



# musawah

For Equality in the Family

## FAMILY LAW IN CONTEMPORARY MUSLIM CONTEXTS: TRIGGERS AND STRATEGIES FOR CHANGE

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### THEORETICAL PAPER SUMMARY\*

This paper concentrates on developments in the last four decades. During this period, two forces have emerged that have particularly focused on family laws: women's collective action on the one hand, and on the other religious fundamentalism. This paper explores the strategies used by women to promote equality and justice in the Muslim family as well as to resist regressive reform. The paper concludes that the relative success of these strategies indicates that positive change is possible.

The main points of the paper are:

1. **Family laws in Muslim societies are based on diverse sources of law.** These range from *“various interpretations of the Quran and Sunnah, to colonial common law, the Napoleonic Code and Soviet code”*. This leads to a diversity of legal systems and practices. The outcomes for women in Muslim families are also thus very varied, some with more and some with fewer rights (see pp 2-3).
2. **These diversities “explode the myth of one homogeneous ‘Muslim world’”.**
3. But **one commonality exists:** laws and practices, no matter how damaging to women's rights, are usually justified with reference to Islam or *“the preservation of a religious-national/religious-ethnic identity”*.
4. Demands for equality and justice have arisen largely out of women's lived experiences that **legal systems as they currently stand do not meet women's needs**. Such demands have been visible for decades, even centuries, but have become more visible as a collective demand and have gathered pace since the 1980s. Society as a whole has become more receptive to the concept of equality and justice in the family, and today even right-wing political parties based on religious identity must at least claim that their positions favour women's rights. Meanwhile, some men have stood up against patriarchal oppression.
5. **The strategies used by activists to demand an expansion of women's rights in family laws** include:
  - Exposing the failings of current family laws through careful research of women's lives (see pp. 5-6 for examples from Iran, Malaysia, the Horn of Africa and the global network Women Living Under Muslim laws). Comparative research has been *“particularly popular because revealing similarities and diversities...strengthens analysis of the power structures that underlie these experiences”*.
  - Consensus-building and developing broad-based platforms has helped consolidate women's efforts and mobilise public opinion (see pp 6-7 for examples from Turkey, Morocco and Syria).

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\* This is a summary prepared by Musawah. For direct quotes, please refer to the original paper in the Musawah resource book, *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar.

- Lobbying with lawmakers and raising the political stakes, despite women's tendency to have a lesser voice, has been successful as in the expansion of divorce options for Egyptian women in 2000.
  - Focusing on procedural amendments is a useful strategy when the political environment limits substantial legislative reform, also as in the Egyptian experience.
  - Strong communications and public advocacy has been important to several successes in family law reform. Effective campaigns can *"inspire women across social classes"* as in the case of Algeria's "20 Years Is Enough" campaign.
  - Demands for reform from within the framework of religion through *ijtihad* and the use of jurisprudential tools as the basis for positive family law reform is not new. The difference within the contemporary context is the growing confidence with which the claim to *ijtihad* is being made by female scholars and theologians and by women's groups, focusing on self-education in *fiqh* and *tafsir* (see p.10 for examples from Malaysia and Iran).
  - One of the most successful strategies has been to use a comprehensive framework to reconceptualise the family. This framework *"combined not only the 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"*. This strategy was successfully applied for instance in Morocco.
9. Meanwhile, **Islamisation has facilitated some regressive law reforms**. In countries such as Malaysia, Pakistan, Sudan, and Iran the State has considerably obstructed or reversed women's access to justice. Elsewhere, the State has succumbed to the demands of Islamists with a negative impact on women's rights (see pp. 13-14 for examples from Algeria, Bangladesh, the Philippines and Uzbekistan).
  10. Given that **women** are often seen as *"repositories, reproducers and gatekeepers of the cultural and national collectivity"* this has often meant that they **are at "the receiving end of legal reforms and the manipulation of cultural symbols such as family laws and dress codes"**.
  11. Regressive reforms are always characterised by the "lack of space for debate and intolerance of dissent or alternative interpretations". **International networking** has been a vital strategy of resistance for women's groups in such situations, and has also contributed to successful family law reform.
  12. **Law reforms alone are not sufficient to ensure empowerment of women**. A long-term plan to change attitudes is needed. This requires **"legal empowerment programmes"** that consciously seek to unravel the linkages between custom, religion, legal practice and statutory law thus making for an understanding of the structure of oppression.
  13. It can be difficult to **assess the impact of family law reform**, which may take many years to show. However, **a failed campaign can have positive outcomes** such as the creation of useful alliances and *"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"*. All these will lead to *"deeper, wider processes of change"*.