



FROM PATRIARCHAL FIQH TO GENDER JUSTICE: DECONSTRUCTING AND RECONSTRUCTING CONTEMPORARY ISLAMIC FAMILY LAW FROM THE PERSPECTIVE OF ZIBA MIR-HOSSEINI

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Abstract

Contemporary Islamic family law faces challenges as jurisprudence (fiqh) constructions formed within specific socio-historical contexts confront demands for gender justice and shifts in family relation dynamics. A number of provisions and legal practices still demonstrate hierarchical relational patterns, placing women in relatively unequal positions. This condition underscores the importance of strictly distinguishing between the normative values of Sharia and classical fiqh products, which are the results of human interpretation influenced by specific social and cultural contexts. This study aims to analyze Ziba Mir-Hosseini's thoughts on the relationship between Sharia, fiqh, gender, and family law, while examining its relevance to efforts to reconstruct contemporary Islamic family law based on gender justice. This study uses a qualitative method with a library research approach, utilizing primary data sources from Ziba Mir-Hosseini's thoughts and classical fiqh literature, while secondary data are obtained from journal articles, books, and relevant research addressing Islamic family law reform and gender justice issues. The analysis is conducted descriptively and analytically through identifying Mir-Hosseini's core ideas, critiquing patriarchal fiqh constructions, and contextualizing these thoughts with contemporary family law problems. The results of the study show that the distinction between Sharia as normative values and fiqh as an interpretative construction opens an epistemological space for a re-reading of family law. This perspective allows the principles of equality, justice, reciprocity, and human dignity to serve as the foundation for reconstructing family relations. Ziba Mir-Hosseini's thoughts hold significant relevance in driving the transformation of Islamic family law shifting from a hierarchical construction toward a paradigm that is more responsive to demands for gender justice, social dynamics, and family welfare.

Keywords *Ziba Mir-Hosseini, Patriarchal Fiqh, Islamic Family Law, Gender Justice, Legal Reconstruction*

INTRODUCTION

The institution of marriage in Islam essentially occupies a fundamental position as a sacred bond that serves as the foundation for the formation of the family and a social order oriented toward justice, affection (*mawaddah*), and mutual compassion (*rahmah*). However, the historical development of Islamic family law shows that the process of forming and codifying fiqh was not entirely detached from the social context in which the scholars lived and developed their ideas (Qurrotul Aini, 2025, pp. 59–69). In this context, some family law constructs subsequently reflect hierarchical relationship patterns and tend to place women in a subordinate position, in line with the strong patriarchal social structure during the formative period of classical fiqh. This situation raises an important academic issue, particularly when legal norms formed within a specific social context come into conflict with the universal principles of Sharia, which regard human dignity and justice as fundamental.

In a number of classical fiqh frameworks, marriage is often understood through the lens of an exchange relationship that positions the fulfillment of sexual rights (*tamkin*) and the provision of financial support (*nafaqah*) as the primary elements of the marital relationship. This pattern of understanding leads to the formation of legal relationships that tend to be asymmetrical, particularly when authority and rights within marriage are predominantly associated with the husband's position. Several provisions regarding the authority to grant divorce, the concept of guardianship (*wali mujbir*), and regulations on polygamy demonstrate how this relational structure can result in an unequal distribution of power between men and women (Rasyid & Harwati, n.d., pp. 10–11). In the Indonesian context, this issue does not lie solely within the realm of religious thought but is also intertwined with the formulation of family law within the national legal system. Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), for example, contain normative provisions that grant the husband a specific status as the head of the household. Although these provisions cannot automatically be interpreted as the sole justification for male dominance, such formulations still create space for hierarchical domestic relationships to persist if they are not interpreted within a framework of reciprocity and justice. (Imaduddin & Firdausi, 2023, pp. 156–168). The consequences can be felt in women's lives, particularly when these unequal relationships lead to divorce, which can result in social stigma, psychological stress, and economic uncertainty for those in a more vulnerable position.

The issue of inequality in Islamic family law gains theoretical relevance when viewed through the lens of Ziba Mir-Hosseini's thought, particularly because her critique is not directed at Sharia as the normative source of Islam, but rather at the construction of fiqh that emerges through human reasoning within specific social and historical contexts. The distinction between Sharia and fiqh serves as a crucial epistemological foundation within her framework of thought. Sharia represents divine will and values of a transcendent nature, whereas fiqh constitutes the human articulation of that will through a process of interpretation that is always intertwined with the social, political, and cultural contexts, as well as the epistemological structures, of its time (Mir-Hosseini, n.d., pp. 629–645). Consequently, fiqh provisions cannot be regarded as the sole and definitive representation of God's will. They are intellectual products that possess both a historical dimension and the potential to be reinterpreted when the social constructs underlying them undergo change.

Mir-Hosseini, along with other reformist thinkers, advocates for a reinterpretation of *qiwama* not as a privilege or superiority inherent to a particular gender, but as a responsibility to ensure the care, protection, and well-being of the family. Thus, *qiwāma* should not be understood as the absolute authority of men, but as a responsibility that must be carried out within a framework of justice, reciprocity, and partnership between husband and wife (Al-Sharmani, 2013, pp. 37–56). Through the *Maqasid al-Shari'ah* approach, this study evaluates Islamic law based on the principles of justice (*'adl*), equality (*musawah*), and the public interest (*maslahah*) to ensure that Islamic law remains relevant to contemporary realities. A critical hermeneutic approach is also employed to reinterpret

religious texts from the perspective of women's experiences, in order to rediscover the egalitarian spirit embedded in Islam's sacred sources.

This research is of critical importance because family law is the most vital sector in shaping the social order, where justice in marital relationships is crucial to the well-being of women and children. By dismantling patriarchal biases and reconstructing Islamic family law through Ziba Mir-Hosseini's perspective, this study is expected to make a theoretical contribution to the development of a more inclusive, just, and humanistic philosophy of Islamic law. Practically, this study offers a scientific foundation for public policy reform and the modernization of positive law in Indonesia that aligns with the principle of the universal public interest (*maslahah*) of Sharia without neglecting the challenges posed by the dynamics of the times.

METHODS

This study stems from the realization that the issue of gender inequality in Islamic family law cannot be addressed solely through a rigid textual interpretation, but rather requires an examination of the historical and epistemological roots, as well as the social context in which these laws were formed and implemented. On that basis, this study employs a qualitative method using a library research approach a choice that is not merely a matter of following standard practices in the study of thought, but is grounded in the conviction that Ziba Mir-Hosseini's ideas can only be fully understood by tracing the trail of her writings, intellectual struggles, and the dialogues she established with both the classical fiqh tradition and contemporary realities (2023). The primary data sources were drawn directly from Mir-Hosseini's works, which form the backbone of her thought particularly her writings that discuss the distinction between sharia and fiqh, the concepts of *qiwamah* and *wilayah*, and efforts to reconstruct gender-just family law. Classical fiqh literature from various schools of thought and exegeses commonly cited as references in the formulation of family law are also included as comparative material, so that the critiques presented do not stand in a vacuum but engage in an honest dialogue with the intellectual heritage being critiqued. Meanwhile, secondary data was obtained from journal articles, books, dissertations, and research reports discussing the reform of Islamic family law, Islamic feminism, and issues of gender justice in various Muslim contexts, including Indonesia (Zed, 2004).

The analysis was conducted using a descriptive-analytical approach through three mutually reinforcing stages (2023). The analysis was conducted using a descriptive-analytical approach through three mutually reinforcing stages (2023). The first stage involved the systematic identification and organization of Mir-Hosseini's key ideas, ranging from the distinction between sharia and fiqh, to her critique of the model of marriage as a contract of ownership, to her proposal for a reconstructive paradigm that positions women's experiences as a source of knowledge. The second stage involved a critical reading of the patriarchal construction of fiqh by situating it within the socio-historical context of its formation, thereby revealing how an interpretation born of a specific era subsequently underwent a process of sacralization, as if it were eternal and beyond challenge. The third stage is contextualization that is, applying Mir-Hosseini's

thought to the problems of contemporary family law, as manifested both in judicial practice and in the formulation of positive law in Indonesia so that these ideas do not remain merely abstract discourse but are grounded in the real issues faced by Muslim communities today.

This approach was chosen because it allows the researcher not merely to “quote” Mir-Hosseini’s ideas, but to experience firsthand the intellectual struggles he faced from family courtrooms in Iran and Morocco to academic debates on the global stage.

RESULTS

Ziba Mir-Hosseini’s thinking is based on a fundamental distinction between sharia as a set of transcendent, divine normative values and fiqh as a product of human *ijtihād* that is always bound to a specific socio-historical context. This distinction opens up an epistemological space for a reinterpretation of classical family law constructs, which have traditionally tended to place the husband-wife relationship within a hierarchical framework (Suud Sarim Karimullah et al., 2024, pp. 99–113). An analysis of Mir-Hosseini’s works and classical fiqh literature reveals that the concepts of *qiwamah* and *wilayah* do not merely represent final and absolute divine commands but are rather the result of *ijtihād* influenced by the patriarchal social structures of the era in which they were formulated. A model of marriage built on the logic of *tamlik* (ownership) and the exchange of *tamkin* and *nafqah* results in an asymmetry of power that places women in a subordinate position whether regarding the right to divorce, guardianship, or the regulation of polygamy (Mir-Hosseini, 2003, pp. 1–28).

The ethnographic approach applied by Mir-Hosseini through observations of family law practices in Iranian and Moroccan courts reveals a tangible gap between textual norms and women’s concrete experiences. These experiences are positioned as a legitimate source of knowledge for critiquing patriarchal biases while formulating a paradigm for reconstruction. This paradigm establishes the principles of equality (*musawah*), justice (*‘adl*), reciprocity, and human dignity as the new foundations of family law (Daud & Syarif, 2021, pp. 170–171). Thus, Mir-Hosseini’s thought not only dismantles hierarchical assumptions in classical fiqh but also offers a relevant theoretical framework for efforts to reform contemporary Islamic family law including in the Indonesian context to make it more responsive to demands for gender justice and current social dynamics.

A descriptive-analytical analysis of Mir-Hosseini’s ideas further reveals that the critique of patriarchal constructs is not directed at Sharia itself, but rather at the process of sacralizing fiqh, which presents historical products as if they were eternal and definitive. When *qiwamah* is reinterpreted as a functional responsibility that can be forfeited if not fulfilled, and women’s experiences are recognized as a source of legal knowledge, the path is wide open for the reconstruction of a more egalitarian and just family law. This finding underscores the relevance of Mir-Hosseini’s thought as both a theoretical and practical foundation for the transformation of Islamic family law from a hierarchical paradigm toward a more humanistic and contextual one.

DISCUSSION

Ziba Mir-Hosseini and the Genealogy of Gender Justice Thought in Islam

Ziba-Mir Hosseini is known as one of the leading Muslim feminist activists who has dedicated her work to exposing gender injustice in Islamic law through a fresh, multidisciplinary approach. The narrative of her life and thought reflects an intense dialogue between religious tradition and the demands of modern justice. Ziba Mir-Hosseini's thinking on gender in Islamic family law did not arise solely from theoretical debates about gender and religion. It grew out of a long engagement with her life experiences, anthropological research, and her observations of how Islamic law functions in real life. Born in Sanandaj, Kurdistan Province, Iran, on April 3, 1952, Mir-Hosseini went on to become one of the most influential legal anthropologists in the fields of gender studies, Islamic family law, and contemporary Islamic feminism. Mir-Hosseini spent her youth in Iran before completing her undergraduate degree in Sociology at the University of Tehran in 1974. Her intellectual journey then continued at the University of Cambridge in the United Kingdom, where she earned her Ph.D. in Social Anthropology in 1990 (2016, pp. 303–320).

His academic background in sociology and social anthropology gave him a different perspective on interpreting Islamic law, so that *fiqh* is not viewed as a legal framework detached from history, but rather as a product of human intellect that is always connected to the social context and power structures within which the law is formulated and applied. A pivotal moment in her life occurred when she returned to Iran in 1980, coinciding with the political transition following the 1979 Islamic Revolution. The shift in the political system from the regime of Shah Reza Pahlavi to the Islamic Republic led by religious figures served as the starting point for her in-depth study of the relationship between feminism, Islam, and state power (Mir-Hosseini, 1999). Currently, her academic work is centered in London, where she serves as a researcher at the London Middle Eastern Institute and the Center for Middle Eastern and Islamic Law, both under the auspices of SOAS, University of London.

Ziba Mir-Hosseini's thinking stems from her concern over the various forms of injustice experienced by Muslim women in the name of religion. According to Mir-Hosseini, male dominance within patriarchal social structures which has persisted for centuries—has influenced the formation and development of interpretations of religious texts, resulting in legal constructs and interpretations that tend to place women in a subordinate position. This issue, from Mir-Hosseini's perspective, cannot simply be understood as a consequence of Islamic teachings but must be viewed as the result of a historical process in the formation of *fiqh* that is inseparable from the social, cultural, and power dynamics of a specific era (Maleha, 2024, pp. 373–383). The distinction between normative religious teachings and human-constructed products of religious thought serves as a key foundation for her critique of patriarchal Islamic family law. She identifies three categories of attitudes among Muslims today, namely:

1. Conservative Islam, which upholds classical traditions but struggles to adapt to the changing times.

2. Fundamentalist Islam, which interprets Islam strictly according to the text and uses it as a political tool.

3. Secular fundamentalism, consisting of groups that reject all religious values due to a phobia of spiritual traditions.

Ziba Mir-Hosseini rejects all three extremes and chooses a path that integrates Islamic values with the principles of freedom and progress for women. Mir-Hosseini believes that Islam contains positive values that contemporary civilization can adopt to liberate women. The novelty and strength of Ziba Mir-Hosseini's thought can be seen through a number of methodological and conceptual aspects that give her work a distinctive character compared to the work of other scholars:

1. The Separation of Sharia and Fiqh: Mir-Hosseini draws a clear distinction between Sharia as divine law possessing a sacred and transcendent dimension and fiqh as a product of human intellect shaped by historical and contextual processes. This distinction serves as a crucial foundation for critiquing discriminatory constructions of Islamic law against women. Within this framework, provisions that place women in a subordinate position cannot automatically be regarded as representations of Sharia; rather, they must be understood as the result of legal interpretations and constructions by the fuqaha within specific socio-historical contexts. Because fiqh is a product of human thought, its provisions are open to review, critique, and renegotiation so that they can respond to the demands for gender justice in the context of contemporary society (Hidayah, 2014, pp. 85–96).

2. The methodology of court ethnography, as formulated, differs from approaches that focus on textual analysis and hermeneutics; Mir-Hosseini developed an ethnographic approach through field research to understand how Islamic family law functions in practice. A study of family law practices in the judicial systems of Iran and Morocco was used to identify gaps between normative legal constructs and the concrete experiences of women who interact with the legal system. This approach allows the analysis to go beyond how the law is formulated textually and instead examines how these provisions are applied, negotiated, and impact women's lives within real-world social contexts (Mir-Hosseini, 2007, pp. 1499–1550).

3. Analysis of Sexuality Control, Mir-Hosseini critically examines how the legal constructs of Islamic law particularly in the realm of family law, which encompasses marriage, divorce, and dowry, as well as provisions regarding adultery can function as instruments for regulating and controlling women's sexuality. This critique is directed at legal constructs that place women's bodies and sexuality within unequal power relations. In this context, the enforcement of punishments such as flogging and stoning is viewed critically because they have the potential to conflict with the principle of justice a fundamental value in Islam as well as with human rights principles. This perspective frames the issue of sexuality not merely as a matter of individual morality, but also as a matter of law, power, and gender justice (Ziba Mir-Hosseini & Vanja Hamzić, 2010).

Ziba Mir-Hosseini offers a robust argument based on Islamic law, drawn from her own tradition, yet one that remains in harmony with the spirit of human rights and feminism. For Ziba, the struggle for gender justice in Islam is an effort to restore God's

universal message of justice, which has long been obscured by layers of rigid patriarchal interpretations.

Ziba Mir-Hosseini and the Genealogy of Gender Justice Thought in Islam

The patriarchal framework in classical fiqh did not emerge suddenly, but rather took shape through a lengthy process in which religious norms were interpreted, formulated, and systematized within a social context that placed men at the center of family authority. At this point, fiqh cannot be understood merely as a direct reproduction of the texts of the Qur'an and hadith, for the products of fiqh are also the result of the *ijtihad* of scholars interacting with the social, economic, and cultural structures of their time. A number of studies even indicate that the concept of *qiwamah* (leadership) in the fiqh tradition developed within a society that was inherently patriarchal in nature, leading to the formulation of relationships between men and women largely within hierarchical frameworks. Construction It is within this framework that *qiwamah* (leadership) and *wilayah* (guardianship) become two key concepts for understanding the patriarchal roots of Islamic family law (Mustofa, 2025, pp. 346–356). Both are not merely legal terms but serve as conceptual tools that determine who holds authority, who is in a subordinate position, and how the relationship between men and women is legitimized within the family structure.

In this discourse, the concepts of *qiwamah* and *wilayah* are often understood as fundamental elements or “DNA” that shape patterns of unequal power relations between men and women. Traditionally, *qiwamah* rooted in a literal interpretation of Quranic Surah An-Nisa: 34 is positioned as a form of men's ontological superiority over women, granting the husband the prerogative to act as the absolute head of the household. Classical interpretations tend to view this authority as an innate, natural advantage, which in turn legitimizes the subordination of women in both the private and public spheres (Muḥammad ibn Jarīr al-Ṭabarī, 2000).

This patriarchal authority is further reinforced through the concept of the household, in which men are positioned as the legitimate holders of economic, social, and legal authority over women. In this system, women are often placed in a position of total dependence on men, as reflected in restrictions on their right to make their own life choices and on their access to legal procedures such as divorce. Contemporary scholars assess that this formulation of fiqh was heavily influenced by the socio-historical context of 7th-century Arab society, where physical protection and economic support were indeed the primary responsibilities of men within a masculine tribal structure (Mochamad Nadif Nasrullah & Taufiq Hidayat, 2022). Consequently, the practical and legalistic Islamic law of the Madaniyah period often adopted these patriarchal norms as a historical compromise with the realities of the time.

Nevertheless, describing *qiwamah* as the root of patriarchy does not mean that all classical scholars understood the concept as the absolute superiority of men. Al-Tabari's exegesis, for example, emphasizes men's responsibility to care for and protect women, linking *qiwamah* to the ability and obligation to provide financial support. This interpretation demonstrates that *qiwamah* possesses a fairly strong functional dimension

(Muḥammad ibn Jarīr al-Ṭabarī, 2000). Fakhruddin al-Razi also offers a different perspective by viewing the relationship between men and women within a framework of complementarity and harmony, rather than mere domination. This means that the problem of patriarchy in fiqh does not always lie in the text or the term *qiwamah* itself, but rather in the process of interpretation and institutionalization that transforms responsibility into privilege, and leadership into the legitimization of power.

A similar pattern can be found in the concept of “*wilayah*.” In classical fiqh, “*wilayah*” refers to a person’s authority to perform legal acts or make decisions on behalf of another party who is deemed not yet or not fully legally competent. When this concept is applied to issues concerning women particularly marriage a framework emerges that positions men, especially fathers or male guardians, as holders of specific authority over women’s legal decisions (Moch. Azis Qoharuddin, 2018, pp. 99–122). In the context of Sasak society in Lombok, this relationship can be observed through the practice of *merariq*, where a woman’s marriage decision even when based on the consent of the prospective bride still involves the authority of the family and a male guardian in the process leading up to the marriage contract, so that the woman’s personal choice is intertwined with the family’s authority in determining and validating the marriage. Consequently, women’s capacity as legal subjects is often situated within a relationship that is not fully autonomous (Aulia et al., 2026, pp. 48–67). This structure is further reinforced when it is integrated with the concepts of ‘*awrah*, obedience, financial support, and the division of domestic labor, thereby forming a network of norms that collectively constructs men as decision-makers and women as parties whose life decisions are subject to male supervision or authorization.

The issue becomes more complicated when products of fiqh which were formed under specific historical and social conditions are subsequently treated as universal norms that are considered fixed and unchangeable. Under such conditions, the distinction between Sharia as a source of normative values and fiqh as the result of human intellectual construction becomes increasingly difficult to maintain. Classical fiqh ultimately serves not merely as a reference for legal rulings but also helps shape social constructs regarding the positions and relationships between men and women. A patriarchal structure, which was initially tied to the social realities of a particular era, can acquire religious legitimacy when the results of scholars’ *ijtihad* are understood as if they directly represent God’s will. Nevertheless, an examination of the concept of *qiwamah* reveals that some classical perspectives also possess contextual and functional dimensions. Therefore, the legacy of fiqh should not be positioned as a singular and uniform edifice of patriarchal thought, but rather as an intellectual product born from the interaction between texts, reasoning, and specific socio-historical contexts.

Debunking Patriarchal Assumptions: The Distinctions Between Sharia, Fiqh, and Epistemological Criticism

The first step in this critique is to recognize that Sharia contains universal principles such as justice (*‘adl*), equality, and compassion (*rahmah*) that do not discriminate based on gender. Conversely, Tafsir and Fiqh are the products of the *ijtihad* of mufasssirs and fuqaha, influenced by the socio-historical, political, and cultural contexts in which they lived. Most

classical exegeses were composed within patriarchal societies, so interpretations of gender-related verses tend to narrow women's roles and reinforce male superiority. Therefore, exegesis is not an absolute truth but a human product that can always be critiqued and revised in accordance with the spirit of justice in the Qur'an.

Epistemological criticism challenges the foundations of knowledge used in traditional interpretation. One of the key concepts it deconstructs is phallocentrism a framework of thought that treats men and symbols of masculinity as universal human parameters. This paradigm manifests itself in men's dominance over interpretive authority, which unconsciously incorporates masculine experiences and interests into the meaning of sacred texts. Furthermore, the phenomenon of androcentrism arises, in which men's experiences are regarded as the universal norm, while women's experiences are viewed as deviations or exceptions. This leads to epistemic injustice, in which women's voices and experiences are deemed not credible or irrelevant in the formation of legal truth (Mu'awwanah & Iffah Al Walidah, 2025, pp. 207–234). This structure of knowledge often overlooks historical facts regarding the existence of female scholars whose contributions have been obscured or silenced through structural mechanisms.

In this context, criticism of patriarchal knowledge structures must not stop at the question of who interprets the text, but must be directed at how religious knowledge is formed, legitimized, and subsequently positioned as a binding truth. The distinction between sharia and fiqh becomes crucial at this point. Sharia refers to divine will and values of a normative nature, whereas fiqh is the result of human interpretation of the sources of sharia, which is always shaped by specific social, cultural, and political contexts. Consequently, fiqh provisions regarding the relationship between men and women cannot automatically be equated with the will of sharia itself. When a provision that designates men as qawwam, for example, is interpreted solely as legitimizing male superiority and absolute authority within the household, the issue lies not only in the wording of the law but also in the social and epistemological constructs that determine how the text is understood (Mir-Hosseini, 2003, pp. 1–28).

A similar pattern can be found in the fiqh discourse on polygamy. When a man's ability to marry more than one woman is interpreted as a right naturally inherent to men, while women are largely positioned as objects who either accept or reject that decision, it becomes evident that men's needs and desires serve as the primary starting point in the formulation of family law. In fact, when the principles of justice, the public good, and human dignity are established as normative orientations, the question that arises is no longer merely "Is a man permitted to practice polygamy?", but also "How does the relational structure formed by this practice affect justice, security, and women's agency?". This shift in the question demonstrates that epistemological criticism operates not by erasing the text, but by deconstructing a particular way of understanding the text that has long been regarded as the only possible interpretation (Ariwibowo et al., 2025, p. 892).

Furthermore, a similar structure is evident in the issue of divorce. In many classical fiqh formulations, men are granted the authority to pronounce divorce, while women must follow specific mechanisms such as khulu' or judicial proceedings to end the marriage. This distinction is often understood as a definitive legal provision without considering the

social context that shaped it. Epistemological criticism then questions why women's experiences, vulnerabilities, and interests do not receive equal consideration in the design of family law (Fitriyani, 2025, pp. 1–20). Such questions are important because the law operates not only through texts but also through structures of authority that determine who has the right to speak, who is trusted, and whose experiences are deemed relevant as the basis for the formation of law.

It is at this point that epistemic injustice becomes relevant; the experiences of women facing domestic violence, economic injustice, or unequal division of labor within the household, for example, can become invisible when family law is constructed solely from a normative perspective that assumes the family to be a harmonious space with predetermined role divisions. Women thus face not only material injustice but also injustice in gaining recognition for their experiences as a source of legal knowledge (Aghtaie et al., 2026, p. 618). Women's voices are regarded as subjective experiences, while men's experiences which have been integrated into scholarly traditions are presented as objective and universal knowledge.

This situation demonstrates that the issue of patriarchy in *fiqh* does not lie solely in certain rules considered detrimental to women, but also in the epistemological structure that makes men's experiences the standard for understanding social reality. When men are positioned as the primary breadwinners and women as homemakers, for example, this division may appear natural. However, as social structures change and women also become breadwinners, while men take on domestic work and child-rearing, the old assumptions about the division of roles become open to question. Such changes in social reality demonstrate that *fiqh*, as a product of human *ijtihad*, has the potential to continue engaging with new contexts without losing its Sharia-based ethical orientation.

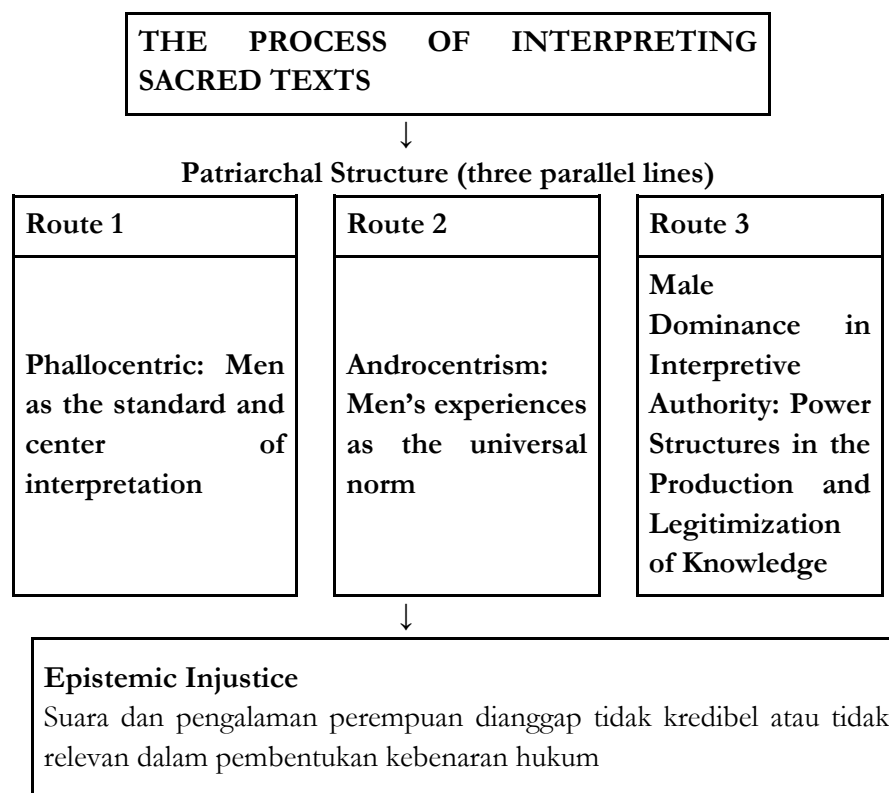
In the discourse on Islamic law, the process of interpreting sacred texts is often assumed to be a neutral and objective activity. In reality, however, the practice of interpretation never occurs in a vacuum. It always involves the interpreter, who exists within specific social and cultural structures and power relations. When these structures are dominated by male perspectives, the results of interpretation tend to reproduce patriarchal assumptions.

Patriarchal constructs in the interpretation of sacred texts can be traced through at least three interrelated pathways:

1. Phallocentrism, namely the tendency to place men as the standard and center of interpretation, so that women's experiences and interests are not used as a starting point for understanding.
2. Androcentrism, in which men's experiences are elevated to a universal norm that is supposedly applicable to all humans, without considering differences in gendered experiences.
3. The dominance of male interpretive authority, which reflects power structures in the production and legitimization of Islamic legal knowledge. Within this structure, men are not only the primary interpreters but also the ones who determine who has the right to speak and what is considered the truth (Aidil et al., 2026, pp. 1221–1242).

These three pathways do not exist in isolation. They reinforce one another and ultimately result in what is known as epistemic injustice. In this context, women's voices and experiences are deemed neither credible nor relevant to the formation of legal truth. As a result, women are marginalized not only socially and legally, but also epistemologically that is, they lose their status as legitimate subjects in the process of knowledge production.

Dismantling Patriarchal Assumptions through the Sharia-Fiqh Distinction and Epistemological Critiques such as this:



These three strands of patriarchal construction do not stand alone; rather, they reinforce one another and systematically produce epistemic injustice, in which women's voices and experiences are marginalized in the formation of legal truth.

From Patriarchal Fiqh to Equitable Family Law: Formulating Ziba Mir-Hosseini's Paradigm of Reconstruction

Ziba Mir-Hosseini's thinking offers a clear yet challenging way out of the trap that has long ensnared discussions of Islamic family law. The approach she has developed does not reject tradition, but rather dissects it from within. Her starting point is simple yet profound, as there is a fundamental difference between the divine Sharia contained in the Qur'an and the practices of the Prophet, and fiqh which represents the scholars' human interpretations of those sources. Fiqh is historical, temporal, and bound to the sociocultural context of its origin. When this distinction is ignored, the provisions that

emerged from the patriarchal societies of early Islam are easily claimed to be an immutable part of Sharia itself.

Mir-Hosseini points out that the model of marriage in classical fiqh is built on the logic of “ownership” or *tamlik*. The husband acquires rights over his wife’s body through a contract resembling a sale, while the wife is obligated to provide *tamkin* (sexual obedience) in exchange for *nafaqah* (financial support). The concepts of *qiwamah* and *wilayah* form the foundation that places women under male authority. Verse 4:34, which is often cited, is interpreted through the social lens of its time, so that “*qanwamun*” becomes a justification for the gender hierarchy. In fact, according to a critical interpretation that has been developed, these two concepts are more a legal construct of the *fukah* than an absolute Qur’anic command. What is referred to as the “DNA of patriarchy” in the Muslim legal tradition actually lies in the postulate of *qiwamah* an assumption that was unquestioningly accepted by subsequent generations until it came to be viewed as part of divine revelation.

The process of codifying family law in the 20th century did not completely break this chain. Modern Muslim countries have indeed undertaken partial reforms, but the result is a hybrid legal system no longer purely classical fiqh, yet not yet fully free from its patriarchal logic. The authority to interpret the law was taken from the community of *ulama* and handed over to legislative bodies that are often reluctant to challenge traditional interpretations. As a result, gender inequalities which should be viewed as historical have instead gained new legitimacy in the form of state laws.

This is where the reconstruction paradigm proposed by Mir-Hosseini finds its urgency. There are three distinct discourses in Islamic legal thought regarding gender, such as:

1. The traditionalist discourse, which accepts inequality as a given.
2. The neo-traditionalist discourse, which attempts to achieve balance through limited reform without challenging its underlying assumptions.
3. The reformist discourse, which emerged later and demands equality as part of justice; it is this latter discourse that has been developed alongside the *musawah* movement (Mir-Hosseini, 2003, pp. 1–28).

This approach views women’s life experiences as a source of knowledge, not merely as objects of the law. Justice is no longer understood as “justice based on hierarchy,” which places men above women, but rather as egalitarian justice grounded in the principles of *‘adl* and *ihsan* in the Qur’an.

What is interesting about Mir-Hosseini’s formulation of this paradigm is its closeness to empirical reality. As a legal anthropologist who has conducted research in family courts in Iran and Morocco, her field experience reveals how women negotiate their space on a daily basis amidst conditions of inequality. This experience leads to a rejection of approaches that simply blame Sharia as the source of the problem (Zakaria, 2020, pp. 51–64). Instead, the call put forth is to revive the spirit of reform once initiated by the Prophet himself a spirit that stalled after his passing due to the persistence of strong patriarchal social structures. The Qur’an and the Sunnah, according to this perspective, have paved

the way toward justice, but that journey must be continued through bold and contextual *ijtihad*.

This reconstruction paradigm is not merely a theoretical critique. The practical framework it offers includes: making a clear distinction between the divine and the human; freeing the concepts of *qiwamah* and *wilayah* from the shackles of hierarchical interpretation; and establishing family law grounded in reciprocity, shared dignity, and shared well-being. Within this framework, family law is no longer the last bastion of patriarchy, but rather an arena where Islam's core values of justice, compassion, and human dignity are truly realized. The process is certainly not easy, as it challenges long-held assumptions. Yet this is precisely where the strength of Mir-Hosseini's proposal lies: tradition is not abandoned, but rather invited to remain faithful to the spirit of justice that lies at its core.

Nevertheless, the reconstruction paradigm proposed by Mir-Hosseini has not been spared sharp criticism, both from traditional sources and from secular feminist perspectives. From the conservative camp, Tim Michael Orr ranks among the most systematic critics. In his essay **A Critique of Ziba Mir-Hosseini's Humanistic Ethic of Social Justice** and his dissertation examining the interpretation of Quran 4:34, Orr argues that Mir-Hosseini's approach relies too heavily on feminist theory, social constructionism, and global human rights principles. According to this assessment, the hermeneutics employed tend to impose egalitarian meanings onto the text rather than allowing the text to speak for itself within its own context. Consequently, there are concerns that such interpretations could encourage a trend toward secularization, weaken the authority of religious scholars, and fundamentally alter the structure of Muslim families (Orr, 2023, pp. 645–680).

Similar criticism came from Fatima Razvi in her review of the book **Journeys Toward Gender Equality in Islam**; Razvi questioned Mir-Hosseini's tendency to automatically equate "justice" with "gender equality." Although Mir-Hosseini emphasizes the importance of examining the presuppositions of classical scholars, Razvi argues that the modern presuppositions underpinning her own thinking have not received adequate attention. For Razvi, the equation of justice with equality is not something that can be accepted at face value but must be examined more critically (Fatima Razvi, n.d.).

From a secular feminist perspective, figures such as Haideh Moghissi and Hamed Shahidian reject the framework of Islamic feminism entirely. For them, the term is an oxymoron. An approach that remains rooted in religious language and sources is seen as actually strengthening the position of Islamist groups and weakening the more radical and secular struggle for equality. Furthermore, traditionalist and neo-traditionalist clerics including several figures Mir-Hosseini interviewed in Qom continue to uphold the models of *qiwamah* and *wilayah* as part of the divine order. For them, the demand for absolute gender equality is a Western concept foreign to the legacy of classical *fiqh* (Haideh Moghissi, 2011, pp. 76–84).

The existence of criticism from two opposing sides actually clarifies the position of Mir-Hosseini's paradigm. The approach she offers occupies a "middle ground" and rejects both the traditionalist absolutism that claims *fiqh* to be an immutable part of *sharia*, and

the total rejection of the religious framework as advocated by secular feminists. By remaining grounded in Islamic sources while opening space for contextual *ijtihad*, this reconstructive paradigm seeks to address the challenges of the times without losing its traditional roots. The ongoing debate surrounding Mir-Hosseini's thought, therefore, not only signifies controversy but also demonstrates the relevance and appeal of these ideas within the discourse on contemporary Islamic family law.

CONCLUSION

The issue of gender inequality in Islamic family law does not lie in Sharia as a divine normative value, but rather in the construction of *fiqh* that arises from human interpretation within a specific socio-historical context. The distinction between Sharia and *fiqh* proposed by Ziba Mir-Hosseini opens up an epistemological space that allows for a reinterpretation of key concepts such as *qiwamah* and *wilayah*, as well as the model of marriage, which has traditionally tended to be hierarchical. Through this approach, the principles of equality, justice, reciprocity, and human dignity can be re-established as a foundation that is more in line with the spirit of Sharia while also being responsive to contemporary realities.

Criticism of patriarchal bias in classical *fiqh* is not intended to abandon tradition, but rather to restore family law to a more inclusive and humanistic ethical orientation. When women's experiences which have long been marginalized in the formation of legal knowledge are recognized as a legitimate source, the space to dismantle hierarchical assumptions becomes more open. *Qiwamah* is no longer interpreted as the natural superiority of men, but rather as a functional responsibility that can be forfeited if not fulfilled. Similarly, the concept of *wilayah* and the *tamlik*-based model of marriage can be reexamined so that they no longer produce power asymmetries that are detrimental to women. Thus, Mir-Hosseini's thought provides a strong theoretical and practical foundation for efforts to reform Islamic family law including in Indonesia so that it is no longer trapped in patterns of subordinate relationships but moves toward an order that is more just, equitable, and oriented toward family well-being. The transformation of Islamic family law toward gender justice is not merely a demand of the times but part of an ongoing effort to remain faithful to the universal message of justice contained within Islamic sources themselves.

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