

Musawah Framework for Action

Plateforme d'action de Musawah

Kerangka Kerja Tindakan Musawah



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Musawah

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Musawah Framework for Action

This Framework for Action is a working document that provides a conceptual framework for Musawah, a global movement for equality and justice in the Muslim family. Musawah declares that equality in the family is necessary because many aspects of our current Muslim family laws and practices are unjust and do not respond to the lives and experiences of Muslim families and individuals. Musawah declares that equality in the family is possible through a holistic approach that brings together Islamic teachings, universal human rights principles, fundamental rights and constitutional guarantees, and the lived realities of women and men today. Musawah builds on decades of tireless effort by women's groups and activists in Muslim countries and communities to campaign for reform of Muslim family laws that discriminate against women and to resist regressive amendments demanded by conservative groups within society.

The Framework has been developed by a group of Muslim activists and scholars who have come together to initiate Musawah. The core group, coordinated by Sisters in Islam (Malaysia), comprises a twelve-member planning committee of Muslim activists and academics from eleven countries. The Framework was conceptualised and written through a series of meetings and discussions with Islamic scholars, academics, activists and legal practitioners from approximately thirty countries.



We hold the principles of Islam to be a source of justice, equality, fairness and dignity for all human beings. We declare that equality and justice are necessary and possible in family laws and practices in Muslim countries and communities.

Recognising that:

- The teachings of the Qur'an, the objectives of the *Shari'ah*, universal human rights standards, fundamental rights and constitutional guarantees, and the realities of our lives in the twenty-first century, all demand that relations between Muslim women and men in both the private and public spheres be governed by principles and practices that uphold equality, fairness and justice;
- All Muslims have an equal right and duty to read the religious texts, engage in understanding God's message, and act for justice, equality and the betterment of humankind within their families, communities and countries;
- Many laws and practices in Muslim countries are unjust, and the lives of all family members, especially women, are impaired by these injustices on a daily basis;
- Human affairs constantly change and evolve, as do the laws and social practices that shape relations within the Muslim family;
- Islam embodies equality, justice, love, compassion and mutual respect between all human beings, and these values provide us with a path towards change;

- The reform of laws and practices for the benefit of society and the public interest (*maslahah*) has always been part of the Muslim legal tradition; and
- International human rights standards require dignity, substantive equality and non-discrimination for all human beings;

We, as Muslims and as citizens of modern nations, declare that equality and justice in the family are both necessary and possible. The time for realising these values in our laws and practices is now.

I. Equality and Justice in the Family are Necessary

Most family laws and practices in today's Muslim countries and communities are based on theories and concepts that were developed by classical jurists (*fuqaha*) in vastly different historical, social and economic contexts. In interpreting the Qur'an and the *Sunnah*, classical jurists were guided by the social and political realities of their age and a set of assumptions about law, society and gender that reflected the state of knowledge, normative values and patriarchal institutions of their time. The idea of gender equality had no place in, and little relevance to, their conceptions of justice. It was not part of their social experience. The concept of marriage itself was one of domination by the husband and submission by the wife. Men were deemed to be protectors of women and the sole providers for the household, such that their wives were not obliged to do housework or even suckle their babies. Women, in turn, were required to obey their husbands completely.

By the early twentieth century, the idea that equality is intrinsic to conceptions of justice began to take root. The world inhabited by the authors of classical jurisprudential texts (*fiqh*) had begun to disappear. But the unequal construction of gender rights formulated in their texts lingered—reproduced, in a modified way, in colonial and post-colonial family laws that merged classical juristic concepts with colonial influences and negative aspects of local customs. Most of the current Muslim family laws were created through this process, and are therefore based on assumptions and concepts that have become irrelevant to the needs, experiences and values of Muslims today. The administration of these hybrid statutes shifted from classical scholars, who became increasingly out of touch with changing political and social realities, to executive and legislative bodies that had neither the legitimacy nor the inclination to challenge premodern interpretations of the *Shari'ah*. Even in Muslim communities where classical juristic concepts have not been codified into law, the centuries-old *fiqh* rules and colonial and local norms have, in many cases, been invoked to sustain inequality between women and men within the family and wider society.

Injustices resulting from this disconnect between outdated laws and customs and present-day realities are numerous and can be found in many Muslim countries and communities. Such injustices and discrimination were also common in secular laws throughout the world until changes were made in the twentieth century to bring these laws progressively in line with new universal norms of equality. Because family laws and practices are interconnected with all other aspects of society, injustices within the family affect women in many other areas, including dignity, personal security, mobility, property, citizenship, nationality, labour rights, criminal laws and political participation.

In our time and contexts, there cannot be justice without equality. Many aspects of our family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do they fail to fulfil the *Shari'ah* requirement of justice, but they are now being used to deny women dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

II. Equality and Justice in the Family are Possible

Qur'anic teachings encompass the principles of justice (*'adl*), equality (*musawah*), equity (*insaf*), human dignity (*karamah*), love and compassion (*mawaddah wa rahmah*). These principles reflect universal norms and are consistent with contemporary human rights standards. These key Qur'anic values can guide further development of family laws and practices in line with the contemporary notion of justice, which includes equality between the sexes and before the law.

Several basic concepts in Islamic legal theory lay the foundation for the claim that family laws and practices can be changed to reflect equality and justice and the lived realities of Muslims today:

- There is a distinction between *Shari'ah*, the revealed way, and *fiqh*, the science of Islamic jurisprudence. In Islamic theology, *Shari'ah* (lit. the way, the path to a water source) is the sum total of religious values and principles as revealed to the Prophet Muhammad to direct human life. *Fiqh* (lit. understanding) is the

process by which humans attempt to derive concrete legal rules from the two primary sources of Islamic thought and practice: the Qur'an and the *Sunnah* of the Prophet. As a concept, *Shari'ah* cannot be reduced to a set of laws—it is closer to ethics than law. It embodies ethical values and principles that guide humans in the direction of justice and correct conduct. What many commonly assert to be *Shari'ah* laws are, in fact, often the result of *fiqh*, juristic activity, hence human, fallible and changeable.

- There are two main categories of legal rulings: *'ibadat* (devotional / spiritual acts) and *mu'amalat* (transactional / contractual acts). Rulings in the *'ibadat* category regulate relations between God and the believer, and therefore offer limited scope for change. Rulings in the *mu'amalat* category, however, regulate relations between humans, and therefore remain open to change. Since human affairs constantly evolve, there is always a need for new rulings that use new interpretations of the religious texts to bring outdated laws in line with the changing realities of time and place (*zaman wa makan*). This is the rationale for *ijtihad* (lit. endeavour, self-exertion), which is the jurist's method for finding solutions to new issues in light of the guidance of revelation. Rulings concerning the family and gender relations belong to the realm of *mu'amalat*, which means that Muslim jurists have always considered them as social and contractual matters that are open to rational consideration and change.
- Laws or amendments introduced in the name of *Shari'ah* and Islam should also reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These

are values and principles on which Muslims agree and which Muslim jurists hold to be among the indisputable objectives of the *Shari'ah*. In the words of Ibn Qayyim al-Jawziyyah, the 7th (AH)/ 14th (CE) century jurist, 'The fundamentals of the *Shari'ah* are rooted in wisdom and promotion of the welfare of human beings in this life and the Hereafter. *Shari'ah* embraces Justice, Kindness, the Common Good and Wisdom. Any rule that departs from justice to injustice, from kindness to harshness, from the common good to harm, or from rationality to absurdity cannot be part of *Shari'ah*, even if it is arrived at through individual interpretation.'

- Diversity of opinion (*ikhtilaf*) is a basic concept that has always been a part of *fiqh*, even after the formal establishment of schools of law. There is not now, nor has there ever been, a single, unitary 'Islamic law'. The very existence of multiple schools of law, let alone the dozens of Muslim family laws in different countries today, attests to the fact that no one person, group or country can claim there is a unified, monolithic, divine Islamic law over which they have ownership. Within the context of the modern state, we must recognise and engage with this diversity of opinions to determine how best to serve the public interest (*maslahah*) and meet the demands of equality and justice.

Thus, contemporary family laws, whether codified or uncoded, are not divine, but are based on centuries-old, human-made *fiqh* interpretations that were enacted into law by colonial powers and national governments. Since these interpretations and laws are human-made and concern relations between humans, they can change within the

framework of Islamic principles and in accordance with the changing realities of time and place. Recent positive reforms in Muslim family laws and evolutions in practices provide support for this possibility of change.

The principles and ideals within the Qur'an lay out a path toward equality and justice in family laws and practices, as they did in ending the institution of slavery. As the injustices of slavery became increasingly recognised and the conditions emerged for its abolishment, laws and practices related to slavery were reconsidered and the classical *fiqh* rulings became obsolete. Similarly, our family laws—as well as practices that have not been codified into law—must evolve to reflect the Islamic values of equality and justice, reinforce universal human rights standards and address the lived realities of families in the twenty-first century. Likewise, laws or amendments introduced in the name of Islam in the future should also reflect the values of equality, justice, love, compassion and mutual respect among all human beings.

III. Principles on Equality and Justice in the Family

Principle 1: The universal and Islamic values of equality, non-discrimination, justice and dignity are the basis of all human relations.

Islam mandates justice (*'adl*), equality (*musawah*), human dignity (*karamah*), and love and compassion (*mawaddah wa rahmah*) in relations among humans and in the family. These principles are

also recognised as universal values and enshrined as rights in many national constitutions and international instruments.

In the Qur'an, men and women are equal in creation and in the afterlife. *Surah an-Nisa'* 4:1 states that men and women are created from a single soul (*nafs wahidah*). One person does not come before the other, one is not superior to the other, and one is not the derivative of the other. A woman is not created for the purpose of a man. Rather, they are both created for the mutual benefit of each other.

The Qur'an teaches 'love and tenderness' (*Ar-Rum* 30:21) between women and men; that men and women are like each other's garments (*Al-Baqarah* 2:187); that 'be it man or woman: each of you is an issue of the other' (*Al-'Imran* 3:195); and that 'both men and women—they are close unto one another, they [all] enjoin the doing of what is right and forbid the doing of what is wrong' (*At-Tawbah* 9:71). The four Qur'anic verses that apparently speak of men's authority over women in the family and inequality between them in society (*Al-Baqarah* 2:222, 228 and *An-Nisa* 4:2, 34) must be understood in light of the broader Islamic principles and the objectives of the *Shar'iah*, and not in isolation.

Understandings of justice and injustice change over time. Within the context of the Qur'anic worldview of justice and equality, there are many verses that can provide a model for relations within the family and between all human beings that is in line with contemporary notions of justice. To have justice in our time and to remain true to the spirit of Islam and its teachings, equality must be embodied in our laws and practices. Inequality in family relations and human relations must be replaced by mutual respect, affection and partnership.

Principle 2: Full and equal citizenship, including full participation in all aspects of society, is the right of every individual.

Islam teaches that all human beings are born equal in worth and dignity, which is echoed in universal human rights principles. The Qur'an promotes absolute equality of 'all men and women' in key aspects of their lives, promising 'for [all of] them has God readied forgiveness of sins and a mighty reward' (*Al-Ahzab* 33:35).

As human beings of equal worth and dignity before God, and as citizens of modern states, all individuals are entitled to exercise equal rights to political participation and leadership, equal access to economic resources, equality before the law, and equal autonomy in the economic, social, cultural and political spheres. The Qur'an notes that all human beings, men and women, are agents (*khalifah*) of God, charged with realising God's will on earth. In countries where Islam is a source of law and policy, as well as communities in which Islam influences customs and traditions, it is the right and duty of all Muslims—and all people—to openly contribute to laws, policies and practices in order to achieve justice and equality within their families, communities and societies.

Principle 3: Equality between men and women requires equality in the family.

Islam calls for equality, justice, compassion and dignity between all people. Family laws and practices must therefore fulfil this call by promoting these principles and responding to the lived realities of Muslim women and men today.

Women and men alike are entitled to equality and justice within the family, as well as respect and recognition for their contributions. The acknowledgement of joint responsibilities within the family must be accompanied by equal rights, equal decision-making practices, equal access to justice, equal property ownership, and equal division of assets upon divorce or death. Islamic principles, universal human rights standards, constitutional and legal guarantees, and the lived realities of women and men today together provide a path for our communities to ensure equality and justice in family laws and practices. In the twenty-first century, the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)—which stands for justice and equality for women in the family and society—are more in line with the *Shari'ah* than family law provisions in many Muslim countries and communities.

Realisation of these principles entails laws and practices that ensure:

- The family as a place of security, harmony, support and personal growth for all its members;
- Marriage as a partnership of equals, with mutual respect, affection, communication and decision-making authority between the partners;
- The equal right to choose a spouse or choose not to marry, and to enter into marriage only with free and full consent; and the equal right to dissolve the marriage, as well as equal rights upon its dissolution;

- Equal rights and responsibilities with respect to property, including acquisition, ownership, enjoyment, management, administration, disposition and inheritance, bearing in mind the need to ensure the financial security of all members of the family; and
- Equal rights and responsibilities of parents in matters relating to their children.



We, as women and men who embrace the Islamic and universal values of equality and justice, call for a renewal of these values within the Muslim family. We urge our governments and political leaders, international institutions, religious leaders, and our sisters and brothers to come together to ensure that our family laws and practices uphold these values.

Equality, justice, fairness and dignity are necessary and possible in Muslim families in the twenty-first century. The time for integrating these values into our laws and realising them in our daily lives is now.

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