

Library of Congress Cataloging-in-Publication Data

Names: Samadi, Mona, author.

Title: Advancing the legal status of women in Islamic law /  
by Mona Samadi.

Description: Leiden ; Boston : Brill/Nijhoff, 2021. | Series: International  
studies in human rights, 0924-4751 ; volume 136 | Includes bibliographical  
references and index.

Identifiers: LCCN 2021011113 (print) | LCCN 2021011114 (ebook) |  
ISBN 9789004446939 (hardback) | ISBN 9789004446953 (ebook)

Subjects: LCSH: Women (Islamic law) | Muslim women—Conduct of life.  
Classification: LCC KBP526.3 .S26 2021 (print) | LCC KBP526.3 (ebook) |  
DDC 342/.1670878—dc23

LC record available at <https://lccn.loc.gov/2021011113>

LC ebook record available at <https://lccn.loc.gov/2021011114>

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: [brill.com/brill-typeface](http://brill.com/brill-typeface).

ISSN 0924-4751

ISBN 978-90-04-44693-9 (hardback)

ISBN 978-90-04-44695-3 (e-book)

Copyright 2021 by Koninklijke Brill nv, Leiden, The Netherlands.  
Koninklijke Brill nv incorporates the imprints Brill, Brill Nijhoff, Brill Hotei, Brill Schöningh, Brill Fink,  
Brill mentis, Vandenhoeck & Ruprecht, Böhlau Verlag and V&R Unipress.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system,  
or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise,  
without prior written permission from the publisher. Requests for re-use and/or translations must be  
addressed to Koninklijke Brill nv via [brill.com](http://brill.com) or [copyright.com](http://copyright.com).

is printed on acid-free paper and produced in a sustainable manner.

Printed by Printforce, United Kingdom

# Contents

Acknowledgments IX

Glossary x

- 1 The Legal Status of Women: An Introduction 1
  - 1 Historical Aspects 4
  - 2 The Dictonomy Between Classical Islamic Law and the State 7
  - 3 Justice and Gender Equality 11
  - 4 Crucial Developments of Law 12
  - 5 Outline 19
- 2 Foundations of Islamic Law 24
  - 1 Immutable Law? 29
    - 1.1 *Sharia* 29
    - 1.2 *Fiqh and Usul al-fiqh* 32
  - 2 Sources of Islamic Law 33
    - 2.1 *The Quran* 34
      - 2.1.1 Authoritative Interpretations 36
      - 2.1.2 Dealing with Contradictions 37
    - 2.2 *Sunnah* 38
      - 2.2.1 Hadith Compilations 44
      - 2.2.2 Validity of Hadiths 45
    - 2.3 *Ijma* 50
    - 2.4 *Legal Reasoning* 52
      - 2.4.1 *Ijtihad* 52
      - 2.4.2 Other Forms of Legal Reasoning 57
  - 3 Who Has the Right to Interpret the Law? 59
- 3 Women and Islam 63
  - 1 The Pre-Islamic Status of Women According to Muslim Sources 64
    - 1.1 *The Pre-Islamic Status of Women According to Historical Sources* 67
  - 2 The Wives of Muhammad 70
    - 2.1 *Khadija* 71
    - 2.2 *Aisha* 72
  - 3 The Influence of Islam on Women 76
    - 3.1 *The Ethical Voice* 80

3.2	<i>Marriage</i>	83
3.2.1	Temporary Marriages	88
3.2.2	Polygyny	90
3.3	<i>Sexual Relations</i>	93
3.4	<i>Fornication and Adultery</i>	95
3.5	<i>Testimony</i>	98
3.6	<i>Compensation for Death</i>	104
3.7	<i>Inheritance</i>	108
3.8	<i>Divorce</i>	112
3.9	<i>Political Positions</i>	114
3.10	<i>Veiling</i>	118
3.11	<i>The Consequences of the Death of the Prophet on the Status of Women</i>	122
4	<b>Guardianship of Women</b>	125
1	Guardianship of Minors	126
2	Legally Incompetent but Financially Independent	130
2.1	<i>Men Are the Managers of Women</i>	132
2.1.1	Marriage Based on Cooperation or Supervision?	133
2.2	<i>Correcting Women</i>	144
3	The Marriage Contract	148
3.1	<i>The Guardians Right to Conclude the Marriage Contract</i>	151
3.2	<i>Mahr</i>	155
3.3	<i>The Analogy to a Sales Contract</i>	158
5	<b>Advancing the Legal Status of Women in Islamic law</b>	162
1	Gradual Changes	164
2	Could the Abolition of Slavery Be a Model for Advancing the Rights of Women?	167
2.1	<i>The Status of Slaves</i>	169
2.2	<i>Female Slaves</i>	170
2.3	<i>Abolishing Slavery</i>	172
2.3.1	Egypt	174
2.3.2	India	176
2.3.3	Persia	178
2.4	<i>Is There an Ijma on Slavery?</i>	179
3	Does the Principle of Justice Include Female Autonomy?	180
3.1	<i>The Concept of Justice</i>	181
3.2	<i>An Unjust God?</i>	183

4	Political Reform	186
4.1	<i>State Law</i>	188
6	Concluding Remarks	193
	Bibliography	195
	Index	215