

**Book Review: Mukaddam F *Muslim Women between Community and Individual Rights: Legal Pluralism and Marriage in South Africa* (Springer Nature Switzerland 2024) ISBN 978-3-031-54613-6; ISBN 978-3-031-54614-3 (eBook)**

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**Abstract**

This review examines the book by Fatima Mudakkam titled *Muslim Women between Community and Individual Rights: Legal pluralism and Marriage Rights in South Africa* (2024). The book explores the pluralistic nature of South Africa's national legal system, focusing on the experiences of Muslim women governed by Muslim Personal Law. It provides a critical analysis of how this legal pluralism affects Muslim marriages and the civil rights of women within these marriages. The book is an essential contribution to the ongoing discourse on gender justice and legal pluralism in South Africa.

**Keywords**

Muslim women; Islamic personal law; legal pluralism; Muslim marriages.

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## Review

In *Muslim Women between Community and Individual Rights, Legal Pluralism and Marriage in South Africa 2024*, Fatima Mukaddam offers an insightful examination of the pluralistic legal landscape in South Africa, with a particular emphasis on the experiences of women in governed by Muslim Personal Law.<sup>1</sup> The book delves into the complexities of South Africa's legal system, which accommodates multiple forms of marriage laws, including those based on religious traditions.<sup>2</sup> Mukaddam's work stands out for its gender-focused analysis of Muslim Personal Law and its effectiveness—or lack thereof—in providing civil protection and rights to women.

Mukaddam's research is grounded in the lived experiences of Muslim women in the Western Cape province of South Africa, highlighting how these experiences shape their legal consciousness.<sup>3</sup> Her book is part of the "Gender, Justice and legal Pluralism" book series published by Springer, which broadly discusses Islamic law, its socio-political background, and its influence on national legal systems, particularly in relation to Muslim marriages. The series is known for its thorough and analytical approach to issues at the intersection of law, religion, and gender.

One of the key strengths of Mukaddam's analysis is her use of feminist theories to examine the intersection of women, religion, and marriage within Islam. She presents a detailed argument on the dynamics between self-activating marriages and those and regulated by the state in South Africa, and she assesses the potential impact of the proposed Muslim Marriage Bill (MMB). Through her research, Mukaddam illuminates the complex negotiations that married women in Muslim communities must navigate within the context of legal pluralism.

Mukaddam observes that Muslim Personal Law has never been formally integrated into South Africa's legal system, a situation that persists even in the post-apartheid era. This lack of formal recognition creates ambiguities in the legal status of Muslim marriages, leading to significant challenges for Muslim women. This challenge is compounded by the fact that the prevailing socialisation and loyalty to traditional values within Muslim organisations

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<sup>1</sup> Mukaddam *Muslim Women between Community and Individual Rights* 1.

<sup>2</sup> Mukaddam *Muslim Women between Community and Individual Rights* 37-38.

<sup>3</sup> Mukaddam *Muslim Women between Community and Individual Rights* 35.

limit the agency and options available to Muslim women in South Africa. Mukaddam sees this adherence to tradition as a major inhibiting factor that results in the perpetual uncertainty for women whose marriages under Muslim Personal Law lack recognition as civil unions. Consequently, these women find themselves in a constant battle, living with precarious legal statuses overshadowed by religious doctrines.

The conflicting demands from different segments of the Muslim community, including feminists and more conservative groups, often clash with the democratic principles enshrined in the South African Constitution.<sup>4</sup> Mukaddam further explores how Muslim Personal Law is predominantly governed by religious and cultural norms, overseen by a patriarchal Muslim hierarchy. She identifies a pattern of entrenched heteronormative socialisation within Muslim communities, which limits the agency and options available to Muslim women. She argues that the conservatism pervasive in South African Muslim societies, coupled with the absence of prominent reformist Muslim organisations, continues to hinder progress toward greater gender equality.

Mukaddam views the current socialisation and adherence to traditional values within Muslim organisations as a significant barrier to the agency and choices available to Muslim women in South Africa. She argues that this loyalty to tradition perpetuates a state of perpetual uncertainty for women whose marriages under Muslim Personal Law lack formal recognition as civil unions. Consequently, these women are forced to navigate a constant struggle, living with precarious legal statuses that are overshadowed by religious doctrines.

Mukaddam concludes - in chapter 9 - by addressing the broader socio-political and historical contexts that have shaped South Africa's legal framework. She argues that the challenges facing Muslim women cannot be fully understood without considering the country's troubled history of inequality, racism, and patriarchy. She calls for an urgent realignment of South Africa's jurisprudence to better reflect the nuances of its contemporary democratic landscape, emphasising the need for a unified legal framework that would mitigate the disparities faced by Muslim women.

The strength of Mukaddam's book lies in its empirical foundation, which is based on real-time data from women's experiences in the Western Cape. This evidence-based approach challenges broad generalisations about

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<sup>4</sup> *Constitution of the Republic of South Africa*, 1996.

women, marriage, and Islamic law. Mukaddam draws on the work of scholars like Chandra Mohanty to caution against essentialist views that oversimplify the diverse experiences of women in the "third world". By acknowledging these complexities, Mukaddam provides a nuanced analysis that is both critical and empathetic.

Drawing on a South African perspective, *Muslim Women between Community and Individual Rights* is a 2024 publication in the "Gender, Justice and Legal Pluralism" series, making it an essential reference for academics, scholars, and non-scholars alike interested in jurisprudential and socio-political development. The book highlights the profound impact of pluri-legal systems on religious laws that balance communal traditions and individual rights in the post-colonial era of democratisation. Mukaddam's work is particularly valuable for its efforts to address significant jurisprudential gaps in the literature concerning the socio-political complexities of South Africa's pluralistic legal system and the challenges of access to justice for women. It provides crucial research insights, offering a platform for future discourse on these critical issues.

While some historical aspects of the book may seem detailed, they are essential for understanding the philosophical underpinnings of Islamic law and its impact on culture and religion. Mukaddam's work is an insightful journey that challenges assumptions and stereotypes about Islam, making complex concepts accessible to readers unfamiliar with the Islamic faith. The study is well-researched and provides grounded conclusions based on historical, political, legal, and philosophical facts.

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