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“Family policy development: achievements and challenges”

Gender and Equality in Muslim Family Law

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Introduction

- ▶ Muslim family laws, based on Islam, but different – not divine
- ▶ Difference between Shari'a and *fiqh* (jurisprudence)
- ▶ Verse 4:34, development and differences in interpretation
- ▶ Maintenance for Obedience equation: obedience, guardianship, divorce, movement, polygamy, wife disciplining, custody after remarriage, financial guardianship of children
- ▶ Q: how does this conform with the equality and justice which are amongst the undisputed objectives of Shari'a?



Contemporary Muslim Family Law

- ▶ Gender in Islamic legal discourses: traditional, neo-traditional, reformist (minority)
- ▶ State power in translating the discourse to law
- ▶ History shows us that: ‘the state and its law makers intentionally choose which interpretations of Islamic source texts to translate into codified law. This was often based on narrow reasons of political interest and expediency for the political elite (Anderson 1967; Shaham 1997: 228) rather than real social change’
- ▶ Examples of Tunisia (presidency) and Morocco (monarchy): polygamy; divorce, obedience
- ▶ Coming closer to CEDAW’s ‘substantive equality’
- ▶ Harmonizing the relation between CEDAW and Islamic law



Contemporary Muslim Family Law

- ▶ Laws have been historically and continuously changing despite divinity claim (see Welchman for list of amendments)
- ▶ They are different
- ▶ They include gender-sensitive and egalitarian provisions here and there
- ▶ There is an alternative, reformist, egalitarian Islamic jurisprudence that can be the basis of such laws and reforms. Needs political power and backing.



Post Arab-Spring Context

- ▶ Maintenance for obedience equation (upon which male privileges are premised) is becoming a 'myth'
- ▶ Arab women economically contributing to their families today (AHDR; women headed households; domestic labour)
- ▶ Rise of Islamists and non-Islamists adopting a traditional Islamic gender discourse (Egypt, Tunisia, Libya...etc)
- ▶ Push back by women's movements and new forms of activism
- ▶ Flux and political struggle/power



Recommendations

- ▶ Emphasize that even if family laws are derived from religious sources, this **cannot justify** inequality and injustice in the family;
 - ▶ Support the continuous production and effective dissemination of **knowledge** harmonizing the relationship between Islam and gender justice and equality;
 - ▶ Recognize that resistance to reform of Muslim family laws persists not simply because of religion, but for other reasons, e.g. patriarchy and **political pressure**;
 - ▶ Recognize **diversity of voices** and discourses on women in Islam within the Muslim community; some segments of society might not want change, but others want change. Whose voice does the government listen to? Whose voice is legitimized, whose denied?
 - ▶ Highlight the egalitarian, gender-sensitive and **progressive provisions** found in various Muslim family laws;
 - ▶ Encourage open and inclusive **public debate** with States parties in the United Nations, within Muslim societies, and within the international human rights system;
 - ▶ Support the women, men and **feminist movements** who are engaging in processes of family law reform and protection of existing rights;
 - ▶ **Build the capacity** and knowledge of state officials and activists on the reformist Islamic discourses that encourage gender-sensitive reforms in Muslim family laws which reflect the new realities of Muslim women and men today;
 - ▶ Recognize the impact **international human rights standards** have on Muslim women by guaranteeing them a voice in defining their own culture and religion;
 - ▶ Promote human rights standards as complementary to Islamic teachings, national guarantees of equality and non-discrimination, and the lived realities of men and women; and
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- ▶ Incorporate procedural changes to prioritize article 16 discussions on issues of Muslim family law during the CEDAW review process.