

# Advancing Gender Equality in Muslim Leadership: Women's Representation in Ulama Bodies in Post-Apartheid South Africa

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## SHORT BIO

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## ABSTRACT

In the post-apartheid landscape of South Africa, the constitutional promise of equality continues to challenge traditional power structures, particularly within religious institutions. This article critically examines the systematic exclusion of women from leadership roles in Muslim ulama bodies, despite significant advancements in religious education and scholarly achievements by Muslim women. The research argues that the exclusion of women from ulama bodies is neither theologically justified nor practically defensible. By drawing on egalitarian interpretations of Islamic traditions, historical examples of women's scholarly contributions in Islam, and contemporary global practices of women's religious leadership, the article challenges entrenched patriarchal interpretations that restrict women's roles. Specifically, this study explores the historical context of the Muslim community in South Africa, the current composition of ulama bodies, and the extensive scholarly achievements of Muslim women. It highlights how these bodies wield considerable authority in matters of marriage, divorce, inheritance, and issuing religious legal opinions, yet remain exclusively male-led. The article reveals that Muslim women in South Africa are now extensively educated in Islamic sciences and are fully capable of occupying leadership positions. By advocating for gender diversity in religious leadership, the research proposes a path towards more inclusive, representative, and equitable religious governance that aligns with both Islamic principles and South Africa's constitutional values of gender equality.

## KEYWORDS

Gender equality, religious leadership, ulama bodies

## Introduction

In the post-apartheid landscape of South Africa, the constitutional promise of equality continues to challenge traditional power structures across all societal domains, including religious institutions. Despite notable progress in many areas, gender equality in religious spheres remains a significant

challenge.<sup>1</sup> This article examines a critical, yet often overlooked, dimension of gender inequality within the Muslim community: the systematic exclusion of women from leadership roles in ulama bodies.<sup>2</sup> Despite significant advancements in religious education and scholarly achievements by Muslim women, these bodies remain predominantly male-controlled,<sup>3</sup> perpetuating a patriarchal interpretation of Islamic leadership that stands in stark contrast to both the egalitarian principles of Islam and the constitutional imperatives of South Africa's democratic society.

The underrepresentation of women in ulama bodies is not merely a matter of institutional gender bias, but a complex interplay of historical, cultural, and interpretative constraints that have long limited women's participation in religious leadership. While Muslim women in South Africa have made remarkable strides in religious scholarship—obtaining advanced degrees, establishing educational institutions, and developing nuanced theological perspectives—they continue to be systematically excluded from decision-making structures that profoundly impact their community's religious, legal, and social landscapes.

This research argues that the exclusion of women from ulama bodies is neither theologically justified nor practically defensible. By drawing on historic examples of women's scholarly contributions in Islam, contemporary

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<sup>1</sup> Dimpho Takane Maponya, "Religion, Patriarchy and the Prospect for Gender Equality in South Africa," *International Journal of Philosophy and Theology* 82, no 4–5 (2021): 337–349; Hannelie J. Wood, "Gender Inequality: The Problem of Harmful, Patriarchal, Traditional and Cultural Gender Practices in the Church," *HTS Teologiese Studies/Theological Studies* 75, no. 1 (2019).

<sup>2</sup> Ulama bodies are councils of Muslim, male theologians located in the various provinces of South Africa.

<sup>3</sup> Ulama bodies, like the Muslim Judicial Council, only have male members on their executive structures (see: <https://mjc.org.za/about-mjc/team/>). Other ulama bodies, like the Muslim Assembly in Cape Town, have women on their executive structure, but men still dominate these structures and the *qādi* who hears *faskh* applications is a male imam (see: <https://muslimassembly.org.za/about-us/>). In the northern provinces of South Africa, women do not have access to mosques, let alone access to leadership structures on ulama bodies. In this regard see, Uta Christina Lehmann, "Women's Rights to Mosque Space: Access and Participation in Cape Town Mosques" in *Women, Leadership, and Mosques – Changes in Contemporary Islamic Authority*, eds. Masoodah Bano and Hilary Kalmbach (Leiden: Brill, 2012), 498.

global practices of women's religious leadership, and South Africa's constitutional commitment to gender equality, this article challenges the entrenched patriarchal interpretations that restrict women's roles. Moreover, the argument extends beyond academic discourse, proposing that the inclusion of women in ulama bodies is not just a matter of equity but a critical pathway to more comprehensive, empathetic, and representative religious governance.

The article is structured across several key sections to comprehensively explore this complex issue. It begins by providing the historical context of the Muslim community in South Africa, tracing their origins and development. The second section delves into the existing Muslim leadership landscape, specifically examining the role and composition of ulama bodies. It then critically analyses the Islamic tradition's perspectives on female leadership and provides both historical precedents and contemporary manifestations of women's religious leadership and scholarship. This is followed by an in-depth analysis of the current state of Muslim women's scholarship in South Africa, highlighting the disconnect between educational achievements and leadership opportunities. It will also explore the constitutional implications of gender exclusion in religious structures, arguing that such practices potentially contravene the principles of equality enshrined in South Africa's democratic framework. The conclusion synthesizes these arguments, proposing a path forward for more inclusive and representative religious leadership.

## The Muslim Community in South Africa

Theistic religions are the dominant religions in South Africa, with Islam being the religion of a small minority.<sup>4</sup> The Cape Muslim community is the oldest and largest Muslim community in South Africa.<sup>5</sup> The first Muslims arrived in South Africa from five main regions of the world: the Indonesian archipelago, Bengal on the South Indian Coast, Ceylon (Sri Lanka), Madagascar, and the

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<sup>4</sup> William J. Schoeman, "South African Religious Demography: The 2013 General Household Survey," *HTS Theological Studies* 1, 73, no. 2 (2017): 3, <https://doi.org/10.4102/hts.v73i2.3837> last accessed on 29 November 2024.

<sup>5</sup> Suleman E. Dangor, "The Establishment and Consolidation of Islam in South Africa: From the Dutch Colonisation of the Cape to the Present," *Historia* 48, no.1 (2003): 209.

East African Coast.<sup>6</sup> In the 17th century, the first slaves, many of whom were Muslim, were brought by the Dutch East India Company from the aforementioned colonies to provide labor to the Dutch at the Cape.<sup>7</sup> In the first 150 years, the Dutch authorities restricted the religious rights of the Muslim community and prevented them from establishing places of worship in the Cape.<sup>8</sup> In addition to slave labor, hundreds of convicts and political prisoners from the Dutch colonies in the East Indies were brought to the Cape to serve out their sentences in the Dutch authorities' employ.<sup>9</sup> Among them were learned Islamic scholars like Abdullah Qadi Abd al-Salaam, commonly known as Tuan Guru, a former Prince of Tidore in the Ternate islands. He was one of the first prisoners to be held on Robben Island and subsequently became the imam<sup>10</sup> of the first mosque<sup>11</sup> established at the Cape in 1797, as well as a teacher at the first Islamic school (madrassa).<sup>12</sup> Through Tuan Guru and the efforts of others, Islam spread rapidly through the Cape in the first two centuries and was fully established by the 20th century through the setting up of numerous mosques, Islamic schools, non-governmental social welfare organizations and theological bodies.<sup>13</sup> As of 2013, Muslims comprised of 2% of the total South African population, with

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<sup>6</sup> Achmat Davids, *The Afrikaans of the Cape Muslims*, (Pretoria: Protea Boekhuis, 2011), 37.

<sup>7</sup> Frank Bradlow, "The Origins of the Early Cape Muslims" in *The Early Cape Muslims*, eds. Frank R. Bradlow and Margaret Cairns (Cape Town: A. A. Balkema, 1978), 86–91, 103–105, 118–124; Robert Shell, "The Establishment and Spread of Islam at the Cape from the Beginning of Company Rule to 1838" (Unpublished B.A. (Honours) manuscript, University of Cape Town (1974), 4–29.

<sup>8</sup> Abdulkader I. Tayob, *Race, Ideology, and Islam in Contemporary South Africa* (Santa Barbara, California: ABC-CLIO, 2004), 255-257.

<sup>9</sup> Shell, "The Establishment and Spread of Islam at the Cape," 4–29.

<sup>10</sup> The term "imam" is a title given to a religious leader who is usually based at a mosque. The imam leads the congregational prayers, delivers sermons, and fulfils other religious responsibilities within a community, such as officiating marriages and funerals.

<sup>11</sup> The first mosque in the Cape was the Auwal Mosque in Bo-Kaap, Cape Town. Bo-Kaap was a designated "Malay" area during the apartheid regime and is one of the oldest Muslim communities in South Africa. See Ephraim C. Mandivenga, "The Cape Muslims and the Indian Muslims of South Africa: A Comparative Analysis." *Journal of Muslim Minority Affairs* 20, no. 2 (2000): 347–352.

<sup>12</sup> Achmat Davids, "Alternative Education: Tuan Guru and the Formation of the Cape Muslim Community," in *Pages from Cape Muslim History*, eds. Yusuf, Da Costa, and Achmat Davids. (Pietermaritzburg: Shuter & Shooter, 1994), 48–49.

<sup>13</sup> Dangor, "The Establishment and Consolidation of Islam in South Africa", 48

most Muslims being concentrated in the Western Cape followed by KwaZulu-Natal and Gauteng.<sup>14</sup> Although there is a growing Shi'ite<sup>15</sup> Muslim community in South Africa,<sup>16</sup> most Muslims in South Africa are Sunni<sup>17</sup> with the majority adhering to the Hanafi or Shafi'i schools of law.<sup>18</sup>

Despite being a predominantly Sunni community, South African Muslims have been described as "heterogenous and plural" in both ideological and political expression.<sup>19</sup> Vahed highlights that Muslims in South Africa are deeply divided by race, doctrine, language, class, and ethnicity.<sup>20</sup> Geographically, the Indian community is concentrated in Gauteng and KwaZulu-Natal, most people of color or Muslims of Malaysian/Indonesian descent live in the Western Cape, whereas Black African Muslims are scattered across townships throughout South Africa.<sup>21</sup> There are also growing Muslim immigrant communities who have settled in Cape Town, Johannesburg, and Durban.<sup>22</sup> Consequently, regional differences in the way Islam is practiced and the different cultural origins impact the creation of gender-specific constructs. Thus, Western Cape Muslims are considered more liberal in their stance on gender issues, while Muslims from Gauteng

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<sup>14</sup> Schoeman, "South African Religious Demography", 3.

<sup>15</sup> The Sunnis and Shi'ites are the two main doctrinal sects in Islam. Although they share fundamental beliefs, they differ in areas of theology, ritual practice, and beliefs on leadership and law.

<sup>16</sup> Goolam Vahed, "Contestation and Transformation: Muharram Practices Among Sunnī Muslims in South Africa, 1860–2020," in *Non-Shia Practices of Muharram in South Asia and the Diaspora*, eds. Pushkar Sohoni and Torsten Tschacher (Routledge, 2021), 72.

<sup>17</sup> Najma Moosa, *Unveiling the Mind: The Legal Position of Women in Islam: A South African Context* (Durban: Juta & Company, 2011), 28; Mandivenga, EC 'The Cape Muslims and the Indian Muslims of South Africa' 348.

<sup>18</sup> Moosa *Unveiling the Mind*, 151; Mandivenga, "The Cape Muslims and the Indian Muslims of South Africa," 348.

<sup>19</sup> Moosa, *Unveiling the Mind*, 146.

<sup>20</sup> Goolam Vahed, "Islam in the Public Sphere in Post-Apartheid South Africa: Prospects and Challenges," *Journal for Islamic Studies* 27, no. 1 (2007), 116–149.

<sup>21</sup> Vahed, "Islam in the Public Sphere in Post-Apartheid South Africa," 119.

<sup>22</sup> Goolam Vahed and Shamil Jeppie, "Multiple Communities: Muslims in Post-Apartheid South Africa," in *State of the Nation – South Africa 2004-2005*, eds. Daniel John, Roger Southall, and Jessica Lutchman (HSRC Press, 2005), 262–266; Sadouni Samadia. "Somalis in Johannesburg: Muslim transformations of the city." *Topographies of Faith*, Brill, 2013, 46.

and KwaZulu-Natal, who are descended from the Indian sub-continent, adopt a more conservative approach to gender roles in Islam.<sup>23</sup>

The segregation policies of apartheid led to the creation of insulated Muslim communities, allowing Islam to thrive within distinct geographical areas. These Muslim enclaves functioned as self-contained entities, shielded from the broader societal pressures and influences. According to Davids, apartheid spatial planning inadvertently safeguarded Islam and its adherents from outside influences.<sup>24</sup> With the dismantling of apartheid and the establishment of a constitutional democracy, the Muslim community in South Africa encountered a complex journey in redefining its identity in an open and democratic society.<sup>25</sup> Muslim communities found themselves integrated into a broader societal landscape where their identity was no longer shielded within insulated enclaves. This newfound openness posed both opportunities and challenges as Muslims grappled with asserting their cultural and religious distinctiveness while embracing the ideals of equality and inclusivity promoted by the post-apartheid era.<sup>26</sup> The struggle to establish a cohesive identity in this context involved negotiating how to preserve their heritage while adapting to the dynamics of a more diverse and pluralistic society.<sup>27</sup> The Muslim leadership in South Africa had to navigate similar challenges.

## **Muslim Leadership in South Africa**

There is no single ulama body that represents or speaks on behalf of all South African Muslims.<sup>28</sup> These bodies are usually constituted of a legal

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<sup>23</sup> Lehmann, "Women's Rights to Mosque Space," 498.

<sup>24</sup> Nuraan Davids, *Women Cosmopolitanism and Islamic Education – One of the Virtues of Engagement and Belonging* (Lausanne: Peter Lang, 2013), 1.

<sup>25</sup> Davids, *Women Cosmopolitanism and Islamic Education*, 6.

<sup>26</sup> For a comprehensive historical overview of the South African Muslim community during and after the demise of apartheid, see Tayob, *Race, Ideology, and Islam in Contemporary South Africa*.

<sup>27</sup> Tayob notes on the South African Muslim community, "Their experiences as a Muslim minority community living in secular democracy has thrown the community into global debates about Islam and Africa democracy." Tayob, *Race, Ideology, and Islam in Contemporary South Africa*, 280.

<sup>28</sup> The 2018 South African Muslim Directory lists 11 theological bodies throughout South Africa, which includes the Muslim Judicial Council. However, this list is not exhaustive

scholar responsible for issuing legal opinions (fatwa) known as a mufti, a judge or a qādi who issues rulings specific to the case before him,<sup>29</sup> and Islamic scholars known as ālim(s), (ulamā(pl)), who also fulfil the role of, *inter alia*, imams in their respective communities. During apartheid, these ulama bodies operated within the confines of segregated Muslim communities, focusing primarily on religious affairs and serving as spiritual guides. However, in a post-apartheid South Africa characterized by democratic principles and multiculturalism, the role of ulama bodies expanded beyond religious matters to engage with broader societal issues such as social justice, human rights, and interfaith dialogue.<sup>30</sup> These bodies also faced the imperative to adapt their modus operandi to the transformed socio-political landscape.

In the Western Cape, as in other provinces, there are various ulama bodies to which imams belong, some of which are more established than others. For instance, the Muslim Judicial Council of South Africa (MJC) enjoys greater recognition and acceptance by the overall Muslim community in the Western Cape.<sup>31</sup> Bodies like the MJC are responsible for administering the community's religious and spiritual affairs.<sup>32</sup> They oversee Muslim marriages, divorces, and inheritance matters, vital roles that impact the status of individuals in the community.<sup>33</sup> Historically, Muslim marriages were

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and there are numerous other theological bodies not mentioned. See "Organisations – Theological," South African Muslim Directory, last modified 2023, <https://www.samd.co.za/organisations/theological.php>.

<sup>29</sup> The qādi typically hears divorce (faskh) applications in the sharī'ah court. His ruling is only binding on the parties whose case he has heard. In this regard, see the case of the Muslim Judicial Council discussed in Fatima Essop, "Problems and Possibilities for Islamic Divorce in South Africa," *Islamic Divorce in the 21st Century – A Global Perspective*, eds. Erin E. Stiles and Ayang Utriza Yakin (New Brunswick, Rutgers University Press, 2022), 65.

<sup>30</sup> In this regard, see Tayob, *Race, Ideology, and Islam in Contemporary South Africa*, 23.

<sup>31</sup> On the MJC website, it describes itself, amongst others, as being "[t]he most representative and influential Muslim religious organisation in the Western Cape, recognised locally, nationally and internationally for the religious, cultural and organisational roles it plays in South Africa". "Significance of the MJC," Muslim Judicial Council (SA), <https://mjc.org.za/about-mjc/significance/>.

<sup>32</sup> F. Cachalia, "Citizenship, Muslim Family Law and a Future South African Constitution: A preliminary enquiry," in Najma Moosa and Suleiman Dangor (eds) *Muslim Personal Law in South Africa: Evolution and Future Status*, (Cape Town, Juta, 2019), 75.

<sup>33</sup> See Fatima Essop, "Do Islamic Law Wills Contravene the Common Law Prohibitions Against Delegation of Testamentary Powers and Incorporation by Reference?" *South*

not recognized under South African law because of their potentially polygamous nature.<sup>34</sup> As a result of this non-recognition, parties to a Muslim marriage did not resort to state courts when seeking to enforce their rights in their Muslim marriage or when seeking an Islamic divorce. Instead, Muslim spouses would approach ulama bodies. It is trite Islamic law that a Muslim husband can obtain a divorce through the utterance of a unilateral divorce pronouncement, referred to as a talāq. He does not have to approach a court to exit a marriage. A wife, however, must approach an ulama body and apply for a divorce if she wishes to exit an unhappy or abusive marriage in a process referred to as a faskh. Ulama bodies, like the MJC run their own shariah courts that hear faskh applications. These shariah courts are officiated by a male judge (qādi) who are scholars schooled in the Islamic laws of marriage, divorce, and inheritance.<sup>35</sup> The interpretation and application of Islamic divorce laws do not always favor female litigants as the court may choose to apply more restrictive interpretations when deciding whether to grant the wife a divorce. Essop notes that a qādi is less likely to grant a faskh on the grounds of emotional abuse, despite it being acceptable grounds to grant a faskh in the Māliki school.<sup>36</sup> Ulama bodies furthermore

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*African Law Journal* 140, no. 3 (2023): 579; Essop "Problems and Possibilities for Islamic Divorce in South Africa," 65; Nina Hoel, "Engaging Religious Leaders: South African Muslim Women's Experiences Matters Pertaining to Divorce Initiatives," *Social Dynamics* 38, no. 2 (2012): 184.

<sup>34</sup> For an account of why Muslim marriages were not recognized by South African courts and how the validity of a Muslim marriage has been endorsed by the courts after the demise of apartheid, see Waheeda Amien, "A South African Case Study for the Recognition and Regulation of Muslim Family Law in a Minority Muslim Secular Context" *International Journal of Law, Policy and the Family* 24, no. 3 (2010): 361–396; Waheeda Amien, "Judicial Intervention in Facilitating Legal Recognition (and Regulation) Of Muslim Family Law In Muslim-Minority Countries," *Journal of Islamic Law* 1, no. 1 (2020): 65; Najma Moosa, "Muslim Personal Law – To be or Not to be?" *Stellenbosch. Law Review* 6, (1995): 417; Najma Moosa "The Interim and Final Constitutions and Muslim Personal Law: Implications for South African Muslim Women," *Stellenbosch. Law Review* (1998): 196.

<sup>35</sup> Many women litigants who appeared before the sharī'ah court felt intimidated by the all-male court. See Essop "Problems and Possibilities for Islamic Divorce in South Africa," 72.

<sup>36</sup> Essop "Problems and Possibilities for Islamic Divorce in South Africa," 75–76.



do not encourage or facilitate khul' as a form of divorce,<sup>37</sup> despite it being an acceptable form of terminating an Islamic marriage.<sup>38</sup>

With respect to inheritance, many Muslims ensure that their estates devolve according to Islamic inheritance law by stipulating this in their wills. They are assisted in this regard by legal professionals or ulama bodies like the MJC.<sup>39</sup> In the case of the death of a Muslim testator, the MJC is also responsible for drawing up distribution certificates that stipulate the heirs of a testator and their respective shares under Islamic law.<sup>40</sup> The MJC and ulama bodies like them thus wield considerable authority in determining how wealth is transmitted within Muslim families through the institution of inheritance. Their interpretation and application of Islamic inheritance laws are deferred to and relied upon: (i) by members of the Muslim community; (ii) by members of the legal profession involved in estate planning for Muslim testators; and (iii) by State officials, such as the Master of the High Court,<sup>41</sup> who are responsible for winding up the estates of the deceased.<sup>42</sup> As with divorce laws, male-dominated ulama bodies interpret and apply Islamic inheritance laws in ways that are not always favorable to women without taking into account the lived reality of women in society.<sup>43</sup>

In addition to the important decision-making powers in Muslim family law, ulama bodies are also responsible for issuing fatwa on any matter affecting

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<sup>37</sup> Essop "Problems and Possibilities for Islamic Divorce in South Africa," 71–72. "Khul" is a non-fault-based divorce that allows a wife to divorce her husband in exchange for forfeiting her dower (mahr) or providing her husband with some other form of financial compensation.

<sup>38</sup> For more on khul' as a permissible form of divorce see Erin E. Stiles and Ayang Utriza Yakin "Introduction – Muslim Marital Disputes and Islamic Divorce law in Twenty-First-Century Practice," in *Islamic Divorce in the 21st Century – A Global Perspective*, eds. Erin E. Stiles and Ayang Utriza Yakin (New Brunswick, Rutgers University Press, 2022) 65.

<sup>39</sup> See <https://mjc.org.za/departments/fatwa/> and Essop "Do Islamic Law Wills Contravene the Common Law Prohibitions," 584.

<sup>40</sup> Essop "Do Islamic Law Wills Contravene the Common Law Prohibitions," 596.

<sup>41</sup> The Master of the High Court is an administrative body and one of its functions is to supervise the administration of estates of the deceased in terms of the Administration of Estates Act 66 of 1965.

<sup>42</sup> Essop, "Do Islamic Law Wills Contravene the Common Law Prohibitions," 606–607.

<sup>43</sup> See the findings in Fatima Essop, *The Intersection between the Islamic law of inheritance and the South African law of Succession* (Unpublished PhD Thesis, University of Cape Town (2022)), 277–298.

the community, including whether it is permissible for women to conduct sermons before the weekly Friday prayers,<sup>44</sup> whether congregants should pray at home during a pandemic,<sup>45</sup> whether a surviving wife is entitled to inherit the residue of her husband's estate in the absence of other relatives,<sup>46</sup> and more. These legal opinions by ulama bodies impact the daily lives of Muslims directly. A fatwa is usually issued by the mufti of an ulama body who, in the case of the MJC, has always been a male scholar. According to the MJC website, its fatwa department consists of a full-time administrator, a mufti who is the head of the department, and a fatwa panel that consists of seven learned scholars of the shariah.<sup>47</sup> These scholars are all male. Although ulama bodies have no power to enforce their fatwa, they rely on their religious and moral authority when issuing their legal opinions.<sup>48</sup> As they are highly respected within the community, their legal opinions have great persuasive value and are generally adhered to by large portions of the community.<sup>49</sup> Evidently, ulama bodies fulfil an important role in the community and their decisions have far-reaching effects on all members of the Muslim community, but especially on women when it comes to the application of Muslim family law. This underscores the importance of having women represented in leadership roles on ulama bodies.

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<sup>44</sup> Hoel, "Sexualising the Sacred, Sacralising Sexuality," 1–2.

<sup>45</sup> Goolam Vahed, "COVID-19, Congregational Worship, and Contestation over 'Correct' Islam in South Africa," *Journal for the Study of Religion* 34, no. 1 (2021).

<sup>46</sup> Essop "Do Islamic Law Wills Contravene the Common Law Prohibitions," 579–610.

<sup>47</sup> "Fatwa," Muslim Judicial Council (SA), last modified 2023, <https://mjc.org.za/departments/fatwa/>.

<sup>48</sup> Keshavjee correctly notes that a fatwa issued by any mufti is not a binding statement, nor is it a divine construct, as it can be changed, withdrawn, or challenged by a counter-fatwa. See Mohamed M. Keshavjee, *Islam, Sharia & Alternative Dispute Resolution – Mechanisms for Legal Redress in the Muslim Community* (London: I.B. Taurus, 2014), 74.

<sup>49</sup> Keshavjee notes that a mufti derives his authority from his level of learning and through popular support and although there are no regulatory mechanisms for muftis, communities themselves invest a mufti with status and legitimacy. Keshavjee, *Islam, Sharia & Alternative Dispute Resolution*, 74.

## Women leaders and scholars in Islam

The hadīth<sup>50</sup> of Muhammad (PBUH) that states, “Never will succeed such a nation as lets their affairs carried out by a woman”,<sup>51</sup> is often used by orthodox Muslim scholars as proof that women should not occupy positions of leadership in Islam.<sup>52</sup> However there are divergent opinions on this hadīth, with some scholars holding the view that the prohibition applies to all leadership positions for women, whilst others opine that it is only a prohibition against women occupying the caliphate position or as a political leader of a country.<sup>53</sup> There are those who also argue that the hadīth is a fabrication and, as such, is inadmissible as proof in legal rulings.<sup>54</sup> The Quranic verse that stipulates that men are the guardians in charge (qawwamūn) of women<sup>55</sup> has also been interpreted to limit women’s participation in leadership positions within the Muslim community.<sup>56</sup> Although this verse deals with men’s legal responsibility to materially support their wives, parents, and children, it is often interpreted by male scholars to relegate women to an inferior position to men and, consequently, exclude

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<sup>50</sup> The hadīth are reports that describe the words, actions or habits of Muhammad (PBUH). These reports were compiled over a century after his death and were completed over a period of more than three hundred years. They are regarded as one of the two primary sources of Islamic law. In this regard, see Asma Barlas, *Believing Women in Islam – Unreading Patriarchal Interpretations of the Qur’ān* (Austin, TX: University of Texas Press, 2011), 42.

<sup>51</sup> *Sahih al-Bukhari*, Kitab al-Maghazi, The Prophet’s letter to Caesar and Kaiser (732/7), no. 4425 as cited in Noor Mohammad Osmani, Mohammad Omar Farooq and Abu Umar Faruq Ahmad, “Women Empowerment and Leadership in Islam between Myth and Reality” in *Economic Empowerment of Women in the Islamic World – Theory and Practice* eds Toseef Azid and Jennifer L Ward-Batts *Advances in Research On Islamic Economic* Vol. 1 (Singapore, World Scientific Publishing Co. Pty. Ltd. 2020), 89

<sup>52</sup> Osmani, Farooq, and Ahmad, “Women Empowerment and Leadership in Islam between Myth and Reality” 87; 103–104.

<sup>53</sup> Ibrahim Zakyi, “Reinstating the Queens: Reassessing the Hadith on Women’s Political Leadership,” *American Journal of Islam and Society* 33, no. 2 (2016): v-x; Bakri, Syamsul. “Women’s Leadership in Islam: A Historical Perspective of a Hadith.” (2020): 219–234.

<sup>54</sup> Osmani, Farooq, and Ahmad, “Women Empowerment and Leadership in Islam between Myth and Reality” 104-105; Zakyi. “Reinstating the Queens” vi; Syamsul, “Women’s Leadership in Islam,” 226–228.

<sup>55</sup> The Qur’ān 4:34 states: “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.” Yusuf Ali, *The Quran – Translation and Commentary* (Durban, Islamic Propagation Centre International, 1946) 190.

<sup>56</sup> Syamsul, “Women’s Leadership in Islam,” 223.

women from leadership roles.<sup>57</sup> Islamic feminist scholars like Wadud<sup>58</sup> and Barlas<sup>59</sup> challenge these traditional interpretations that use the verse to justify male superiority and argue, instead, for a contextual reading that emphasizes equality, mutual respect, and protection between men and women, rather than hierarchical dominance. They highlight that the patriarchal meanings ascribed to Quranic verses are largely a function of who is reading and interpreting them and the context in which those interpretations occur.<sup>60</sup> Moreover, they correctly argue that the Quranic values and teachings are egalitarian and antipatriarchal in nature and that these values should impact on the formation of legal rulings.

This egalitarian and antipatriarchal reading of Islamic texts finds expression in the numerous examples of women fulfilling scholarship and leadership roles in the history of Islam, starting with Aisha, Muhammad's (PBUH) wife. She was responsible for narrating over 2210 ahādith from Muhammad's (PBUH) life and she pronounced legal opinions on matters pertaining to worship, marriage, inheritance, and trade.<sup>61</sup> After Muhammad's (PBUH) death, her legal opinions were highly respected and remain critical to Islamic law today. She also led the Muslim army in the Battle of the Camel, so-called because she directed the army from camelback.<sup>62</sup> There are

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<sup>57</sup> This is one of the most contested verses in the Qur'ān and it is beyond the scope of this paper to deal with in greater detail. For a more detailed analysis of the verse see: Amina Wadud, *Qur'ān and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York, Oxford University Press, 1999), 70–73; Aysha A Hidayatullah, *Feminist Edges of the Qur'an* (Oxford, Oxford University Press, 2014), 71–80; Shaikh Sa'diyya "Exegetical Violence: *Nushuz* in Qur'anic Gender Ideology," *Journal for Islamic Studies* 17 (1997), 49–73.

<sup>58</sup> Amina Wadud, *Qur'ān and Woman*, 70–73.

<sup>59</sup> Barlas, *Believing Women in Islam – Unreading Patriarchal Interpretations of the Qur'an* (Austin, University of Texas Press, 2002). Hidayatullah also challenges men's exclusive authority to interpret the Qur'ān and argues that classical interpretations were based on "men's experiences" and that there was a need to add women's perspectives to these interpretations, Hidayatullah, *Feminist Edges of the Qur'an* 35-36.

<sup>60</sup> Mernissi also argues that the marginalization of women in many Muslim societies is a result of male religious elites controlling the interpretation of religious texts, rather than something that is inherent to Islam. In this regard see Fatima Mernissi, *Women and Islam: An Historical and Theological Enquiry* (New Delhi, Kali for Women, 1993).

<sup>61</sup> Carla Power, *If Oceans Were Ink – An Unlikely Friendship and Journey to the Heart of the Quran* (New York: NY: Henry Holt & Company, 2015), 139–141.

<sup>62</sup> Power, *If Oceans Were Ink*, 141.

numerous other examples of women playing leadership roles in the time of Muhammad (PBUH),<sup>63</sup> serving as evidence of its permissibility in Islam. The Qur'ān, furthermore, praises the just rule of the Queen of Sheba who led the majority of her nation to believe in the monotheistic God, thereby giving further credence to leadership roles being occupied by women.<sup>64</sup>

Nadwi cites many examples of Muslim women, starting with the female companions of Muhammad (PBUH), who sought knowledge of the religion and then recorded, transmitted, and implemented it in his comprehensive work on women scholars in Islam.<sup>65</sup> Nadwi notes that some women scholars were so proficient in the study of the Islamic sciences that they became jurists and muftis.<sup>66</sup> Asma Sayeed's work also provides a historic overview of women as religious scholars from the first decades of Islam to the early Ottoman period (seventh to seventeenth centuries).<sup>67</sup> Both these works belie the myth that, historically, Islamic knowledge was solely the purview of men.

In contemporary times, we once again see the rise of women acquiring knowledge of Islamic science and fulfilling the role of the preacher and spiritual guide in Muslim communities around the world. In Morocco, the state institutionalized the role of the *murshidah*, a woman preacher trained and certified by the Moroccan state to offer spiritual counselling and instruction on Islamic doctrine and practice to women.<sup>68</sup> Women scholars have also been appointed to advisory positions in state religious councils,

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<sup>63</sup> See further examples cited in Osmani, Farooq, and Ahmad, "Women Empowerment and Leadership in Islam between Myth and Reality," 96–99.

<sup>64</sup> Q27:32-33 states: "She said: 'Ye chiefs! advise me in (this) my affair: no affair have I decided except in your presence.' They said: 'We are endued with strength, and given to vehement war: but the command is with thee; so consider what thou wilt command'" Yusuf Ali, *The Quran – Translation and Commentary* (Durban, Islamic Propagation Centre International, 1946), 190.

<sup>65</sup> Mohammad Akram Nadwi, *Al-Muhaddithāt: The Women Scholars in Islam* 2nd ed (Johannesburg: Interface Publications, 2013). His work contains references to over nine thousand women scholars, ranging from the time of Muhammad to the twentieth century.

<sup>66</sup> Nadwi, *Al-Muhaddithāt*, 109. A mufti is a legal jurist who is authorised to issue a legal opinion (*fatwa*).

<sup>67</sup> Asma Sayeed, *Women and the Transmission of Religious Knowledge in Islam* (Cambridge: Cambridge University Press, 2013).

<sup>68</sup> Margaret J. Rausch, "Women Mosque Preachers and Spiritual Guides: Publicising and Negotiating Women's Religious Authority in Morocco." In *Women, Leadership, and Mosques*, eds. Masooda Bano and Hilary E. Kalmbach (Leiden: Brill, 2012), pp. 59-83.

including the High Council of the Ulema, and in both these positions, women enjoy official state recognition and remuneration, equivalent to their male counterparts.<sup>69</sup> In Turkey, over 350 women work as preachers for Turkey's Directorate of Religious Affairs, many of whom are highly educated individuals with advanced degrees in Islamic Studies.<sup>70</sup> Hassan notes that “[w]ithin Turkish society at large, these female preachers are slowly altering the perception of men as the exclusive representatives of official religious authority in Turkey”.<sup>71</sup> There are numerous other examples of Muslim women scholars reshaping notions of religious authority, but it is beyond the scope of this paper to highlight all of them.<sup>72</sup> Religious authority is a fundamental concept in religious studies as it determines who has the right to interpret sacred texts and guide the lives of adherents. Yet, it is clear that the influence of religious leaders and their teachings extends beyond the religious sphere, affecting social, political, and economic activities. As such, it is crucial to understand the dynamics that shape their ability to lead and how such leadership is constituted. This leads me to a discussion on female scholars and leaders in the South African Muslim community.

## **Where are the Muslim Women Scholars in South Africa?**

The underrepresentation of Muslim women in leadership roles in religious structures in South Africa is rooted in historical, cultural, and social dynamics. By selectively interpreting both the prophetic hadīth that declares a nation will never succeed under female leadership and the Quranic verse designating men as guardians (qawwamūn) over women, conservative ulama have historically constructed theological arguments that limit women's participation in religious leadership roles. Furthermore, institutional barriers in ulama bodies, such as entrenched patriarchal hierarchies and resistance to change, impede the advancement of women.<sup>73</sup> Cultural norms also

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<sup>69</sup> Rausch, “Women Mosque Preachers and Spiritual Guides,” 59.

<sup>70</sup> Mona Hassan, “Reshaping Religious Authority in Contemporary Turkey: State-Sponsored Female Preachers” In *Women, Leadership, and Mosques*, 85-103.

<sup>71</sup> Hassan, “Reshaping Religious Authority in Contemporary Turkey,” 101.

<sup>72</sup> For further examples of Muslim female scholars occupying positions of leadership in and outside of religious sacred spaces, see Bano and Kalmbach, *Women, Leadership, and Mosques*.

<sup>73</sup> Naidu, Maheshvari, and Nina Hoel. “Continuities and Departures: Women's Religious and Spiritual Leadership,” *Journal for the Study of Religion* 26, no. 2 (2013): 6–11.

prioritize male leadership, relegating women to supportive roles within the community.<sup>74</sup> Historically, a lack of access to education and resources has also restricted women's ability to challenge these structures and assert their leadership. Social and cultural expectations regarding women's roles as caregivers and homemakers often clashed with their aspirations for leadership roles, leading to internalized barriers among Muslim women. In some places in South Africa, like Gauteng and Kwa-Zulu Natal, these barriers not only entailed a lack of representation of women on ulama bodies but included the prohibition of women accessing sacred spaces like the mosque.<sup>75</sup>

However, the political, social and religious landscape in South Africa has changed, and Muslim women have increasingly advocated for equal rights within sacred spaces and in the application of Islamic law.<sup>76</sup> As mentioned previously, Muslims in South Africa do not form a monolithic group, so while Cape Town mosques have historically provided facilities for women (albeit in a separate area of the mosque) this has not always been the case in Gauteng or KwaZulu-Natal.<sup>77</sup> The Malay, or Colored, culture prevalent in the Western Cape are more open and vibrant, allowing women's active participation in the community as well as greater access to the mosque.<sup>78</sup> By contrast, Muslims in Gauteng and KwaZulu-Natal who originate from the Indo-Pakistan region are generally considered more patriarchal, with greater restrictions being placed on women in both the public and private spheres. It is, therefore, no surprise that the fight for equal representation of Muslim women in sacred spaces originated in the Western Cape. In 1994, with the dawn of democracy in South Africa, the Claremont Main Road Mosque in Cape Town advanced the cause for women's equal access and participation in the mosque by allowing a Muslim women scholar, Amina Wadud, to deliver the sermon prior to the obligatory Friday weekly prayer, which had previously been a male prerogative.<sup>79</sup> Wadud addressed the entire

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<sup>74</sup> Women are inevitably relegated to roles like fundraising for the masjid, community projects, or running social outreach projects.

<sup>75</sup> Lehmann, "Women's Rights to Mosque Space," 486 and 498. See also Hoel, "Sexualising the Sacred, Sacralising Sexuality," 26–41.

<sup>76</sup> For a description of the gender jihad that occurred in South Africa see Lehmann, "Women's Rights to Mosque Space," 484–487.

<sup>77</sup> Lehmann, "Women's Rights to Mosque Space," 487.

<sup>78</sup> *Ibid*, 498.

<sup>79</sup> *Ibid*, 498.

congregation from the main prayer area of the mosque where both men and women shared the same floor space. At the time, this event caused a major commotion in both Cape Town and the broader South African Muslim communities, and ulama bodies like the MJC condemned Wadud's actions.<sup>80</sup> However, thirty years later, the Claremont Main Road Mosque continues to have women give English sermons before the Friday prayers and though other imams have not followed suit at their mosques, they no longer condemn this practice at the Claremont Main Road Mosque.

Although male ulama are still regarded as the main authority on religious and legal matters in Islam, there is a growing trend within the South African Muslim community of challenging the exclusive claim of men to religious authority.<sup>81</sup> It has been argued that anyone who acquires the necessary religious knowledge should have the right to express him or herself from the mosque's pulpit.<sup>82</sup> By extension, anyone with the necessary religious knowledge should be given the opportunity to sit on leadership structures of ulama bodies irrespective of their gender. Interestingly, classical Islamic law scholars, like Abu Hanifa, allowed women to be judges and muftis in all matters, except financial and criminal matters, whilst Imam al-Tabari and Ibn Hazm held that women could be scholars in all issues.<sup>83</sup> However the question remains: where are the women scholars in South Africa?

Previously, religious knowledge in the South African Muslim community was predominantly a male privilege, where women had very little access to religious education beyond the madrassa system available to students that attended school.<sup>84</sup> There were limited opportunities for women to pursue further tertiary studies in the Islamic sciences, specifically relating to the Islamic legal sciences like the principles of Islamic jurisprudence (usūl al-

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<sup>80</sup> *Ibid*, 498.

<sup>81</sup> *Ibid*, 93 and 493.

<sup>82</sup> *Ibid*, 93.

<sup>83</sup> Osmani, Farooq, and Ahmad, "Women Empowerment and Leadership in Islam between Myth and Reality," 107.

<sup>84</sup> Lehmann, "Women's Rights to Mosque Space," 493.



fiqh) or Islamic jurisprudence (fiqh).<sup>85</sup> Knowledge of these legal sciences enables a scholar to devise legal rulings and opinions. Men pursued Islamic studies by leaving home to further their education in places like India, Pakistan, Saudi Arabia, and Egypt,<sup>86</sup> while women were not granted the same opportunities. However, the religious educational landscape has changed dramatically in South Africa over the past 30 years and women now have equal access and opportunities to pursue the study of Islamic sciences, especially in the Western Cape. Currently there is a proliferation of Islamic educational institutions that accommodate both male and female students, including the International Peace College of South Africa (IPSA) that offers a Bachelor of Arts degree in Islamic Studies, as well as honours and master's programs in Islamic Studies.<sup>87</sup> Similarly, the Madina Institute provides a three-year Bachelor of Arts degree in Usūl ul Dīn for both men and women.<sup>88</sup> Female graduates from these institutions have been schooled in both the principles of Islamic jurisprudence (usūl al-fiqh) and Islamic jurisprudence (fiqh), the latter including the fiqh of marriage, divorce, and inheritance. There are furthermore numerous religious institutions directed solely at women that have flourished in the Western Cape over the past few years, including the Zahraa Institute that describes itself as an independent educational institution by women and for women and whose main focus is to educate women to navigate the Quranic text in the language of its revelation.<sup>89</sup> Similarly, there is the Qamar Institute that provides courses on Quranic Arabic as well as Islamic studies that women can easily access<sup>90</sup> and the Baseerah Institute that describes itself as “a female-led Islamic institution that seeks to raise the level of female education and scholarship through the teaching and publishing of traditional or well-known texts in a subject”.<sup>91</sup> South African Muslim women currently have unprecedented

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<sup>85</sup> For a brief overview of these sciences and how they correspond to the South African legal system, see Fatima Essop, “Understanding the Islamic Legal System for South African Legal Practitioners,” *Advocate* 3, (August 2023).

<sup>86</sup> Hoel, “Engaging Religious Leaders,” 184.

<sup>87</sup> For a list of the Islamic courses offered by IPSA, see <https://www.ipsa-edu.org/courses/bachelors-of-arts-islamic-studies>

<sup>88</sup> For a list of the Islamic courses offered by the Madina Institute, see <https://madinainstitute.ac.za/3-year-bachelors-degree-usul-al-din/>

<sup>89</sup> For more details on Zahraa Institute, see <https://www.zahraa.co.za/about-us/>

<sup>90</sup> For more on the courses being offered by Qamar Institute, see <https://qamar.co.za/>

<sup>91</sup> For more on the courses being offered by the Baseerah Institute, see <https://baseerahinstitute.org/>

access to acquiring knowledge on the Islamic sciences and are qualifying with degrees that equip them with knowledge of laws relating to worship, marriage, divorce, inheritance, and finance.

In addition to women pursuing the traditional Islamic sciences, South Africa also sees Muslim women academics, like Sa'diyya Shaikh and Fatima Seedat, obtain degrees in Islamic studies from Western universities and go on to advocate for a more feminist hermeneutic when it comes to Quranic exegesis, especially in relation to verses of the Qur'an that have historically been interpreted to the detriment of women.<sup>92</sup> In this regard, they rely on and build upon the works of Islamic feminist scholars such as Aziza al-Hibri, Amina Wadud, Asma Barlas, and Kecia Ali to name a few,<sup>93</sup> to interpret Islamic texts in a more gender-sensitive manner. Evidently, there is no shortage of female Muslim scholars who have the religious knowledge and capability to occupy positions of leadership in ulama bodies. However, the expansion of educational opportunities for women has not been sufficient for significant change, as the increase in women's admission to the highest levels of Islamic education has not led to a corresponding rise in women holding high-level positions in ulama bodies.<sup>94</sup>

Consequently, although these female scholars are sufficiently qualified to (i) preside over shariah courts as judges (qādis); (ii) mediate inheritance disputes, and, (iii) issue fatwa as muftis on matters affecting the community,

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<sup>92</sup> They have also penned a book together containing a collection of women-led sermons. Sa'diyya Shaikh, and Fatima Seedat, eds. *The Women's Khutbah Book: Contemporary Sermons on Spirituality and Justice from Around the World* (New Haven, Connecticut: Yale University Press, 2022).

<sup>93</sup> Aysha A. Hidayatullah, *Feminist Edges of the Qur'an* (Oxford: Oxford University Press, 2014), 15.

<sup>94</sup> A similar trend was observed in Egypt, where Dr Su'ad Salih, a professor and department chair at Al-Azhar's Women's College, was unable to become a member of Egypt's Islamic Research Council because she only received one vote despite assurance from the late Shaykh al-Azhar (and former Grand Mufti), Shaykh Tantawi, that qualified women could become muftis, as depicted in Brigid Maher and Karen Bauer, *Veiled Voices*, DVD (Seattle, WA: Typecast Releasing, 2009). See also Hilary Kalmbach, "Introduction: Islamic Authority and the Study of Female Religious Leaders" in Bano and Kalmbach, *Women, Leadership, and Mosques*, 17.

they are not granted these opportunities by ulama bodies.<sup>95</sup> Currently, only male scholars or imams fulfil the role of the judge at the MJC shariah court despite it being mostly women litigants who approach the court for a divorce.<sup>96</sup> One of the imams who presided over the MJC shariah court had the following to say when questioned about the lack of female representation in the court:

No, I mean gender is not an issue in determining the verdict. The Qadi is not worried whether you are a male or a female. That's not the issue here...[t]he text of fiqh will always be his yardstick in getting to his conclusion That's why I say gender is irrelevant when it comes to this case. It's just what the Fiqh says, it is what the text says, and we will grant the verdict based on that.<sup>97</sup>

The said imam appeared to be oblivious to the fact that many female litigants found the court setting intimidating, specifically because of the all-male panel hearing their divorce applications.<sup>98</sup> Approaching the shariah court as a woman and seeing an all-male panel might evoke concerns about representation and whether their perspective will be adequately understood and considered by the all-male bench. As one female participant noted after appearing before the court:

You have to share your problems with them [the male judges]; I mean other women maybe have worse problems where they were

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<sup>95</sup> Shaykha Mymoena Solomons was the first Muslim woman in Cape Town to pursue Islamic studies, Arabic, and Islamic law at Al Azhar University in Cairo, Egypt in the 1980's. Despite being highly educated in the classical Islamic sciences, she never received the recognition that male scholars of the same educational background received and was never invited to sit on the decision-making structures of any of the ulama bodies in Cape Town. She was often referred to as one of Cape Town's unsung heroes, see: <https://vocfm.co.za/sa-muslim-community-rocked-by-the-passing-of-its-first-sheikha/> Similarly, Shaykha Rukkaya Samsodien, who founded the Baseerah Institute, is a highly qualified scholar in various Islamic sciences of jurisprudence. She spent six years studying Arabic and Islamic sciences in Syria and is more than adequately equipped to issue fatāwa on different matters. See <https://baseerahinstitute.org/#about> However she has yet to be invited to sit on the executive structures of the MJC.

<sup>96</sup> Essop, "Problems and Possibilities for Islamic Divorce in South Africa," 73

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

abused, maybe sexually or physically by their husbands. How do you tell all of this to a man?<sup>99</sup>

They may have concerns about potential bias or lack of understanding regarding issues specific to women or gender-related matters. In some cases, women litigants might feel disadvantaged or intimidated by the power dynamics inherent in facing a group of men, particularly if they perceive those men as holding authority over them. Women litigants may worry about being misunderstood or not being taken seriously, particularly if they perceive differences in communication styles between men and women. As such, I argue that gender diversity in shariah courts can help ensure a fair and inclusive judicial process and may alleviate some of the concerns that women litigants have when facing an all-male shariah court. In addition to sitting as judges in shariah courts, I argue that having women sit on fatwa committees at ulama bodies is essential as it would ensure a diverse range of perspectives, enriching the discourse within these decision-making structures and fostering a more comprehensive understanding of the community's needs. Women's representation on ulama bodies would serve as a catalyst for social change within Muslim communities. It would also be consistent with the constitutional imperative to ensure gender equality in all structures of society, including religious structures.

## **Gender Equality a Constitutional Imperative in Religious Structures**

The right to equality is one of the cornerstones of South Africa's democracy, one that has been entrenched in the Constitution<sup>100</sup> as a fundamental human right.<sup>101</sup> In addition to the constitutional provision, the right to equality

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<sup>99</sup> *Ibid*, 72. See also case studies of women's experiences in the MJC shari'ah court cited in Hoel, "Engaging Religious Leaders," 188–189.

<sup>100</sup> The Constitution of the Republic of South Africa, 1996 ("Constitution").

<sup>101</sup> Constitution, section 9 provides:

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms...
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social

is also protected under the Promotion of Equality and Prevention of Unfair Discrimination Act<sup>102</sup> that prohibits any practice, including any religious practice, that impairs the dignity of women and undermines equality between women and men.<sup>103</sup> Consequently religious structures or institutions would be subject to constitutional scrutiny should they be legally challenged about practices that undermine equality between men and women. Ulama bodies might argue that women are excluded from leadership positions because of religious reasons by referencing the leadership hadīth or the Quranic verses cited above. Although the Constitution does protect the rights to religious beliefs and practices,<sup>104</sup> the courts will be circumspect in allowing discriminatory gender practices based on religious reasons.

In a pluralistic and multicultural society like South Africa, the courts will always be tasked with balancing the right to equality with the right to religious and cultural beliefs or practices. In the case of *Christian Education South Africa v Minister of Education*,<sup>105</sup> a group of Christian private schools applied for an exemption from legislation prohibiting corporal punishment from being administered in schools on the grounds that it was against their Christian beliefs and violated their religious freedom. The constitutional court held that individuals have no automatic right to be exempt from generally applicable laws on the grounds of religious beliefs.<sup>106</sup> The court rejected the claim for an exemption as the legislation served an important objective, namely the

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origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.

4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

<sup>102</sup> Act No. 4 of 2000 ("PEPUDA" or "the Equality Act").

<sup>103</sup> Section 8 read as follows:

Prohibition of unfair discrimination on grounds of gender Subject to section 6, no person may unfairly discriminate against any person on the grounds of gender, including:...(d) any practice, including traditional, customary or *religious practice*, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child.

<sup>104</sup> Constitution, s15(1): "Everyone has the right to freedom of conscience, religion, thought, belief, and opinion."

<sup>105</sup> 2000 (4) SA 757 (CC).

<sup>106</sup> *Ibid*, 35.

protection of children from abuse, degradation, and indignity.<sup>107</sup> The court held that the child's best interests are of utmost importance.<sup>108</sup> The court may show the same deference to gender equality if Muslim women challenged their lack of representation on ulama bodies.

Ulama bodies that exclude female scholars from their leadership and decision-making structures open themselves up to constitutional scrutiny in a similar fashion as discussed in the aforementioned *Christian Education* case.<sup>109</sup> The courts may regard the lack of female representation as contrary to the right to equality, despite their claim that their actions are based on religious precepts. It would be even harder for ulama bodies to justify this exclusion if the evidence clearly illustrates that Islamic law does not preclude women from fulfilling leadership roles and that women are fulfilling these roles in other jurisdictions, as mentioned above. Addressing the underrepresentation of Muslim women in leadership requires a multifaceted approach that challenges patriarchal interpretations of Islam, promotes gender equality, and fosters inclusive religious communities. By dismantling systemic barriers and empowering women, ulama bodies will be harnessing the full potential of its diverse Muslim population and fostering more equitable and representative religious structures.

## Conclusion

In conclusion, this paper has argued that addressing the underrepresentation of Muslim women in ulama bodies is essential to advancing gender equality and fostering more inclusive religious communities in post-apartheid South Africa. By challenging patriarchal interpretations of Islamic law and advocating for the inclusion of women in

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<sup>107</sup> *Ibid*, 50.

<sup>108</sup> *Ibid*, 41.

<sup>109</sup> In *Fortuin v Church of Christ Mission of the Republic of South Africa* (3626/15) [2016] ZAECPEHC 18, a religious minister sought judicial review of the church's decision to prevent him from performing his pastoral duties as an ordained minister of his church. The court had to determine whether it had the power to review decisions taken by a church and whether the church had adhered to fair or equitable procedures when dealing with its religious minister. The court held that it had the power to interfere with the decision of the church because fundamental principles of fairness had been flouted. The case confirmed that civil courts have the authority to interpret a church order and to adjudicate accordingly by means of judicial review.

leadership roles, ulama bodies can better reflect the democratic principles upon which our democratic dispensation was founded. This inclusion would not only enrich the decision-making processes within these religious organizations, but also ensure that the diverse needs of the Muslim community are met. As South Africa continues to navigate towards a more inclusive society, the active participation of women in ulama bodies is a crucial step in realizing the constitutional imperative of equality for all citizens

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