

**GENDER AND SOCIAL JUSTICE IN ISLAMIC LAW: A COMPARATIVE ANALYSIS
OF CLASSICAL JURISPRUDENCE AND CONTEMPORARY PRACTICE IN NIGERIA**

BY

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ABSTRACT

This article examines how classical Islamic jurisprudence (fiqh) addresses gender and social justice, in particular regarding women's rights, and compares that with how Islamic law is practiced in contemporary Nigeria — especially in the Northern states where Sharia has been implemented formally. Key issues include economic rights, testimony and legal status, inheritance, polygyny, criminal offences such as zina and hudud punishments, procedural safeguards, and social norms. The analysis shows that while classical legal sources often provide mechanisms or doctrines that aim at justice and grant women substantive rights (property, inheritance, maintenance, etc.), the contemporary implementation in Nigeria encounters various gaps: in legal procedure, gender bias in courts, cultural and socio-political pressures, and conflict with constitutional or human rights norms. By comparing the classical principles (sources, schools, and jurisprudence) with real cases (e.g., Amina Lawal, Safiya Hussaini, etc.) and the role of advocacy by women's groups, it argues that improvements are possible through better legal education, reform of Sharia codes and penal laws, and ensuring procedural protections. The article contributes to debates on how Islamic law can be applied in a way consistent with both religious authenticity and gender justice in modern plural constitutional states.

Keywords: Gender, justice, Islamic law, classical jurisprudence.

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1.0 Introduction

The pursuit of gender and social justice within Islamic law is a dynamic and evolving discourse, shaped by both classical jurisprudential principles and contemporary realities. This research explores the intersection between foundational Islamic legal sources- such as the Qur`an, Sunnah, and Juristic methodologies- and their application in modern-day Nigeria, where Shariah law has been formally implemented in several Northern states. By comparing classical doctrines with current legal practices, especially in areas like inheritance, testimony, marriage, and criminal justice, the analysis reveals both congruence and divergence. Nigeria`s unique legal pluralism, demographic diversity, and socio-political context make it a critical case for examining how Islamic legal ideals of justice, fairness, and welfare are interpreted, challenged, and reimagined in practice.

This research addresses three core questions:

1. To what extent do classical Islamic jurisprudential sources support gender justice?
2. How do contemporary practices in Nigeria reflect, distort, or fail these ideals?
3. What reforms or mediating factors can bridge the gap between theory and practice?

1.1 Definition of Key Terms

Gender justice

Defined as the equitable treatment of individuals regardless of gender—is a cornerstone of social justice. Within Islamic legal traditions, the pursuit of justice (‘adl), welfare (maṣlahah), and dignity (karāmah) is central to the maqāṣid al-sharī‘ah, or higher objectives of Sharia. Yet, the application of Islamic law in modern contexts often reveals tensions between classical ideals and contemporary realities.

Gender justice also refers to the systematic achievement of fairness and equality between genders in all spheres of life — legal, social, economic, and political. It entails not only equal rights but also the redress of historical and structural disadvantages that disproportionately affect women and

marginalized genders. Gender justice in Islamic contexts often involves navigating between textual traditions, historical interpretations, and modern understandings of equality and equity.¹

Social Justice

Social justice is the concept of creating a society founded on principles of equality, human rights, and fairness. It seeks to address systemic inequalities in wealth, opportunities, and privileges, especially among marginalized populations. In Islamic discourse, social justice is a core moral imperative grounded in the Qur'an and Sunnah, demanding protection of the vulnerable, equitable distribution of resources, and elimination of oppression.²

Classical Jurisprudence (Fiqh)

Fiqh refers to the human understanding and application of divine Islamic law (Sharia). Classical fiqh was developed by early jurists across different Sunni schools (madhāhib), notably the Maliki, Hanafi, Shafi'i, and Hanbali schools. It encompasses a comprehensive legal framework covering ritual, family, civil, and criminal law, derived from sources like the Qur'an, Sunnah, ijma' (consensus), qiyas (analogy), and independent reasoning (ijtihad).³

Sharia Implementation

Sharia implementation denotes the process through which Islamic legal principles are institutionalized within a society. This can occur through state legislation, judicial systems, religious courts, or social norms. Implementation varies by context and often reflects local cultural, political, and legal realities. In Nigeria, this term became particularly significant following the reintroduction of Sharia criminal codes in the early 2000s in several Northern states.⁴

Nigeria offers a compelling case study. With a significant Muslim population and a history of Islamic scholarship, the country reintroduced Sharia Penal Codes in several northern states around 1999–2000. This development raised critical questions about the compatibility of classical

¹ What is Gender Justice? <https://www.globalfundforwomen.org> accessed 20 September 2025,

² <https://www.investopedia.com> accessed 20 September 2025

³ <https://en.wikipedia.org> accessed 20 September 2025

⁴ <https://cpsglobal.org> accessed 20 September 2025

jurisprudence with modern constitutional and human rights frameworks, particularly concerning gender justice.⁵

1.2 Inheritance and Economic Rights

The Qur'an prescribes specific shares for daughters, wives, and mothers.⁶ While daughters receive half the share of sons, this is balanced by men's financial obligations. Women's rights to property ownership, contractual agency, and maintenance are affirmed across all schools of law.

All the four Sunni schools agree broadly on these Qur'anic shares, though there are differences in details (e.g., how shares are computed in complex families, or on conditions like the widow's iddah e.t.c)

The classical juristic rationale; given that men bear greater financial burden (e.g., maintenance of wives, children), women are exempted from such obligations; thus, although their share is smaller, their net financial responsibilities are less.

1.3 Testimony and Legal Capacity

Classical fiqh differentiates between male and female testimony in certain contexts, particularly financial transactions.⁷ However, this is not a universal rule and reflects social norms of the time rather than inherent incapacity.

1.4 Marriage, Divorce, and Polygyny

Marriage is a contract with mutual rights and duties. Polygyny is permitted but conditioned on fairness ('adl), which many scholars argue is difficult to achieve. Divorce procedures vary, but women have access to khul' (divorce initiated by the wife) under specific conditions.⁸

⁵Ostien Philip Sharia Implementation in Northern Nigeria 1999–2006: A Sourcebook spectrum Books Ltd Ibadan, 2007, volumes I-V

⁶Qur'an 4:11–12

⁷ Qur'an 2: 282

⁸ Abdur Rahman I. Doi Shari'ah: The Islamic Law A S Noordeen publishers 2007 p.114

1.5 Criminal Law and Procedural Safeguards

Hudud offences such as zina require stringent evidentiary standards—four eyewitnesses or a confession. The principle of doubt (shubha) and presumption of innocence are meant to protect the accused. Classical jurists emphasized procedural integrity to prevent injustice.⁹

1.6 Classical Limits and Cultural Norms

Some rulings reflect patriarchal assumptions, such as differential burdens of financial maintenance or restrictions on mobility. These were often justified by social roles rather than divine mandate, opening space for reinterpretation.

1.7 Contemporary Practice in Nigeria

The reintroduction of Sharia Penal Codes in northern Nigeria was driven by political, religious, and cultural motivations. While intended to reflect Islamic values, implementation has been uneven and controversial.

2.0 Case Studies

In 2002, Amina Lawal was convicted by Katsina State Shariah Court of Zina for having a child out of wedlock. She was sentenced to death by stoning for zina but later acquitted due to procedural flaws, including lack of legal representation, procedural irregularities, insufficient evidence; not meeting the required number of judges; inadequate time to understand charges etc.

On appeal in 2003, the Katsina Shariah Court of Appeal overturned the sentence, citing these procedural flaws among other legal defects.¹⁰ In a similar case, Safiya Hussaini Tungar Tudu¹¹, a divorcee who had a child, was sentenced to death by stoning to death for adultery. The verdict was later overturned on appeal.

⁹ Peters, Rudolph. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* <https://www.cambridge.org> accessed 24 September 2025

¹⁰ *Amina Lawal v State SCA* 2002

¹¹ Philip Ostien *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* Ibadan: Spectrum Books Ltd., 2007, Volume V, Chapter 6, Pt VII, pp.129-139

Her trial similarly involved issues of evidence, representation, and procedural fairness as well as public and international pressure.

2.1 Sharia Courts and Legal Practice

Many Sharia courts lack trained personnel and standardized procedures. Legal representation is often inaccessible, especially for women. Appeals and procedural safeguards exist in theory but are inconsistently applied.

2.2 Social Norms and Institutional Actors

Organizations like Federation of Muslim Women`s Association in Nigeria (FOMWAN) advocate for women`s rights within Islamic frameworks. The Hisbah corps—religious police—enforce moral codes, sometimes exceeding legal boundaries. Public opinion is shaped by religious teachings, cultural values, and media narratives.¹²

2.3 Legal Conflicts

Nigeria`s constitution guarantees fundamental rights and recognizes international treaties such as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, conflicts arise when Sharia-based rulings infringe on these rights. The supremacy of the constitution remains a legal and political battleground.¹³

2.4 Comparative Analysis: Classical vs contemporary practice

Areas of Alignment

- Inheritance laws are generally upheld.
- Women`s property rights are recognized.
- Appeals and procedural protections are theoretically available.

¹² Federation of Muslim Women Association of Nigeria (FOMWAN) reports and publications.

¹³ Nigerian Constitution (1999) and relevant international treaties (CEDAW, ICCPR)

Areas of Divergence

- Evidentiary standards often ignored in zina cases.
- Women disproportionately targeted and convicted for moral offences.
- Legal representation and literacy are inadequate.
- Cultural norms override classical safeguards.

Causes of Divergence

- Low legal literacy among citizens and officials.
- Uneven judicial training and resources.
- Political pressures and selective use of classical sources.
- Socioeconomic disparities limit access to justice.

2.5 Normative Reflections

Maqāṣid al-Sharī‘ah as a Reform Tool Justice, welfare, and equality are actionable principles. Reform efforts should be guided by these objectives, emphasizing context-sensitive and ethical interpretations.

2.6 Islamic Feminist Hermeneutics

Scholars like Amina Wadud¹⁴ and Asma Barlas¹⁵ advocate for gender-sensitive readings of the Qur’an, challenging patriarchal interpretations while remaining within Islamic epistemology.

¹⁴ Wadud, Amina. Qur’an and Woman: Rereading the Sacred Text from a Woman’s Perspective <https://archive.org> accessed 23 September 2025

¹⁵ Barlas, Asma. Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur’an <https://www.tarbiyahbooksplus.com> accessed 24 September 2025

2.7 Islamic Law and Human Rights

Areas of synergy include dignity, equality, and protection from harm. Legal pluralism and contextual reinterpretation can foster compatibility between Islamic law and international human rights norms.

2.8 Policy Implications and Reform Suggestions

Legal Reforms

- Revise Sharia Penal Codes to align with constitutional rights.
- Train judges and lawyers in both Islamic and human rights law.
- Ensure women's access to legal counsel.
- Codify evidentiary standards to prevent abuse.

Institutional Reforms

- Support women's NGOs and legal aid organizations.
- Educate the public on rights and legal procedures.
- Increase transparency and accountability in Sharia courts.
- Regulate Hisbah activities to prevent overreach.

Legislative and Constitutional Alignment

- Harmonize state Sharia laws with federal constitution.
- Review international treaty obligations.
- Establish oversight bodies to monitor compliance and protect rights.

Recommendations

- Reform must be rooted in both Islamic tradition and constitutional law
- Awareness, activism, and reinterpretation are key

- A gender-just Shariah is not only possible-it is imperative

Conclusion

Classical Islamic jurisprudence contains many principles that support gender justice. However, contemporary practice in Nigeria reveals significant gaps and distortions. Bridging this divide requires reforms grounded in both Islamic tradition and constitutional law. Legal literacy, activism, and reinterpretation are essential. A gender-just Sharia is not only possible—it is imperative for a just and equitable society.