



# Women in Islam

Islamic Feminism, the Veil, Politics, and Love

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# Probate Law

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- ▶ Women as heirs instead of asaba
- ▶ Women receive half of inheritance
- ▶ Sunni jurists – improve agnate system, women's position
- ▶ Shia jurists – reject agnate system
- ▶ More than two daughters,  $\frac{2}{3}$  inheritance
- ▶ Wife without children,  $\frac{1}{4}$  inheritance
- ▶ Wife with children,  $\frac{1}{8}$  inheritance
- ▶ Two or more wives, share inheritance



# Probate Law: The Qur'an

“In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave; their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two, gets a sixth; but if more than two they share in a third.”

— An-Nisa 4:12

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّتِهِنَّ يُوصِينَ بِهِنَّ أَوْ دِينَ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثَّمَنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّتِهِنَّ يُوصِينَ بِهِنَّ أَوْ دِينَ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شِرْكَاءُ فِي الثَّلَاثِ مِنْ بَعْدِ وَصِيَّتِ يُوَصَّىٰ بِهِنَّ أَوْ دِينَ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

“To the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents a sixth share of the inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth.”

— An-Nisa 4:11

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ آبَاؤُهُ فَلِأُمَّهُ الثَّلَاثُ فَإِنْ كَانَ لَهُ أُخُوَةٌ فَلِأُمَّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّتِ يُوَصَّىٰ بِهِنَّ أَوْ دِينَ لِأَبَائِكُمْ وَأَبْنَاؤِكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنْ اللَّهُ كَانَ عَلِيمًا حَكِيمًا

# Family and Divorce Law

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- ▶ Divorce recognized, but discouraged
- ▶ Divorce last resort
- ▶ If husband initiates, cannot take wedding gifts
- ▶ Wife can end marriage (khula), may return gifts
- ▶ Wife can sue for divorce
- ▶ Men told to be kind to wives

“But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower take not the least bit of it back: would ye take it by slander and a manifest wrong?”

— An-Nisa 4:20

وَإِنْ أَرِيدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَءَاتَيْتُمْ إِحْدَهُمْ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِنَّمَا مُبِينًا

A divorce is only permissible twice: after that, the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you (men) to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom.

— Al-Baqara 2:229

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَجِلُّ لِيَكُمُ أَنْ تَأْخُذُوا مِمَّا ءَاتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

# Family and Divorce Law

- ▶ "The believers who show the most perfect faith are those who have the best character and the best of you are those who are best to their wives" (Sunan al-Tirmidhi)
- ▶ Wife-beating temporary measure in open lewdness
- ▶ Woman may seek same redress in court

“O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them,— except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity.”

— An-Nisa 4:19

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضَلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْنَهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مَبِينَةٍ وَغَائِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): for Allah is Most High, Great (above you all). If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: for Allah hath full knowledge, and is acquainted with all things.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّتِي تَجَافُونَ نُسُوزَهُنَّ فِعْظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣٤﴾ (وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكْمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

# Family and Divorce Law

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- ▶ Until two years old, father fully financially responsible
- ▶ 2 to 7 or 8, Muslim mother favored, must not remarry, father financially responsible for both
- ▶ 7 or 8 to puberty
  - ▶ Maaliki and Zaahiri: Mother always has more right
  - ▶ Hanbali: Boys have choice, father has more right for girl
  - ▶ Hanafi: Father has more right for boy, mother has more right for girl
- ▶ Child's rights are first

“And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties let another woman suckle (the child) on the (father's) behalf.” — At-Talaq 65:6

أَسْكُنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تَضَارُّوهُنَّ لِيُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولِي حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَمْرُهُمْ بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَسَرِّضْ لَهُ أُخْرَى



# Polygamy

- ▶ Polygamy permitted
- ▶ Up to four wives
- ▶ Polygamy discouraged in Qur'an

- ▶ Committee of The Status of Woman in Islam (1975): 1951 -1961, 4.31% Muslims practice polygamy
- ▶ Debra Mubashshir Majeed (Beloit college): Less than 1% of American Muslims practice polygamy

“Ye are never able to be fair and just as between women, even if it is your ardent desire: But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practise self-restraint, Allah is Oft-forgiving, Most Merciful.”

— An-Nisa 4:129

“If ye fear that ye shall not be able to deal justly with the orphans, Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.”

— An-Nisa 4:3

وَلَنْ يَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا  
كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ  
عَفُورًا رَحِيمًا

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي النِّسَاءِ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ  
النِّسَاءِ مَثْنَىٰ وَثَلَاثَ وَرُبَاعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا  
مَلَكَتْ أَيْمَانُكُمْ ۚ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

# Sex Crimes

- ▶ All women must be respected and protected
- ▶ All cruelty prohibited in Qur'an
- ▶ Violating woman's chastity forbidden
- ▶ Rape is *hiraba*: crime of violence or theft
- ▶ Civil redress (*jirah*): financial compensation, including *diyya*
- ▶ Women own their bodies
- ▶ Marital rape forbidden

“But force not your maids to prostitution when they desire chastity, in order that ye may make a gain in the goods of this life. But if anyone compels them, yet after such compulsion, is Allah Oft-Forgiving, Most Merciful (to them).”

— Al-Noor 24:33

وَلَيْسَتَعْظِفَ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّىٰ يُغْنِيَهُمُ اللَّهُ  
مِنْ فَضْلِهِ ۗ وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ  
أَيْمَانُكُمْ فَكَاتِبُواهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا ۗ وَءَاتُوهُمْ مِّنْ  
مَّالِ اللَّهِ الَّذِي ءَاتَيْتَكُمْ وَلَا تَكْرَهُوا ۗ فَتَيِّبَتْكُمْ عَلَى  
الْبَغَاءِ إِنْ أَرَدْتُمْ تَحَصِّنَا لِنَبْتَغُوا عَرَضَ الْحَيَاةِ الدُّنْيَا  
وَمَنْ يَكْرِهِنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ  
رَّحِيمٌ



# Sex Crimes

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- ▶ Wail bin Hujr: Woman accused man of rape in the mosque, Muhammad (alayhi salaam) forgave woman, rapist was stoned to death
- ▶ Umar bin al-Khattab (second caliph)'s son accused of rape and punished, woman not punished
- ▶ Abu Bakr Ibn al-Arabi, Maliki scholar (1076-1148): Hiraba with “the private parts” worse than hiraba involving stealing money
- ▶ Shaykh Ibrahim al-Husaini al-Dasuki, Shafi'i scholar, later sufi (633-676): Forcing a woman to have sex is hiraba.



# Sex Crimes

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- ▶ Fiqh-us-Sunnah by Sayyid Sabiq (1915-2000): “[Hiraba is] a single person or group of people causing public disruption, killing, forcibly taking property or money, attacking or raping women (hatk al ‘arad), killing cattle, or disrupting agriculture.”
  - ▶ Ibn Hazm (994-1064): “[Hiraba is o]ne who puts people in fear on the road, whether or not with a weapon, at night or day, in urban areas or in open spaces, in the palace of a caliph or a mosque, with or without accomplices, in the desert or in the village, in a large or small city, with one or more people... making people fear that they’ll be killed, or have money taken, or be raped (hatk al ‘arad)... whether the attackers are one or many.”
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# Sex Crimes

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- ▶ August 2010: Taliban give Bibi Sanubar, pregnant widow, 200 lashes and shot three times in head for having “illicit affair.” Man involved not punished.
- ▶ Taliban: Four male witnesses for rape; otherwise women were flogged or stoned for “adultery”
- ▶ November 2007: Saudi court doubles sentence of gang-rape victim for being in car with unrelated men; rapists given 1-5 years in prison
- ▶ Saudi Arabia allows death penalty for rape



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