

Family Law in Contemporary Muslim Contexts: Triggers and Strategies for Change

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Family law has been one of the most politically and socially contested issues in Muslim contexts in the contemporary period. This has had both positive and negative aspects. On the one hand, it has opened up the possibility of discussing matters and power relationships previously regarded as strictly belonging to the private sphere. But on the other hand, women's autonomy has at times been threatened in a sphere that holds the key to the realisation of their rights across all aspects of their lives. While positive change or protection of threatened family law rights in Muslim contexts has almost always been actively instigated by women, increasingly women are also leading a demand for the reconceptualisation of family relationships based on clearly articulated concepts of equality and justice.

This paper explores this demand for positive change in family laws and for the protection of rights, illustrating ways in which equality and justice in the Muslim family have become increasingly possible. After citing examples of the immense diversities in legal systems and laws relating to families in Muslim countries and contexts, the paper outlines a variety of strategies used by activists to promote equality and justice in family laws and responses to situations in which existing rights are threatened. Because of space constraints, this paper cannot discuss the enormous social and economic changes that have taken place within Muslim societies and that underlie the need to reconceptualise family relationships based on principles of equality and justice.

Defining the ‘contemporary period’ in relation to family laws in Muslim contexts is not easy. In some countries (e.g. in South Asia), codification processes—often the main vehicle for changes in law—began during the colonial period and have been expanded in the post-colonial period. In others (e.g. in the Gulf states and parts of francophone West Africa), codification is an issue raised only in the past decade, while in yet others (e.g. Nigeria), existing Muslim family law is part of an uncodified continuity stretching back to when communities first embraced Islam. For the purposes of this paper, I shall concentrate on developments in the past four decades. This is a period when two countervailing forces have become particularly visible: women’s collective activism for their rights as well as absolutist visions of religion that seek control of politics and society (sometimes referred to as religious fundamentalisms).

I. Diversities in Legal Systems and Family Law Outcomes for Women

Law reform processes in Muslim contexts have been every bit as diverse as the legal systems, political systems and social customs informing the interpretation and application of laws, and the interpretations of Muslim jurisprudence that prevail in these societies.

There are diversities in terms of sources of law, ranging from various interpretations of the Qur’an and *Sunnah*, to colonial common law, the Napoleonic Code and Soviet code. Some countries, such as Nigeria, have plural legal systems with parallel customary, *Shari’ah* and general¹ courts, while others, such as Turkey’s system, are unitary. In some countries, such as Cameroon and India, a couple can choose which system (customary, religious or general) they wish to be governed by, whereas in others such as Egypt and Sri Lanka (majority and minority communities respectively), Muslim couples are automatically governed

by Muslim family laws. Malaysia has a federal system in which the various states have jurisdiction in developing and applying family laws, while Algeria is a highly centralised unitary state. In countries such as Britain and Germany where there are Muslim minority communities, a unified civil law is often applied differently by the courts in matters involving Muslims. Court systems are also varied: in Pakistan a single family court system hears cases for all communities, while in Syria multiple courts adjudicate on the matters of different religious communities.

For many issues in women's lives, criminal and family laws are inextricably linked. For example, the requirement of registration of marriage, generally seen as a positive step in reform efforts, can become less beneficial to women when sex outside of a valid marriage is criminalised through *Hudud* laws. In some systems, violation of family law provisions (e.g. on polygamy, child and early marriage, and maintenance) are also criminalised. More broadly, family law is also often linked with constitutional law, which may for example recognise the status of customary and/or religious law, including in family matters, or set up seemingly irresolvable contradictions between gender equality and the right to religious freedom.

The practical outcomes of all these variations for women's lives are equally diverse. Bangladesh, influenced by customs denying women ownership of property, makes no legal provision for post-divorce maintenance, whereas in Tunisia it is provided for—at least in the relevant statute. Sri Lanka and countries in South-East Asia, where the Shafi'i school dominates, require a *wali* (guardian) even for an adult Muslim bride, while there is no such legal requirement in Hanafi-dominated Pakistan and Bangladesh. There is also a great diversity of legal positions on the issue of polygamy, ranging from an outright ban (Tunisia and Turkey, with the sources of law being religious and secular respectively), to completely unregulated (Saudi Arabia and Nigeria) and partially regulated (Egypt, Malaysia and many other Middle Eastern and

Asian countries). This extraordinary diversity explodes the myth of one homogeneous ‘Muslim world’ propounded by both orientalists and global media, as well as by right-wing forces within Muslim societies.

But there is a commonality: whatever the diverse positions of laws and customs on family law issues, these are frequently justified with reference to religion or the preservation of a religious-national/religious-ethnic identity. The vast majority of women are marginalised from the power structures that determine processes of legislative reform and community identity formation. Thus the needs and concerns of women arising from their daily struggles are rarely, if ever, addressed in local laws and customs. In those Muslim contexts where legislation has been introduced or where customs have been changed in ways that increase women’s life options, the goal of the process has often been the strengthening of the religious/ethnic or national community, and not women’s empowerment—and particularly empowerment of marginalised women—per se.

Nevertheless, over the past some 100 years, women’s demands for a transformation of their family lives—often impacting deeply on the possibilities for their engagement in the public sphere—have also brought about some beneficial tinkering with family law. Occasionally, and with gathering pace since the turn of the twenty-first century, there have been wholesale and positive transformations of the concepts underlying family relationships.

II. Feminist Demands for Equality and Justice

It is important to remember that demands for equality and justice in family law have meant both reform as well as resistance to (regressive) reform; the latter issue will be dealt with in the section on nation-building, state Islamisation and identity politics later in this paper. Moreover, I see

'feminist' as including those men who have challenged the oppression that patriarchy brings to the lives of both women and men, even though it is acknowledged that many men, and indeed women, who are part of this struggle would not identify themselves as 'feminist'.

Demands for equality and justice have arisen largely out of women's lived experiences that legal systems as they currently stand do not meet their needs. Such demands are not new. When Pakistan's Prime Minister decided to take a second wife in the early 1950s, his first wife mobilised the full strength of the country's major women's organisation to demand codification of Muslim family laws and thereby limitations to men's exploitation of women in the family. The 1955 Rashid Commission culminated in the 1961 Muslim Family Laws Ordinance, which provided for the registration of marriage and divorce and regulated polygamy.

Women's demands for reform have gained particular momentum since the 1980s, when feminist researchers and activists began to move beyond simplistic statements that 'the system of patriarchy is oppressive' towards gathering concrete evidence of how structures of oppression actually work. This is one of the strategies that have made moves towards equality and justice in the Muslim family possible, and which are discussed in more detail below. Limitations of space mean I cannot examine here all the social, political and economic factors that have made such moves possible, but it is important to highlight the normalisation of concepts of gender equality and human rights. Thus, while women may have been making demands for equality and justice for centuries, it is only more recently that these have taken a conscious shape as collective action for women's rights, and that society as a whole has become more receptive to the recognition of such rights. Today, even right-wing political parties based on religious identity must at least claim that their positions favour women's rights. States have to sign on to international treaties recognising women's equality, and are also

increasingly under pressure to withdraw reservations to, for example, family related articles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that were made in the name of protecting cultural and religious specificity. This is a profoundly important context for the promotion and protection of women's rights within the Muslim family.²

Although women's collective organising for their rights has had positive impacts on family law reforms in Muslim contexts, one must be careful not to ascribe all positive changes to women's efforts. For example, in Cote d'Ivoire (38 per cent Muslim), people are increasingly rejecting customary and informal courts in favour of courts applying general civil law (which usually have better outcomes for women) due to urban migration and the breakdown of traditional community structures rather than women's advocacy efforts.

III. Strategies Used to Promote Equality and Justice in Family Laws

This section outlines different strategies used by activists to demand an expansion of women's rights in family laws. Responses to situations where existing rights are threatened are discussed in a later section on regressive law reform processes. For ease of analysis, strategies discussed here are divided into two main groups: first, those related to campaigning and advocacy methods, and later those more related to analytical and conceptual perspectives. This can only be a very broad overview of strategies and cannot possibly reflect the diversity and creativity involved even in just one country's experience of positive change. The examples here have been chosen largely because they clearly illustrate the point that positive reforms in family law in Muslim contexts are indeed possible.

i. Documenting Women's Lived Realities and Experiences of Injustice

Exposing the failings of current legal systems through careful research of women's lived experience of the law has been a vital strategy.

In Iran, for example, the massive loss of male life in the Iran-Iraq war left thousands of widows. Yet Iran's custody laws, based on a male-centred interpretation of Muslim jurisprudence, meant that widows frequently lost custody of their children to the families of their dead husbands. Iranian women's rights activists successfully argued for reform of these unjust provisions by publicising examples of the extreme emotional hardship they caused, and questioning how such provisions matched the 1979 Revolution's slogan of Islam and social justice, and the authorities' glorification of the sacrifice of (male) lives in the war.³

In 2001 in Malaysia, Sisters in Islam (SIS) organised a press conference in the hope of embarrassing the government into making legislative changes. Failing to bring about reform through the submission of memoranda, SIS decided to produce public evidence of the injustices suffered by Muslim women in the administration of family law by the country's *Shari'ah* court system. One single mother related how she had to fight for five years to get a simple divorce from a violent husband who had sprayed her with acid. Because she had to constantly flee from her husband, she failed to file a case in time and lost alimony and financial support guaranteed under the local *Shari'ah* provisions. Such concrete evidence of inequity forced the government to promise to speed up the creation of a family court system extending protection to Muslim women.⁴ In 2006, Bahraini women took a similar approach in their campaign for codification. A group of women directly affected by the injustices of the current system toured Europe and shared their life stories in order to build pressure for reform.

A comparative research approach appears to have been particularly popular because revealing similarities and diversities in women's lived experiences strengthens analysis of the power structures that underlie these experiences. Examples of such comparative research which has led to practical support for demands for equality and justice in the family include the Women & Law in the Muslim World Programme of the network Women Living Under Muslim Laws, which ran for over a decade starting in 1991 and spanned over twenty countries.⁵ Meanwhile, the network Strategic Initiatives for Women in the Horn of Africa (SIHA) is currently planning regional research on women's experiences of different aspects of family laws.

ii. Mobilisation through Consensus-building and Broad-based Platforms

The use of consensus-building and broad-based platforms to consolidate women's advocacy efforts and mobilise public opinion in favour of one specific demand has had considerable success.

For example, in 2001, the Turkish Parliament finally accepted 1030 amendments to Turkey's Civil Code, signalling the victory of a protracted lobbying campaign by the country's women's movement. The amended code finally establishes the equality of men and women in the family by abolishing the clause that defines the man as the head of the family and by providing for a 50/50 division of all matrimonial property. This followed a major public campaign involving women's groups all around the country, overcoming traditional divisions within Turkey's women's movement and strong resistance from nationalists and religious conservatives who insisted on the retention of the separate property regime in force since 1926. Similarly, in Morocco a broad-based coalition of women's groups overcame opposition from the religious right and led to reform of the *Moudawana* (Personal Status Code) in 2004.

Last year, a three-year programme uniting nine civil society organisations towards reform of the personal status law was launched in Egypt.

Mass mobilisation has also been used to support piecemeal change where a reconceptualisation of family relationships (as envisaged in Turkey and Morocco) is strategically not yet possible. For example, in 2003, lawyers and other volunteers in Syria collected 15,000 signatures in favour of women-friendly amendments to child custody provisions—enough to make the Syrian Parliament agree to study the proposal. The law on custody was ultimately changed, but only through a decree from the (Alawite minority) President, which avoided the risk of stirring up organised *Sunni* Muslim protests.⁶ This illustrates the experience that in some contexts mass mobilisation can bring a backlash, and thus lobbying with specific lawmakers may be more effective.

iii. Lobbying with Lawmakers and Raising the Political Stakes

Family law reform suffers from a number of specific constraints. These include the fact that frequently those most in need of the reform—usually women—are a group with a lesser voice and poorer access to lawmakers. Nevertheless, direct lobbying around family law reform—without necessarily first mobilising a groundswell of public opinion in favour of the reform—has been successful.

A recent example is the 2000 expansion of divorce options for Egyptian women recognising the concept of *khul'*. Women's groups made a conscious effort to unite around the issue and sought male support within Parliament. They also closely lobbied the Minister of Justice and identified key parliamentarians who could convince others in a sort of snowball effect.

Increasingly, women have also begun to access concepts of citizenship and to use their power as voters to raise the political stakes, such that lawmakers, governments and authorities can no longer risk

ignoring women's demands. The 'One Million' march and signature campaign in favour of wholesale family law reform in Morocco played a major part in ensuring a successful campaign, and a similar 'One Million Signatures' campaign has been launched to support reform in Iran.

But in the political contexts that characterise many of our countries, there are dangers in efforts to lobby a specific group of decision-makers or parliamentarians. One Fiji women's activist lawyer of Indian Muslim origin spent years lobbying for a comprehensive family law reform package—only for the Parliament to be dismissed during political instability precisely the week that the reform package was tabled for debate. Once some form of stability returned, she found she had to begin from scratch with an entirely new set of politicians and parliamentarians, although she ultimately succeeded and Fiji now has possibly the most forward-thinking family law in the world.

iv. Focusing on Procedural Amendments

Additionally, women's groups have also advocated for procedural reform, acknowledging that the 'law' is far more than a specific family code and that winning guarantees of rights in the text is only half of the battle.

Some of the ways in which existing legal systems fail to address women's needs relate specifically to women, such as the absence of a gender-sensitive judiciary. Others, such as the lack of legal aid, protracted procedural delays, grey areas in jurisdictional matters, and weak legal drafting leaving litigants vulnerable to cultural and social biases, obstruct all disadvantaged groups' access to justice. But they are particularly significant for women in domestic disputes since in many jurisdictions women form the majority of plaintiffs in family law and domestic violence cases, and the failure of legal systems to guarantee and protect their rights leaves them vulnerable in their most immediate sphere of experience—the family.

Moreover, focusing on amendments in procedural law may be more manageable and may bring immediate relief to thousands of potential litigants, particularly when the political context militates against substantial legislative reform. The expansion of Egyptian women's rights to divorce through the introduction of procedures for *khul'* came through a cleverly crafted procedural amendment rather than overtly adding *khul'* to the list of divorces possible for women. The vitriolic nature of the media debate around the proposed provisions indicated that had the direct reform route been taken, the amendment may not have passed.

v. Communications and Public Advocacy

Most successful campaigns for change have a strong communications and public advocacy elements, and family law reform efforts in Muslim contexts have followed this pattern.

Algeria's *20 Ans Barakat!* (20 Years Is Enough!) campaign produced a wonderful short DVD with a campaign song that raised the family law issue and inspired support from women across social classes. Morocco's reform campaigners produced several highly effective publications for various audiences, including a pamphlet called *Necessary and Possible* that was specifically designed to advocate with the King and those who could make a new *Moudawana* happen. Sisters in Islam in Malaysia have consistently developed and used alliances with media to strategically increase pressure on lawmakers for positive change in the family law, while in Pakistan a process of public advocacy spanning several years led to important amendments to provisions regarding *zina*—a topic which in Pakistan is intricately connected to validity of marriage and choice in marriage.

vi. Demands for Reform Based Within the Framework of Religion

Claiming the right to *ijtihad* and using jurisprudential tools such as *takhayyur* and *talfiq* (selecting context-appropriate interpretations from across the various schools of law) as a basis for positive family law reform in Muslim contexts is not new. In pre-independence India, the 1939 Dissolution of Muslim Marriages Act, which codified women's access to divorce, drew upon schools beyond the locally dominant Hanafi school that offered only very restricted access. In Tunisia, the use of *ijtihad* legitimised state-led reform of the Personal Status Law 1956,⁷ which had famously banned polygamy on the basis of reinterpretations of Qur'anic provisions. The Rashid Commission, which led to Pakistan's Muslim Family Laws Ordinance 1961, explicitly referred to *ijtihad*.

What is new, however, is the growing confidence with which the right to *ijtihad* is being claimed by female scholars and theologians who support equality and justice within the family, and by women's groups. The latter have particularly focused on self-education in *fiqh* and *tafsir*.

Numerous sources argue that gender justice is completely compatible with, and even an essential ingredient of, Islam's principle of social justice and community well-being.⁸ It is not the place of this paper to discuss whether or not the use of arguments from within a religious framework is an appropriate strategy in any given context. But it is clear that over the past two decades in particular, faced with the growing political power of religious groups and the reality that religion is a fact of social life, women's organisations have increasingly also based their demands for positive reform within a religious framework.

In Malaysia, for example, Sisters in Islam have uncompromisingly and successfully advocated from within the framework of religion for both procedural and legal reforms benefiting women in the areas of family law and violence against women. They have been invited by the

government to submit further recommendations for family law reforms and have developed good working relationships with a number of *Shari'ah* court judges. Currently some of the most progressive reinterpretations regarding gender and Islam are coming out of Indonesia, where state research institutions and Islamic universities have led attempts at family law reform.

Over the past two decades, Iran stands out for its vibrant debates around family law reform from within the framework of religion. Whether as a strategic choice given the impossibility of secular and/or supposedly 'Western'-framed rights-based approaches or whether out of conviction that a progressive interpretation of Islam offers women the possibility of equitable rights within the family, women's groups in Iran have initiated an extraordinarily powerful movement for reform, challenging the conservative interpretations introduced in the immediate post-1979 period. They have engaged with religious scholars and launched widespread public debates; they have carefully documented the impact of inequitable provisions, giving a voice to women's daily experiences. Through their campaigns and a very calculated use of their power as voters, Iranian women have secured a new official marriage contract that lists in detail the wife's divorce rights. It also provides for a 50:50 division of marital property in the event of *talaq* 'not due to the fault of the wife'. Moreover, since 1993, following another struggle by women's groups, husbands divorcing their wives are legally obliged to pay 'wages for housework' in addition to the *nafaqa* and *mahr* due to wives according to the Muslim family law. The precise amount is determined by the court on the basis of the number of years of marriage and the status of the couple. Even if they acknowledge the difficulty in enforcing such provisions, Iranian women activists argue that the reforms have considerably strengthened women's bargaining power and in particular have effectively redressed some of the imbalances present in custody and divorce provisions for women.⁹

But in societies where there are substantial non-Muslim communities, the 'from within' approach can be problematic if it prioritises religion as a source of public policy. Again, Malaysia illustrates the problems. 'Since Malays form the majority of the Muslim population in Malaysia, any success in uplifting the position of Islamic law within the legal system may thus be construed by non-Malays as a win for Malays, thus reducing the space for non-Islamic institutions.'¹⁰ Women's groups are concerned about a possible negative impact on communal harmony.

The countries of francophone West Africa can be divided into two groups, one with uniform family codes applicable to all communities (usually based on the Napoleonic Code and with adaptations based on custom and religion, e.g. Senegal, Mali), and the other where uniform family laws were drafted several years ago but are yet to be enacted or promulgated due to political opposition (e.g. Chad, Guinea, Benin). In both instances, focusing purely on reinterpretation is not regarded as strategically the most useful approach. In both, Islamists are demanding separate codes for each religious community, which activists fear will further fragment the nation and cause immense problems for those marrying across religious lines.

vii. Multiple Frames of Reference and Reconceptualising the Family

The kinds of pitfalls that arise from using religion as a sole frame of reference for reform demands were successfully avoided in Morocco's inspiring campaign for a new *Moudawana*. A distinctive feature of the campaign was that it was rooted in multiple frames of reference articulated as mutually complimentary rather than mutually exclusive, which has often been an approach in feminist campaigning. Indeed, in the case of Morocco, which built on the Collectif 95 Maghreb Egalité

campaign that also inspired the positive changes in Algeria in 2005, the use of multiple frames of reference appears to have been a major factor in the campaign's success. This strategy combined not only a process of reclaiming jurisprudence and emphasising the compatibility of Islam with concepts of human rights, but also documenting women's realities and appealing to social reality, highlighting women's citizenship, and emphasising the country's obligations under international human rights law. In essence, such a strategy provides 'something for everybody'.

Moreover, in both Morocco and Turkey, women's activists deliberately sought for, and won, a complete reconceptualisation of the spousal relationship. They successfully argued that the enormous gap between the classic patriarchal construction of the family (whether under the Napoleonic Code or the old Maliki-dominated *Moudawana*) and the socio-economic realities of contemporary family relationships was damaging society as a whole and therefore needed a total re-think.

It can be difficult to distinguish between reform efforts that are based on an entire reconceptualisation of family relationships and those that merely tinker with existing relations of power. Partly, this is because legal systems and the realities of family relationships are so contextual. Thus, while I may regard the content of Bahrain's proposed new family law to be disappointingly conservative, Bahraini women counter that any form of codification sends the essential signal to men that they may not violate women's rights within the family with impunity; for them, this is a very profound change. Even the seemingly smallest change may, over time, produce a critical mass that leads to a reconfiguration of spousal relationships. Amendments in 2002 to Pakistan's Family Courts Act have introduced the possibility of women filing for a share of marital assets as part of their divorce proceedings rather than relying on the virtually impossible procedure of filing a separate civil suit for recovery under ordinary civil law (which could take decades). Traditionally, women in

Muslim marriages in the subcontinent who have divorced their husbands have had to abandon any hope of recovering or sharing assets; this introduces a hidden imbalance in the marital relationship based on the threat of financial loss and/or poverty if a woman exercises her right to divorce. The new law, if routinely accessed by women, could go a long way toward redressing this imbalance.

The use of multiple frames of reference and the reconceptualisation of the family are not concepts that can become popularised overnight, and an important aspect of this strategic approach to family law reform in Morocco and Turkey was that in both countries, activists have talked about how they recognised that they were ‘in it for the long-term’, that this new vision required an enduring commitment to change that would overcome intermediate set-backs and obstacles.

IV. Regressive Law Reform Processes

Despite the real progress made towards equality and justice in the Muslim family in recent decades, there have also been grave threats to women’s existing rights in family law. These have come from weaknesses and contradictions in post-colonial nation-building as well as from the rise in identity politics, specifically prioritising religion as the defining aspect of a person’s identity.

In the 1980s and 1990s, women’s access to justice in many Muslim contexts was considerably obstructed or reversed by the state. In places this was part of a deliberate state policy of ‘Islamisation’ (as in Pakistan, Sudan, Iran, Malaysia, post-unification Yemen, and more recently certain states of Nigeria), or using religion as a means of ‘divide and rule’. Palestinian feminists see the Israeli state’s preservation of different, religion-based family laws for the Arab minority not as a positive recognition of diversity but a useful means of dividing the

Palestinian community and perpetuating its social and economic backwardness.¹¹

In other places, threats to women's rights were due to the government's 'convenient stance of vacillating and proffering short-term and piecemeal solutions to some of the most extreme demands made by the Islamic faction'.¹² Having woefully failed to meet its people's aspirations after liberation from French colonial rule, the Algerian Government introduced the regressive 1984 Code de la Famille (reformed in 2005) as a distraction and a sop to the power of the religious Right. The state's failure to see women and marginalised communities as citizens has allowed the resurgence of informal legal systems. In Bangladesh, religious groups have sought to use these informal systems as an entry point to gain greater social and political control. Since 1993, informal *salishes* (village councils) have carried out extreme punishments (including stoning) of women for the 'crimes' of divorcing their husbands or choosing their own marriage partners. Although a 2001 landmark judgement declared all fatwas illegal,¹³ shifting political alliances and pressure from religious orthodox groups means the matter remains an election issue even today. In Uzbekistan in the early 1990s, the government permitted a parliamentary and media debate on the possible reintroduction of polygamy. Although no reform followed, this strengthened anti-women biases in the implementation of family law.¹⁴ In Senegal a few years ago, some election candidates opportunistically raised a brief call for the introduction of separate, religion-based family laws. These threats continue today elsewhere. In Gambia, women face threatened reform of family laws based on conservative interpretations of Muslim jurisprudence as the government struggles to resist opposition from increasingly influential politico-religious extremists.

In a number of countries with a significant Muslim minority, the rise of religious identity politics has led to a debate over the possible

introduction of separate Muslim family laws. In the Philippines, although the Moro National Liberation Front climbed down from its demand for a separate Moro homeland, it continued to demand, and was granted in 1977, the introduction of a traditionalist Shafi'i interpretation of Muslim family law as part of its claim to a separate national identity.

Whatever the factor behind the regression, women's role as the repositories, reproducers and gatekeepers of the cultural and national collectivity¹⁵ have meant that women have often been on the receiving end of legal reforms and the manipulation of cultural symbols such as family laws and dress codes. The impact on women has been well documented.¹⁶ For women in Iran, Malaysia, Sudan and Yemen, the reversals meant the withdrawal of many rights granted under previous laws that at one time stood out in the Muslim world for their progressive nature.

In places where regressive reforms were introduced (whether through parliament or dictatorial decree), such processes were always characterised by the lack of space for debate and an intolerance of dissent or alternative interpretations. Across many Muslim contexts, even under supposedly democratic dispensations, states have tolerated and even encouraged slanderous attacks by politico-religious extremists against those demanding rights-based legal reform.

Introduction of regressive family law reform in the name of nation-building and recognition of identity seems particularly characteristic of post-conflict contexts where resources are few and there is a lack of political will to prioritise women's rights or include them in negotiations under UN Resolution 1325 (on peace, women and security). The recent regressive changes in Iraq's family law are an example. In post-conflict Sierra Leone (60 per cent Muslim), international development assistance has revitalised traditional and largely women-unfriendly adjudication systems.

Rising identity politics have complicated efforts by rights advocates to protect and promote women's rights within the family. In Lebanon (with separate family laws for the 18 religious communities recognised by the Constitution), women activists in 1998 demanded a uniform civil code as a counter to the country's social fragmentation. But this was bitterly opposed by almost all the self-declared guardians of the various communities' identities (with the exception of the Druze community), and was ultimately shelved for political reasons. In multi-ethnic and multi-religious India, family laws have been at the centre of extreme tensions between the country's Hindu and Muslim communities following an upsurge in communal politics, and in 1986 rioting instigated by Muslim fundamentalists led to a regressive change in maintenance laws for Muslim women. Feminist reform efforts were hampered by the existence of a Hindu fundamentalist government which raised the fear that any uniform code would essentially mean imposing Hindu laws on minority communities.

i. Safeguarding Women's Existing Rights in the Family

Despite this bleak picture, it is significant that in several of the countries that saw some of the most regressive changes in women's rights in family law, more recently there has been a gradual shift back towards greater equality and justice—usually due in part to feminist efforts to promote and protect rights within the family. Thus, even where there has been a reversal, positive change and protection of existing rights has ultimately been possible.

Feminists have used a variety of strategies to resist the problematic aspects of state-imposed 'Islamisation' and legal reform arising out of identity politics, depending upon the particular local circumstances. Many of the strategies used to protect women's existing

rights within the family are the same as those discussed earlier in the section on positive reform processes.

In Canada in 2003-5, self-styled 'community leaders' sought to introduce '*Shari'ah* Courts' for family matters among Muslims under the Arbitration Act, 1991. Even though this was to be voluntary, opponents emphasised that for women, 'voluntary' often equates to social compulsion. The ultimately successful campaign of resistance featured a broad coalition of believing Muslims, atheists from a Muslim cultural background, and secularists within wider Canadian society; public advocacy through meetings and seminars; a deliberate claiming of women's right to interpret religion and a process of self-education; and an emphasis that this was a women's issue, beyond the question of religious or cultural identity.

International networking was particularly effective in the Canadian campaign, and has been important to many other successful family law campaigns. Activists in Muslim contexts who challenge the imposition of identity through 'Islamisation' and identity politics frequently face the accusation that their demands for gender justice are somehow not in consonance with 'tradition' and accepted norms of what constitutes a 'good Muslim woman'. International networking brings three important advantages in this context: first, those struggling to resist regressive reforms become aware that their struggle is mirrored across the world; this enables them to analyse more effectively the power structures and political objectives behind the reforms. Second, networking across boundaries involves a sharing of information about how women experience the law and legal reform in other contexts; this strengthens local activists' awareness of the potential benefits and pitfalls of legal reform. And third, networking allows a sharing of strategies. While these may not transfer effectively from one particular context to another, the sharing of strategies can undoubtedly inspire new initiatives.

National networking and a locally rooted awareness of what issues appeal to public and political sentiment is equally vital to protecting existing rights women have in family laws in Muslim contexts. Thus women's rights activists in contexts as diverse as Senegal and Pakistan have successfully resisted efforts by politico-religious forces to introduce regressive reforms. The strategy also works for promoting new rights. In the UAE and Saudi Arabia, activists demanding codification or improved application of uncodified jurisprudence have highlighted the extremely high numbers of divorces to prove that existing provisions are not conducive to the main leitmotif for the conservatives: a stable family.

V. Long-Term Empowerment Strategies

Despite the success of their campaign to reform the country's civil code, leading Turkish women's rights activists such as Ferda Cilalioglu argue that, 'What really needs to change is not just the law but the mentality of people. Changing the value system will take decades.'¹⁷ In other words, laws may change but legal reform is merely a small part of societal development.

Even after successful law reform efforts, there is the challenge of empowering women to access positive provisions. This has led to the development of the 'legal consciousness' concept. Going beyond simple legal literacy programmes that just inform people of existing laws and institutions, legal consciousness enables people 'to identify and articulate their oppression and exploitation. This is the first stage in the people's fight for a more just and equitable society.'¹⁸ In concrete terms, it involves the building of alliances between women's organisations, the courts administering family law, and relevant ministries, as is currently happening in Morocco.

Importantly, legal empowerment programmes have not just focused on statutory law. They have consciously sought to unravel the interlinkages between custom, religion, legal practice and statutory law, thus enabling women to analyse more effectively the structures and sources of their oppression. This, in turn, has enabled them to develop more effective strategies for the reform of laws in the very broadest sense of the word. Thus, when the 1994-7 Pakistan Commission of Enquiry on the Status of Women sought opinions on legal reforms, grassroots women's groups were able to provide concrete recommendations that related to custom, procedural laws and personal laws. These were incorporated in the Commission's final 1997 Report,¹⁹ and some eventually found their way into the 2002 Family Courts (Amendment) Ordinance that offered some real improvement in women's access to justice.

VI. Evaluating Efforts to Promote and Protect Women's Rights in the Family

The actual pace of legal reform may not be a determinant of 'success'. Indeed, reform is often rapid where the state is interested in reform for its own ends and slow where the impetus has come from women's demands for justice and equality. Even where rapid reform has been at the initiative of women's demands, its very rapidity has later proved to be problematic, as intricacies (especially around implementation) may not have been properly thought through.

Moreover, evaluating positive reform and resistance to regressive change can be difficult both because the impact of attitudinal change can take decades to appear, and because indicators of success can be politically contentious. For example, family law reform that leads to an increase in the number of divorces granted to women might be judged successful by progressive women's groups but a negative indicator of the

‘break-up of family and society’ by conservatives. Quantitative indicators are also inadequate. For example, an increase in cases brought by women to the courts can potentially ‘prove’ two diametrically opposite trends: either that the reformed law is failing to provide women a secure base for their rights and is therefore failing to prevent disputes from arising, or that the reformed law is now successfully enabling women to access their rights within the family.

Additionally, reforms have to be examined in the totality of their impact upon all members of society, and not just those for whom the reform is ‘intended’. For example, a 1994 amendment to Malaysia’s polygamy provisions which aimed to protect the rights of the new wife arguably undermined the original spirit of the law, which sought to regulate—and thereby discourage—polygamy and to support the rights of first wives.

Finally, it is essential to challenge the notion that unsuccessful efforts to introduce positive reform or to prevent regressive change are an overall failure. The platforms and alliances that are often created during rights-based campaigns, the strengthening of analysis, the public awareness raised, the experience gained through interaction with the political and law-making structures, and the numerous related social issues raised may well lead to deeper, wider processes of change.

VII. Conclusion

Reform of family laws and protection of rights within the family touches upon politically contested issues around cultural identity, raises questions about the rights and responsibilities of the state vis-à-vis the community and individuals, questions the utility of existing gender dynamics, and also involves the rights of some of the most silenced members of a society: women and children. Changes in law must also be seen as a

social process, and one in which actual textual amendments are but a small part. It is only when we take this wider perspective that we are able to foresee the potential pitfalls of reform and understand its impact on all aspects of social interaction and the structures of power. Moreover, the conditions which enable positive reform or trigger regressive change, as well as the strategies of women's rights activists that help create or respond to these conditions, vary according to the particular context. Small wonder, then, that engaging in family reform and protection of rights within the family is so challenging.

There have undoubtedly been severe setbacks in some contexts and there are remaining challenges in many others due to factors such as regional and national conflict, rising poverty, the persistence of authoritarian regimes and forces that exploit religion and religious identity for political gain. Yet despite the strength of these countervailing forces, overall over the past four decades family laws in Muslim contexts have been gradually and inexorably moving in a positive direction. While numerous social, economic and political forces are implicated in this process, the efforts of women's rights activists have made it clear that it is certainly necessary and possible to promote and protect equality and justice in the Muslim family. In the past ten years, a qualitatively new and positive direction has emerged in family laws. This emphasises a comprehensive reconceptualisation of the Muslim family that calls for an end to outmoded and unsuccessful relationships of dominance and subordination, and their replacement by loving relationships of equality and justice. Realising this vision of the family may be a long-term project, but recent developments have shown that it is now possible to envisage such a reality in Muslim contexts.

Notes

- 1 The term 'general' is used here to describe family laws introduced by colonial rulers that were neither based on custom nor Islam. They are often called 'secular' or 'civil' law but since all family law is civil and since these laws are almost always based on a Christian conceptualisation of the family, I avoid these terms as inaccurate.
- 2 The inexorable shift towards positive change in Muslim family law is quite a contrast to the apparent trend in areas of international law where the Muslim-Catholic-Washington coalition has had some success in rolling back understandings of women's rights in international law debates, in particular in the areas of reproductive health and rights.
- 3 Kar and Hoodfar, 'Personal Status Law as Defined by the Islamic Republic of Iran'.
- 4 Kuppusamy, 'Muslim Women in Plea for Sharia Law Redress'.
- 5 See <http://www.wluml.org/english/pubsfulltxt.shtml?cmd%5B87%5D=i-87-16766>.
- 6 See <http://www.ep.liu.se/ea/iap/2005/003/iap05003.pdf>.
- 7 Kelly, 'Finding Common Ground', pp. 81-3.
- 8 An-Na'im, *Towards an Islamic Reformation*; Hassan, *Selected Articles*; Wadud, *Qur'an and Woman*.
- 9 Kar and Hoodfar, 'Personal Status Law'.
- 10 Endut, 'Malaysia's Plural Legal System and Its Impact on Women', p. 25.
- 11 Rouhana, 'Muslim Family Laws in Israel'. The state's intent may also change over the years. What may have been the initial post-colonial nationalist leadership's vision of respect for religious minorities in Pakistan has transformed into neglect, wilful or otherwise, under subsequent regimes.

- 12 Mohamad, 'Islamic Family Law Reforms in Malaysia', p. 69.
- 13 Writ Petition No. 5897 of 2000 (*Editor, The Banglabazar Patrika and others vs. District Magistrate and Deputy Commissioner, Naogaon*), heard by a two-member Bench including Justice Nazmun Ara Sultana, Bangladesh's first female High Court Division judge and reported as 21 BLD (2001) 45.
- 14 Tokhtakhodjaeva, 'Traditional Stereotypes and Women's Problems in Post-Soviet Uzbekistan'.
- 15 Yuval-Davis, *Gender and Nation*.
- 16 See Helie-Lucas, *L'internationalisme dans le mouvement des femmes*; Shaheed et al. *Shaping Women's Lives*; Mir-Hosseini, *Islam and Gender*; <http://www.acttogether.org/>.
- 17 Zaman, 'Turkey to Expand Rights of Women'.
- 18 Sobhan, 'Legal Literacy and Community Development in Bangladesh'.
- 19 Government of Pakistan, *Report of the Commission of Inquiry for Women*.

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