understanding, jurists promoted a view of equality. They said that women could receive the same rewards and punishments and practice their worship in the same manner as men. However, this view of justice did not extend equitable treatment in every area of life for women, especially about family and women’s role in society. This view, says Lamrabet, is a misinterpretation of the gist of what the Qur’an presents. She says the Qur’an teaches that men and women are equal in function and thought to be co-laborers in the world.

This understanding should inform how the word is used in Qur’an 4:34. Instead of viewing the word to mean a picture of the egalitarian relationship between men and women, classical jurists have used the word to justify discrimination. They applied this understanding of guardianship to the marriage.

The final word to be analyzed is that classical jurists understood the word qiwamah to mean the man’s obligation to be the breadwinner of the family and is a word that Muslims have traditionally used to prove the “absolute superiority of men over women.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) ﻿Verse 4:34 was unquestionably the verse on which the whole model of the family in Islam was shaped. However, Lambert believes that this interpretation “is one of the most flagrant misconceptions to have shaped the Muslim mind over the centuries. It assumes that the Qur’an has definitively decreed the absolute authority of the husband over his wife and, for some, the authority of all men over all women.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) She believes that a correct understanding recognizes that this word is used when addressing the public sphere and the private sphere. When addressing the public sphere, the word is used on two occasions, one in Qur’an 4:135 and the other in Qur’an 5:1. Both instances reflect the Qur’anic support and commitment for justice, fairness, and impartiality that should produce a moral vision that respects equality. Thus, the way the word is used in the public sphere should interpret how it is understood in the private sphere or the marriage and home.

**My Response to Rereading Khilafah, Wilayah, and Qiwamah**

It is essential to understand that Islamic feminists in general, and Mir-Hosseini, in particular, deviate dramatically from how jurists have historically interpreted the text. Hidayatullah points out that Islamic feminists utilize three interpretive hermeneutical methods to interpret the Qur’an. They are the “contextualization, intratextual reading, and the tawhidic paradigm (an interpretive lens based on the singularity and incomparability of God).” (Hidayatullah 2014b, 116) These methods offer a different nuance in interpreting the text, with the tawhidic principle being the most controversial.

On the other hand, classical jurists typically have used the *kamil was jami* method to interpret the Qur’anic text, which Muhammad Ali Ismail (2016) has translated to mean “the mega-method.” This method consists of six parts: (1) exegesis of the Qur’an by the Qur’an (the intratextual method), (2) exegesis of the Qur’an by the Sunna, (3) Islamic theological (kalami) approach, (4) juristic approach, (5) linguistic approach, and the (6) socio-historical approach. Lambert and Mir-Hosseini intentionally avoid using this method because it does not achieve the feminist goals they aspire to make the text say. For me, their attempt resembles a Christian Protestant hermeneutic and not an Islamic one. The Protestant hermeneutic denounces tradition as having any authority in interpreting the texts. For them, it is scripture alone. However, an Islamic hermeneutic does not rely on the Qur’an alone, but also on the Sunna and jurists’ prior interpretations.

Ismail points out that feminist approaches draw upon contextualization, intratextual reading, and the tawhidic interpretive paradigms, and use them to dismiss traditional interpretations. However, any classical interpretation goes beyond simply interpreting the text for themselves. One must appeal to the Sunna, theology, past jurists’ rulings, and the like. This is because Muslims must uphold traditions and hold them in high esteem, says Murtadha Mutahhari, as they are the “logical and rational argument about the principal doctrines of Islam … and emerges from the core of … [the] *hadith*.” (Mutahhari n.d.)

In short, any teaching must pass the test of an Islamic theological worldview defined by the traditions. Whereas a juristic approach is informed by fiqh and therefore looks to Islamic jurisprudence (fiqh), which requires one to review traditional legal interpretations done by qualified jurists.

What Mir-Hosseini and other Islamic feminists do is to put forth a creative hermeneutic that privileges some verses over others. Hidayatullah divides the categories of verses into two. The first category of verses is the hierarchical ones, such as in Qur’an 2:223. This verse states, “Your wives are a place of sowing of seed for you, so come to your place of cultivation however, you wish and put forth [righteousness] for yourselves. And fear Allah and know that you will meet Him. And give good tidings to the believers.” This verse speaks of the husband’s right anytime he wants it, while the wife is not afforded the same demands. Another verse that can add to the repertoire of hierarchical verses is Qur’an 4:34, which is the verse under examination.

The second category is the mutuality verses like Qur’an 9:71 (Sahih International), which says, “The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong, establish prayer, give zakah, and obey Allah and His Messenger. Those - Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise.” This verse is understood to solidify that there is a mutually beneficial relationship between husband and wife. With that said, an obvious question emerges. Cannot the mutuality verses benefitting a relationship include affirming one another in one’s different gender role?

It is essential first to understand God’s plan for the Muslim family. The classical position and the modern position are at odds here. The classical position believed that God intended the family to be a close, intimate relationship, but yet one that upholds clear familial roles for each individual, with the husband serving the home as the leader. The position that Mir-Hosseini holds has a vision for the egalitarian family, based on the Western notion of mutuality, where leadership is shared, and rejects clearly defined gender roles.

The mistake that Mir-Hosseini and others make is to treat mutuality and hierarchical verses as if there is a conflict to reconcile. When taken together, these verses seem to communicate an overarching narrative of complementary roles, but, if interpreted in a way that assumes an ontological egalitarianism, that is to say, that men and women are ontologically equal but serve different roles, the Muslim family dynamic does not need to be oppressive. It could be that God has designed the marriage to reflect mutual dependence between the two spouses, but in a different way than Mir-Hosseini imagines. If so, there does not seem to be any reason to negate the married couple’s call to support one another mutually. For instance, Ibrahim Amini (n.d.) says the “[p]ortrayal of wives and husbands as one another’s clothing reflects their close connection and relationship since clothes are the closest of things to one’s body and are greatly needed in order to protect one from heat and cold, to cover imperfections, and confer tranquility and beauty.” The feminist interpretation not only seems to betray the Islamic concept of the family, but it also betrays the text’s claims to authority they claim to uphold. This type of hermeneutic advocates that the interpreter reimagine a sense of justice that the text does not offer. The danger, of course, is to conceive of “a conception of justice that does not derive direct support from the Qur’an.” (Hidayatullah 2014b, p, 175)

**Gender-Egalitarian Islamic Law**

One of the toughest challenges to an egalitarian understanding of gender in Islam is the authoritative sources that define its law, namely its prophetic reports, including the Sunna, hadith, and Sira. These sources describe Muhammad as someone who seems to capitulate to the patriarchal structures, which is particularly problematic because Muslims believe that Muhammad is said to be sinless, given that he was a prophet. Generally, Islamic feminists have ignored this literature and focused on the tafsir instead. However, Ayesha S. Chaudhry thinks this is a severe mistake. In her chapter on this subject, she attempts to explain this tension of Muhammad’s capitulation to seventh-century patriarchy and his proposed sinlessness by utilizing a case study that focuses on guardianship (wilayah). She says that Muslims have two options. One is to say that “Muhammad was a feminist” and the other is to “accept Muhammad in his patriarchal context.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) She chooses the latter position.

To accomplish her task, Chaudhry sifts through the prophetic tradition to find references that counter patriarchal ideas. She does not see this as being agenda-driven, but representative of “the way prophetic reports were used in the Islamic scholarly tradition in the precolonial period.” .([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) She points out that commentators and jurists would cite both weak and strong transmission of prophetic reports. This process only became an issue when one scholar wanted to refute another scholar’s position. Hence, her methodology of using particular hadith to substantiate an egalitarian understanding, for instance, would be in line with how commentators and jurists have always done it.

One of the tensions that Islamic feminists like Mir-Hosseini and Chaudhry have to deal with is Muhammad’s actions that do not adhere to Islamic feminists’ egalitarian presuppositions. Muslims are to emulate the life of their prophet. For example, trustworthy hadith recorded Muhammad marrying Aisha while she was six years old and consummating the marriage while she was nine years old. This issue is why some Muslim nations have had a lower marriage age than the West because they wanted to honor the example of Muhammad. How does one reconcile this dilemma, particularly in a modern context that sets the age of consent at a much higher age?

Chaudhry attempts to rectify this dilemma by employing Kecia Ali’s perspective, where she divides Muhammad’s actions into exemplary acts versus exceptional acts. Muhammad’s actions that coincide with an egalitarian framework are exemplary and worthy of emulation, whereas the exceptional acts are actions that Muslims should repudiate, like marriage to Aisha. ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger) 2015) In other words, the action is exceptional and not meant to be emulated. In doing so, it permits Muslims “to engage with prophetic practice in a constructive way, emulating Prophet Muhammad when his practice conforms to contemporary standards of ethical excellence and withholding emulation – and repudiation – when his practice seems ethically problematic.” ([Mir-Hosseini](https://www.goodreads.com/author/show/8394089.Ziba_Mir_Hosseini), [Al-Sharmani](https://www.goodreads.com/author/show/7230891.Mulki_Al_Sharmani), and [Rumminger](https://www.goodreads.com/author/show/8394090.Jana_Rumminger)) This resolution seems to modify a practice based upon whether an action fits into a feminist lens.

**My Response to Gender-Egalitarian Islamic Law**

The importance of the Sunna in Islam cannot be understated. It is considered indivisible from the Qur’an as one cannot comprehend the Qur’an without it. The Sunna is what Muhammad said and did, while the hadith is the Sunna’s recorded record. Consequently, it “has come to supplement the Holy Qur’an as a source of the Islamic religious law.” (Hashim n.d.) Not all hadith are considered accurate. Most are not, which is why “Hadith consists of Mat’n and Isnad. Mat’n means the text of the Hadith, while Isnad means the chain of transmitters to that Hadith.” (Hashim n.d.) The process of discovering the Isnad plays a significant part in discovering if a hadith is authentic or not. Muslims only accept authentic hadith as accurate. Therefore, this attempt by Chaudhry and Mir-Hosseini to sift through the hadith literature is a laudable one.

For instance, in Shi’a Islam, one of the most controversial statements is made by Imam' Ali ibn Abi Talib in Nahj al-Balaghah, the first of the twelve Imams in Twelver Shi’a Islam. The comment attributed to him was that “women are deficient in intellect.” (Inloes, 2015) This statement is particularly problematic given his status, as his words are inerrant, considered the ultimate example after Muhammad for justice, a role model for men to follow, and he was married to Muhammad’s daughter. One would think his view of women would reflect his father-in-law’s view of women. (Inloes, 2015) How does one reconcile this contradiction?

Amina Inloes challenges the idea that Ali’s statement was an authentic one. According to her, “the nature and role of women in Nahj al-Balaghah compared with those in Kitab Sulaym ibn Qays, the oldest extant Shi’i text centered on Imam' Ali,” as she believes that it is clear that the characterizations of women in the two sources are vastly different. That the Qur’an never characterizes women in the way that Ali’s statement does is another reason one should dismiss this view. This should be a model on how to deal with patriarchal ideas in the literature. Instead of applying a feminist hermeneutic of suspicion and relying on an inauthentic hadith, one should counter patriarchal hadiths with better ones.

To me, this is one of the real contributions Islamic feminists like Mir-Hosseini can make, as they seek to reanalyze hadith texts where classical male jurists have unscrupulously used them to serve a patriarchal agenda. However, there is a flaw, in my estimation, in Chaudhry’s work. This flaw points to the epistemological crisis that feminism presents to Islam because the epistemological mission is to reimagine the faith to fit feminist presuppositions. Chaudhry says that she intentionally uses weak Hadith to prove her point because this is how jurists have used them in the past. Her point, in my estimation, invalidates her cause and casts doubt on her conclusions.

**Chapter 5**

The recent call for gender justice is a clarion call that has permeated contemporary society in every sphere, including religion. Since I was studying Islamic Studies at Islamic College, I was intrigued by what the debate looked like in Islamic scholarship. Before my research, I had very little knowledge of the subject. This dissertation has been an exciting study that I hope is reflected in my research.

Islam claims to have always had a theology for gender justice from the very beginning of its existence. There is no unified theory about what an Islamic view of gender justice looks like in contemporary life. What is more, there is a diversity of opinions on this subject among both scholars and laity.

In examining Ziba Mir-Hosseini’s work, my assumption in this dissertation was that any legitimate understanding of what Islam teaches on gender justice must be grounded in what Muslims understand as God’s revelation, the Qur’an.

I chose to compare an Islamic feminist perspective on this subject with a classical view by using Mir-Hosseini’s work for the comparison. I attempted to discover whether Mir-Hosseini offered a fresh perspective on this matter by determining whether she can reconcile her understanding of the text using her hermeneutical methodology. Since she offered a relatively new Islamic history method of interpreting sacred texts, the burden of proof is on Mir-Hosseini to show how and why one should adopt her method over the classical method. I used Aysha A. Hidayatullah’s methodology to examine Mir-Hosseini’s work.

Mir-Hosseini believes that there is an epistemological crisis in Islam that has resulted in continuing a patriarchal culture in Islam. She desires to challenge the patriarchy in Islam and replace it with a new hermeneutic, one that draws inspiration from feminism and human rights understandings as well as on hermeneutical tools postulated by male Muslim scholars of the Qur’an. I showed how her epistemology shapes her hermeneutics, which allows her to reinterpret verses like Qur’an 4:34. My goal was to determine if Mir-Hosseini’s Islamic feminist views allow the text to speak regarding gender justice, or is her position deviating from the text.

Before I summarize my critique of Mir-Hosseini’s work, I also need to point out why her work is necessary. Adis Duderija refers to the worldview that undergirds the classical position as the Salafi worldview. I showed how this worldview holds to ridged textualism that dramatically influenced the four Sunni law schools and the Hadith literature. It also immortalized the companions whose ideas were possibly uncritically accepted and became established fiqh. Mir-Hosseini’s work draws attention to their arguments.

I concluded my evaluation of Mir-Hosseini’s work by looking at three arguments she and others offered in the book *Men in Charge?* The first argument I addressed was the use of qiwamah as an exegetical construct. Mir-Hosseini argues that the Qur’an communicates an egalitarian message, whereas it is the tafsir that communicates a patriarchal one. I argued against the idea that there was an evolution of qiwamah that took place in differing stages, as the Qur’an does not seem to communicate an “absolute” egalitarian message, To argue that qiwamah was an exegetical construct assumes an inaccurate starting point.

Second, I countered the idea of rereading the words khalafa, wilahah, and quiwaman. Muslims universally accept the postulate that the Qur’an offers guidance. This argument says that the Qur’an guides how to formulate egalitarian family relationships by dividing the verses about women and family into two categories: mutuality and hierarchical ones. The verse under discussion is Qur’an 4:34, which is one of the most hierarchical verses. Mir-Hosseini and Lamrabet counter that verse with Qur’an 9:21, a mutuality verse. I argued that the two types of verses do not create dissonance but are coalescing ideas that communicate a complementarian view of gender.

Third, I evaluated gender-egalitarian Islamic law’s view, one of the toughest challenges to a feminist interpretation. I showed that one of the challenges lies in Islam’s prophet, who seemed to be comfortable with patriarchy. One solves this difficulty by differentiating between

exemplary acts versus exceptional acts, which run encounter to an egalitarian understanding and therefore were not meant to be emulated.

This quest to jettison non-patriarchal readings that do not comport to the feminist interpretation is also furthered when interpreting hadith that does not seem to endorse their presupposition. I pointed out the long history of using weak hadith to prove one’s point, a strategy that Muslims should keep using. I countered by pointing out that one should counter patriarchal ideas by appealing to what most would consider sound and reliable hadith or accept a different understanding of equality.

My conclusion is that Mir-Hosseini has adopted a hermeneutic that does not allow the text to speak. Her effort to reform Islam and implement gender justice has undermined how Islam has historically understood gender justice, even during Muhammad’s life. Her work is indeed important, but her effort to have the Qur’an and hadith formulate a Western notion of equality falls short.

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1. This summary was taken from the chapter titles of the book. [↑](#footnote-ref-1)
2. This is the argument made in the book *Islam and Gender.* [↑](#footnote-ref-2)