

Department of Economic and Social Affairs (UNDESA)
Division for Social Policy and Development
United Nations Expert Group Meeting,
New York, 14 – 15 May 2015
“Family policy development: achievements and challenges”

Gender and Equality in Muslim Family Law
Dr. Marwa Sharafeldin

Musawah, The Global Movement for Equality and Justice in the Muslim Family
(www.musawah.org)

Despite being based on the same ‘Islam’, we find significant variations between most contemporary Arab Muslim family laws.¹ This means that such laws are not divine, unitary and unchangeable as they are claimed to be by opponents of reform, rather they are man-made human understandings of the divine and change of such laws is possible depending on the political will of those in power (Musawah (a) nd.; Mayer (1995)). However, most of these laws do have one thing in common, to varying degrees they are all based on an equation created by classical Muslim jurists which obliges the husband to financially maintain and the wife to obey.² Out of this humanly-derived equation emerged another set of obligations and male privileges which I will cover below.

Qur’anic verse 4:34 has been one of the most important verses informing and underlying this juristic equation as well as the philosophy governing most codified Muslim family laws today:

Men are in charge of [are guardians of/are superior to/ have authority over/ are protectors and maintainers of]³ women (*al-rijalu qawamuna ‘ala l-nisa’*) because God has endowed one with more [because God has preferred some of them over others]⁴ (*bi-ma fadala Allahu ba’dahum ‘ala ba’din*) and because they spend of their means (*wa-bi-ma anfaqu min amwalihim*). Therefore the righteous women are obedient [devout/virtuous]⁵ (*qanitat*), guarding in secret that which God has guarded. As to those from whom you fear rebellion [disloyalty/ ill-conduct/ haughtiness/ desertion/ aversion]⁶ (*nushuzahuna*), admonish them and banish them to separate beds, and beat them [go to bed with them when they are

¹ See Welchman (2007); Musawah (Family Law Texts: <http://www.musawah.org/resources/family-law-texts>); Emory University Islamic Family Law Project (<http://aannaim.law.emory.edu/ifl/legal/>); Women’s Learning Partnership (Family Laws Chart <http://www.learningpartnership.org/lib/family-laws>).

² See Mir-Hosseini et.al. (2015).

³ Stowasser and Yusuf Ali.

⁴ Stowasser.

⁵ Yusuf Ali and Ahmed Ali.

⁶ Stowasser, Yusuf Ali, Shakir and Ahmed Ali.

willing]⁷. Then if they obey you, seek not a way against them. For God is Exalted, Great' (Qur'an verse 4:34).

From the word *qawamuna* in this verse, classical Muslim jurists created the concept of *qiwama*,⁸ the meaning of which may range between the traditionalist understanding of it as the husband's authority, superiority, financial obligation and guardianship towards the wife on one hand, or the more reformist understanding of it as responsibility for the care and financial maintenance of the family, which may be shared by both spouses, on another.

Above I use Stowasser's (1998) translation of the verse as a base (1998: 33), but I also include between square brackets additional translations from other works to demonstrate the different possible readings of it.⁹

We see here how various contemporary translations deal differently with the contentious topics of men's superiority, women's obedience and beating. However, in Abou-Bakr's important work (2015), we grasp how early and modern exegetes frequently understood this verse to not only mean men's obligation to maintain their wives, but to add and inscribe superiority, guardianship and authority of men over women, in both the private and public realms. They instituted what Abou-Bakr calls a 'twisted logic' that uses the divine assignment to provide economic support into a reason for privilege and authority for men over women (2015: 47-8).¹⁰

Welchman (2011) explains that *qiwama*'s link to men's maintenance or 'spending of their means', became the basis of additional juristic assertions which we find today in modern codified laws in the Muslim world, such as the wife's duty to obey; the necessity of male *wilaya*, guardianship, to contract the marriage on behalf of the woman; and the structure of divorce law which allowed husbands' unilateral divorce, while requiring wives to justify the grounds of their judicial divorce which - unless a woman had been delegated the power to divorce herself by her husband - could only be granted by a judge (2011: 6-7). Welchman points out that the requirement of the wife's obedience was also the reason why jurists restricted the wife's movement without the husband's permission (2011: 8). Issues such as polygamy, wife disciplining, the loss of child

⁷ Ahmed Ali.

⁸ By examining the works of numerous exegetes, Abou-Bakr traces the development of the meaning of *qawamun* and the subsequent creation of the juristically-innovated notion of *qiwama* from the ninth century till present times. For more see Abou-Bakr (2015).

⁹ In these additional translations between square brackets, I draw on different translations by Yusuf Ali, Pickthal, Shakir and Ahmed Ali of this verse, all cited by Kecia Ali (n.d.) here: <http://www.brandeis.edu/projects/fse/muslim/translation.html>

¹⁰ Both Abou-Bakr and Stowasser show how later scholars have analyzed and interpreted the verse in ways to achieve a more egalitarian relationship between the sexes. Such scholars include Fazlurahman (1982), Faruqi (1962), Wadud (1999), Taha (1987), An-Na'im (1990) Abou Zayd (1990, 1994) and Abou El Fadl (2001).

custody by the mother in the case of her re-marriage, and the exclusive legal guardianship of children by their fathers (even if they are in the custody of the mother) come under the remit of this particular understanding of *qiwama* as male authority.

We find all these male privileges present in contemporary Muslim family laws in the Arab region to varying degrees despite the possibility of interpreting the verse in a more egalitarian manner; and despite the presence of other Qur'anic verses governing marriage, which clearly state important notions such as *ma 'ruf* (common good) and *mawadda wa rahma* (love and compassion).

Mir-Hosseini asks important questions such as 'Why and how did verse 4:34, and not other relevant Qur'anic verses, become the foundation for the legal construction of marriage? How, and through what juristic processes, was men's authority over women legitimated and translated into laws?' (Mir-Hosseini et.al. 2015: 2). She also asks '[h]ow far does this notion [of *qiwama* as male authority found in contemporary family laws] conform with the equity and justice that are among the undisputed objectives of the Shari'a? Why and how does *fiqh* [jurisprudence] define marriage in such a way that it deprives women of free will and makes them subject to male authority?' (2003: 8). Before taking this further it is important first to clarify my usage of certain terms such as Shari'a, *fiqh*, 'Islamic law' and '*fiqh*-based codified state law'.

Note on Terms

Shari'a in the Arabic language means the 'path' or the 'way'. The only reference to it in the Qur'an comes in 45:18¹¹ to signify 'the right way of religion' (Kamali 2008: 2). According to numerous scholarship on the issue,¹² Shari'a is the divine message sent by God to humanity. It is a total discourse within the Islamic faith that includes spiritual, legal, moral, economic and political sub-discourses within it.

However, this divine message requires discovery, deciphering and interpretation by human beings if it is to be lived by. This human effort is *fiqh*. Therefore, *fiqh*, or jurisprudence, is the human understanding of this eternal divine discourse, and it changes with time and place. *Fiqh* is thus not divine like Shari'a, though it is sometimes conflated with 'God's law'.

Historically, 'Islamic law' was the product of the efforts of jurists in their theoretical jurisprudence (*fiqh*) to understand the legal aspects of Shari'a. However, Islamic law as practised in Shari'a courts was sometimes different from the Islamic law produced by jurists in their theoretical books and manuals. This is why we may have two interrelated but different manifestations of 'Islamic law'.

¹¹ Verse 45:18 reads, 'Thus we put you on the right way [*Shari'atan*] of religion. So follow it and follow not the whimsical desire [*hawa*] of those who have no knowledge.'

¹² My understanding of the term draws on the following works (noting the differences among the authors): Brown (1997), Mitchell (1988), Messick (1993), Sonbol (2003), Moors (1999), Cuno (2009), Tucker (1998; 2008), An-Na'im (1990), Esposito and DeLong-Bas (2001) and Kamali (2008).

After the advent of the nation state, Islamic law (meaning the theoretical product of Islamic legal jurisprudence) often became the basis of contemporary *fiqh*-based codified state laws, which also drew upon other non-religious foundations besides Islamic law as is the case with the Egyptian Muslim family law for example (which later became the basis of most Arab Muslim family laws).

Gender in Islamic Legal Discourses

There are three main discourses, delineated by Mir-Hosseini (2003), which we find reflected in contemporary Muslim family laws. She terms the first two as Traditionalist and Neo Traditionalist, and the third Reformist. The first two, she asserts, build their constructions of gender rights and obligations on their assumed inequality of the sexes. These two discourses are extensively reflected in contemporary Muslim family laws in the Arab world. The third discourse changes these assumptions and springs from a space of equality between the sexes while still operating within an Islamic framework. It remains a minority discourse in Arab family laws today.

The traditionalist discourse, which can be mainly found in classical *fiqh* texts, posits biology as destiny where gender inequality is taken for granted. It believes that the divine plan is for women to bear and rear children, and 'women's rights' as we know them today have no place in this construction of gender. Women here are not seen as social beings, rather as sexual ones. Mir-Hosseini finds that this juristic logic, informed by societal conditions of the time, contradicts with the message of *wahy*, revelation, in the Qur'an where one can find a more egalitarian voice that reflects the justice of Islam (2003: 5-6).

The neo-traditionalist discourse rose after Muslims' encounter with the colonial West in the nineteenth century and the ensuing battle over the 'status of women', which continues till today. In the context of new modernizing nation-states, classical jurisprudential rulings on the family were 'selectively reformed, codified and gradually grafted onto a unified legal system' (2003: 15). This discourse does address some salient issues such as female education and employment, however, in substance and gender roles, this discourse did not change much and still fully embraced the inequality found in the traditional discourse. The main difference is that it now uses the machinery of the state to enforce classical rulings which were now reflected in state code (2003: 15).

The reformist discourse on the other hand argues for gender equality from within an Islamic framework, where Islam is seen to be compatible with plurality, democracy and change. This discourse posits that gender inequalities found in classical jurisprudence are constructions of male jurists reflecting their very different times rather than divine injunctions, such jurisprudence is therefore 'neither sacred nor immutable but human and changing' (2003: 20). This new discourse is challenging the hegemony of traditionalist discourses and its proponents who speak in the name of Islam, and tries to include the voices of those who were silenced such as women (2003: 21).

In the same vein, Welchman (2007) divides the reform of Muslim family law in the Arab world into three moments up till now. The first phase starts in the early 20th century with the Ottoman Law of Family Rights of 1917 and the Egyptian Personal Status law which was decreed in the 1920's and 1940's. Prior to this, uncodified jurisprudence was referred to by judges adjudicating family-related legal disputes. The Egyptian model was the main one to be later emulated in the second phase of Muslim family law reform in the 1950's where countries such as Tunisia, Morocco, Syria, Iraq and Jordan first codified their own Muslim family laws. Welchman describes the third phase to include later codifications in countries such as UAE (in 2005) and Qatar (in 2006) (2007: 12-13).

Whereas Welchman divides these phases based on the moment of codification for any one country, we may find codifications such as those of the more recent third phase mainly reflecting a traditional and neo-traditional gender discourse (such as the Emirati and Qatari codes), as opposed to codifications from the earlier first and second phases that reflect a more reformist and egalitarian gender discourse (such as the Tunisian law and to a lesser degree the Egyptian one). This shows that reforms are not necessarily moving towards a more gender sensitive conception of family relations by time.¹³

Whether reforms are traditionalist or reformist depends on several inter-related factors. These include the political will of the state and its representatives, the presence of a vibrant women's movement that pushes for reforms which address new lived realities of women and men, as well as a conducive societal environment.

State Power in Promulgating Muslim Family Laws

It is important to note that such codified laws were not a conglomeration of the most prevalent jurist opinions on each matter, but rather, the codified laws constituted 'an eclectic choice' from a range of opinions which were chosen for their supposed appropriateness to the needs of modern life (Anderson 1976: 17). Sonbol states

family laws practiced in the Muslim world today are presented as being pure Shari'a law even though it is evident historically that today's laws are a product of a long historical process involving Shari'a laws, cumulative interpretations of these laws over long historical periods, and local traditions and western legal practices and gender philosophy dating from Europe's Victorian period, the time when western legal diffusion to the world was taking place (2010: 349).

Hallaq emphasizes the importance of engaging with the state apparatus if any sort of meaningful reform is to take place in Islamic law (2004: 47). Tucker proves this point by showing that in their efforts to modernize and codify Muslim family law, early twentieth century reformers in the Arab world

had the power of their respective states behind them. Theirs was not simply an intellectual exercise in reviewing the law, but also a state project geared to

¹³ The Moroccan 2004 reformed family law would nevertheless be grouped under a reformist discourse.

specific agendas: in every case legal reform entailed the assertion of state power over religious courts and personnel as well as basic questions of identity implicit in marriage practices (2008: 76).

We see here how 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.

A good example which demonstrates that it is really up to the state to promulgate gender-sensitive and egalitarian Muslim family laws is the case of Tunisia and Morocco. Both countries have presented alternative interpretations of Shari'a with regard to the rights and duties of married spouses. Such alternative jurisprudence is consistent with many rights outlined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which most Arab countries had inserted reservations.¹⁴ It is worth noting here however that in Morocco and Tunisia, the political establishment was committed to achieving these developments for women. In Morocco it was the monarchy, while in Tunisia it was the presidency.

In Tunisia, for example, polygamy was abolished based on several Islamic methodological tools, such as Qura'nic referencing, contextual analysis and *qiyas* (analogy).¹⁵ In Morocco, and from within the Islamic framework, the 2004 reforms to the law made it procedurally very difficult for a man to take more than one wife in practical terms by putting stringent conditions on it (Naciri 2007: 17).

Tunisia also managed to give women and men equal rights when it came to divorce. Men, like women, had to resort to a judge to gain a divorce, instead of just uttering the words 'I divorce you'. This reform was based on a new interpretation and jurisprudence. A somewhat similar procedure for divorce called 'judicial divorce for discord based on the request of either spouse' is now present in Morocco's recent family law, which has been in effect since 2004 (Naciri 2007: 17).

Perhaps one of the most important reforms that both Tunisia and Morocco have succeeded in implementing is to change the wife's obligation of obedience to the husband. Previously, both countries' codes went by the obedience in return for maintenance equation. After reforms in 1993 however, the concept of 'mutual duty' in Tunisia meant that both husband and wife are - under the law - equal in decision making within the family. No one needs to obey the other (Brandt and Kaplan, 1995-6: 131).

¹⁴ There still remain important provisions that do not treat women and men equally in Tunisian and Moroccan family laws. However, I am more concerned here with the egalitarian provisions that find root in Islamic jurisprudence.

¹⁵ For more details on this see Sharafeldin (2013: 139) and Mashhour (2005: 585).

For Morocco, a new understanding of *qiwama* was put forth by the government to reflect the changes taking place in the family structure in contemporary times. Article 51(3) of the 2004 Moroccan *Mudawwana*, family law, states that both spouses carry the 'joint responsibility' of caring for the family. No mention is made of obedience.

Welchman recounts some parliamentary discussions that took place prior to the passage of the law where the Minister of Endowments and Islamic Affairs clarified that:

Qiwama may come from the man or from the woman, or from both of them together. *Qiwama* does not only mean the provision of maintenance, or being in a higher position (*al-'uluw*), which is why there is no definitive command in *fiqh* on this issue. The understanding of *qiwama* in the new law and its role in the family relationship depends on the strongest principles, such as those of community and living together, justice, and equity. It could come under the frame of care (*ri'aya*) based on the noble hadith [prophetic saying]. It remains among general principles because of the plurality of views on interpretation of it (Welchman 2011: 15).

What is of importance here is that 'the government's formulations seem to strip *qiwama* of any notion of 'authority' and similarly deny that the husband acquires authority through his provision of support to his wife' (Welchman 2011: 15). At the same time, in articles 194 and 195, the law still kept the obligation of maintenance on the husband, mentioning briefly in article 195 that this maintenance shall be dropped if the wife refuses to come back to the marital home after a judicial ruling to do so. Welchman notes the very significant absence of the term '*nushuz*', disobedience, in this article (2011: 14). We see here an attempt to come closer to the notion of 'substantive equality'

found in CEDAW,¹⁶ as suggested by Abu-Odeh (2004),¹⁷ and an effort to drop discriminatory terms and obligations, such as obedience, towards women.¹⁸

It is, therefore, apparent that Shari'a can be interpreted by the state in many different ways for family law reform, and it does not necessarily have to be an obstacle to realizing some of the rights outlined in CEDAW. In many Arab countries such as Egypt it was made to pose an obstacle towards the realization of equality in some rights,¹⁹ while in Tunisia and Morocco the context in which the reform was taking place enabled the use of Shari'a to realize the same rights.²⁰

¹⁶ Substantive equality is not only concerned with having a legal right to formal equality through laws and policies, it also includes 'equality of results'. Unless these laws and policies have given women real equal opportunities that men have in all spheres, then substantive equality will not have been achieved. In its General Recommendation No. 25, the CEDAW Committee states:

a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women (CEDAW Committee 1999: 3).

¹⁷ Abu-Odeh's suggests that a 'substantive equality' stance here might allow activists to call for keeping the obligation of maintenance on the husband while calling for the rescinding of the obligation to obey by wives, thus addressing the economic situation of women on the ground (Abu-Odeh 2004: 205).

¹⁸ For more details on the role of feminist organizations in the Moroccan 2004 law reform see Wurth (2003). For a critique of the process of drafting the law and its contents see Salime (2009).

¹⁹ Egypt's reservation on article 16 of CEDAW on the family states,

Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Shari'a 's provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses (CEDAW (a) n.d.).

It is worth noting that in 2008, the Moroccan King announced the withdrawal of all reservations on CEDAW.

²⁰ That context enabled the state in both countries to use their family law reforms as a measure by which the government was trying to gain women as allies against Islamic movements (Brandt & Kaplan 1995/1996: 132; Salime 2009: 161). Although for Tunisia this applies mainly to reforms in the last twenty years.

Therefore one can conclude that the political context was significant in shaping the way Shari'a is made to respond to the needs of contemporary Muslim families as well as international human rights law.

Indeed, Musawah the Global Movement for Equality and Justice in the Muslim Family, conducted a ground-breaking research on CEDAW and Muslim family laws which shows that the CEDAW Committee has often urged governments to look at positive examples from other Muslim countries lifting their reservations, changing their national legislation to address discrimination and 'to interpret Islamic law in harmony with international human rights standards' (Musawah 2011: 9-10). Furthermore, Committee members have presented alternative Islamic interpretations, contesting state parties' own interpretations, for example, on matters related to polygamy and custody (Musawah 2011: 10). The second half of the Musawah research itself provides alternative jurisprudence and interpretations that seek to harmonize Shari'a with human rights standards.

Finally, Mayer (1995) unequivocally shows that assertions by most Arab countries on the difficulty of reforming their respective Muslim family laws, because they are based on divine and immutable Shar'ia, contradict with reality. Not only are all these laws different from one another despite them being based on the same source: Shari'a, but historically they have been continuously changed and amended when the state wished to do so (1995: 118). Welchman illuminatingly provides a list of all Muslim family laws and their amendments through time in Algeria, Egypt, Iraq, Jordan, Libya, Morocco, Qatar, Palestine, Syria, Tunisia, United Arab Emirates and Yemen (2007: 157-60).

More specifically, an Egyptian NGO network working on Muslim family law reform has conglomerated an initial list of progressive provisions actually found in different Arab family laws on issues of obedience, maintenance, custody, visitation rights of the non-custodian parent, divorce, polygamy and shared matrimonial assets. Despite the discriminatory nature of most laws where these provisions exist, yet the individual articles presented here move closer towards a more egalitarian and just conception of family relations nevertheless (NWRO 2010).

Change is Necessary, Change is Possible, Change is Happening

This section will briefly cover two important changes that have been witnessed in the Arab world in the past twenty years. The first is the change in the family members' roles and obligations which render the traditional male role as provider, a 'myth'.²¹ Due to several economic, social and political factors, Arab women are now increasingly contributing economically to their households. In several countries such as Egypt, a

²¹ See Al-Sharmani and Rumminger (2015) for narratives of Muslim women's experiences across the globe on economically providing for their families.

third of Egyptian households have women as their main or sole breadwinner.²² Additionally, The Arab Human Development Report (AHDR) of 2005, dedicated to Arab women, states that 'Arab society does not acknowledge the true extent of women's participation in social and economic activities and in the production of the components of human well being, and it does not reward them adequately for such participation. Since most women work without pay for their families, their contributions are not recognized as economic activity' (UNDP 2006: 6). Indeed a recent survey conducted by a reputed Egyptian NGO, the New Woman Foundation, shows that unpaid domestic labour by women takes between 14 to 48.2 hours weekly as opposed to 0.27 to 1 hour weekly for men. This amounts to estimations between 307.6 billion to 455 billion Egyptian pounds which amount to 20.4% to 30.2% of the Egyptian Gross Domestic Product in 2012. Nevertheless the AHDR states that despite low figures of formal economic participation, 'between 1990 and 2003 the Arab region witnessed a greater increase in women's share of economic activity than all other regions of the world [at more than six times the global rate]: the increase for Arab women was 19 per cent compared to 3 per cent for the world as a whole' (2006: 8). The report mentions family laws as one of the hindering factors towards women's economic participation, as they require 'a father's or a husband's permission to work, travel or borrow from financial institutions' (2006: 8).

This increase in women's financial maintenance of the family, which was the main justification for men to enjoy considerable un-egalitarian privileges in Muslim family laws, has not been translated into adequate legal reforms reflecting this new reality between women and men. This is creating many societal problems and much suffering for family members, both female and male, affected by such an unjust situation (Al-Sharmani and Rumminger 2015: 233-4; NWRO 2010; Sharafeldin 2013).²³

The second important change witnessed in Arab societies has been what came to be known as the Arab Spring uprisings and revolutions. Despite the hope these events spurred towards a more democratic and egalitarian future for Arab citizens, yet reality was much more complex than that. The political turmoil and, in certain countries, the rise of political Islamists to power has had its significant effects on the situation of women. In Egypt, the rise of political Islam in both parliament and presidency, has made it very clear to Egyptian women how a traditionalist Islamic discourse may negatively affect their lives. The frequent public statements by Islamist and non-Islamist figures, including those who occupied positions within state institutions, advocating child

²² In the mid-nineties, estimates of female-headed households ranged from 16% to 22% of total households (El-Laithy 2001: 17). Practitioners in the field estimate the number to have risen to 30% by the end of the 2000's, although no reliable figures are available.

²³ Welchman also indicates that whereas in some Arab countries' laws both guardian and custodian roles may overlap requiring the mother to financially provide for the children if the father is unable to, this is usually not accompanied by transferring the authorities of guardianship from the non-paying father to the providing mother (2007: 137).

marriage; curtailing *khul'*;²⁴ legalising female genital mutilation; and sympathizing with sexual harassment of women who are not properly covered have caused alarm to wide sections of Egyptian women.²⁵ In Libya, one of the first announcements made by the Chairman of Libya's Transitional National Council, Mustafa Abdel Jalil, was to remove the restrictions on polygamy instated by the Ghadaffi regime previously, (Nossiter 2011). Several spectators suggest that this was a political card being played to woo the increasingly influential Islamist militia on the rise in Libya today. In 2012 Tunisia, where the new constitution was being drafted, the ruling Islamist El Nahda party proposed the deletion of the principle of equality between men and women that had been enshrined in the previous Tunisian constitution to be replaced by the notion of 'complementarity' which presupposes the unfeasibility of equality between the sexes. After the Tunisian women's movement organized demonstrations, petitions, and numerous advocacy activities against the proposal, 'complementarity' was finally removed from subsequent drafts of the constitution (Charrad and Zarrugh 2013).

To varying degrees across the Arab world, it is becoming evident that the post-Arab-Spring era involves the rise to power by Islamist movements that adopt a traditional gender discourse which threatens previous family law gains for women. Such a threat has spurred women's movements across the Arab world to push back and mobilize against these aims. Charrad and Zarrugh (2013) note how 'women's organizations and activists asserted themselves in debates in Tunisia during the post-revolutionary period in a way that departed significantly from top-down gender policy promulgation that prevailed in earlier eras'. Sharafeldin (2013) shows how new forms of dynamic and young feminist organizing have emerged in post-revolutionary Egypt to fight back both Islamist and non-Islamist attacks on women's gains which use a traditional Islamic discourse. The current moment is one where there is a continuous ebb and tide between the forces shaping discourses on women in Islam and Muslim family law reform. The main conclusion is that accumulation of political power is essential in translating a certain Islamic discourse on gender into actual state code and legal reform. And now may be just the right moment for this after such huge political and economic transformations. For as Harding reminds us that producing feminist knowledge and laws

always requires political struggles since it reveals exactly what "is not supposed to exist" – the interested, "subjective", local, ethnocentric character of dominant knowledge systems that claim to be disinterested, maximally objective, universally valid, and speaking from no particular social location at all (1996: 446).

All this paves the way for a final discussion regarding recommendations.

²⁴ According to article 20 of the Egyptian law 1/2000, by filing a *khul'* case in court the woman is able to obtain a judicial divorce from the husband without his consent, paying him back the dower he initially paid her and foregoing all her subsequent maintenance rights as well as any remaining deferred dower. This law came as a relief for many women who were finding it considerably difficult to obtain divorce through other available means in the law.

²⁵ See Tayel (2012), Al-Masry (2012), Russia Today (2012), Ibrahim (2013).

Recommendations

- Support the continuous production and effective dissemination of knowledge harmonizing the relationship between Islam and gender justice and equality;
- Emphasize that even if family laws are derived from religious sources, this cannot justify inequality and injustice in the family;
- 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
- Incorporate procedural changes to prioritize article 16 discussions on issues of Muslim family law during the CEDAW review process.²⁶

²⁶ Some of these recommendations were taken from Musawah's Power Point presentation on CEDAW and Muslim Family Laws: In Search of Common Ground.

Bibliography

- Abou-Bakr, Omaima. 2015. 'The Interpretive Legacy of Qiwwamah as an Exegetical Construct'. *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. London: Oneworld.
- Abou El Fadl, Khaled. 2001. *Speaking in God's Name: Islamic Law, Authority and Women*. Oxford: Oneworld Publications.
- Abu Zayd, Nasr Hamed. 1994. *Al-Mar'ah fi Khitab al-Azma [Woman in the Crisis Discourse]*. Cairo: Dar al-Nusus.
- Abu-Odeh, Lama. 2004(a). 'Egyptian Feminism: Trapped in the Identity Debate'. *Islamic Law and the Challenge of Modernity*. Haddad, Yvonne; Stowasser, Barbara (eds). Oxford: Altamira Press.
- Ali, Kecia. N.d. 'Muslim Sexual Ethics: Understanding a Difficult Verse, Qur'an 4:34: Additional Translations'. <http://www.brandeis.edu/projects/fse/muslim/translation.html> (accessed 30 April 2015).
- Ali, Yusuf. 2000. *The Holy Quran*. Hertfordshire: Wordsworth.
- Anderson, J.N.D. 1976. *Law Reform in the Muslim World*. London: University of London Athlone Press.
- An-Na'im, Abdullahi; Deng, Francis (eds). 1990. 'Preface'. *Human Rights in Africa: Cross Cultural Perspectives*. An-Na'im, Abdullahi; Deng, Francis (eds). Washington D.C.: The Brookings Institution.
- Brandt, Michele; Kaplan, Jeffrey A. 1995-1996. 'The Tension between Women's Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia'. *Journal of Law and Religion*. 12, 1, pp. 105-42.
- Brown, Nathan. 1997. 'Sharia and State in the Modern Muslim Middle East'. *International Journal of Middle East Studies*. 29, 3, pp. 359-76.
- CEDAW (a). n.d. 'Declarations, Reservations and Objections to CEDAW'. <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (accessed 30 April 2015).
- CEDAW Committee. 'General Recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures'. [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) (accessed 30 April 2015).

Charrad, Mounira; Zarrugh, Amina. 2013. 'The Arab Spring and Women's Rights in Tunisia'. *E-International Relations*. <http://www.e-ir.info/2013/09/04/the-arab-spring-and-womens-rights-in-tunisia/> (accessed 29 April 2015).

Cuno, Kenneth. 2009. 'Disobedient Wives and Neglectful Husbands: Marital Relations and the First Phase of Family Law Reform in Egypt'. *Family, Gender and Law in a Globalizing Middle East and South Asia*. Cuno, Kenneth; Desai, Manisha (eds). New York: Syracuse University Press.

Esposito, John; Delong-Bas, Natana. 2001. *Women in Muslim Family Law*. New York: Syracuse University Press.

Al-Faruqi, Ismail Raji. 1962. 'Towards a New Methodology for Quranic Exegesis'. *Islamic Studies*. 1, 1, pp. 35-52.

Hallaq, Wael. 2004. 'Can the Shari'a Be Restored?'. *Islamic Law and the Challenges of Modernity*. Haddad, Yvonne; Stowasser, Barbara (eds). New York: Altamira Press.

Harding, Sandra. 1996. 'Gendered Ways of Knowing and the "Epistemological Crisis" of the West'. *Knowledge, Difference, and Power: Essays Inspired by Women's Ways of Knowing*. Goldberger, Nancy et. al. (eds). New York: Basic Books.

Ibrahim, Raymond. 2013. 'The 'Epidemic' of Sexual Harassment - and Rape - in Morsi's Egypt' <http://www.meforum.org/3450/egypt-rape-sexual-harassment> (accessed 30 April 2015).

Kamali, Hashim. 2008. *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications.

El-Laithy, Heba. 2001. 'The Gender Dimensions of Poverty in Egypt'. *Economic Reform Forum Working Paper Series Working Paper 0127*. Cairo: ERF. http://www.erf.org.eg/CMS/uploads/pdf/0127_Elleithy.pdf (accessed 30 April 2015).

Leila, Reem. 2011. 'Controversy over 'Suzanne's laws''. <http://weekly.ahram.org.eg/2011/1046/eg14.htm> (accessed 30 April 2015).

Mashhour, Amira. 2005. 'Islamic Law and Gender Equality - Could There be a Common Ground? A Study of Divorce and Polygamy in Shari'a Law and Contemporary Legislation in Tunisia and Egypt'. *Human Rights Quarterly*. 27, pp. 562-96.

Al-Masry, Ahmed. 2012. 'Independent MP proposes draft law to limit women's right to divorce' <http://www.egyptindependent.com/news/independent-mp-proposes-draft-law-limit-women%E2%80%99s-right-divorce> (accessed 30 April 2015).

Mayer, Ann Elizabeth. 1995. 'Rhetorical Strategies and Official Policies on Women's Rights: The Merits and Drawbacks of the New World Hypocrisy'. *Faith and Freedom*. Afkhami, Mahnaz (ed). London: Tauris.

- Messick, Brinkley. 1993. *The calligraphic state: Textual domination and history in a Muslim society*. Berkeley: University of California Press.
- Mir-Hosseini, Ziba; Al-Sharmani, Mulki; Rumminger, Jana. 2015. 'Introduction'. *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. London: Oneworld.
- Mir-Hosseini, Ziba. 2003. 'The Construction of Gender in Islamic Legal Thought and Strategies for Reform'. *Hawwa*. 1, 1, pp. 1-28.
- Mitchell, Timothy. 1988. *Colonising Egypt*. Cambridge: Cambridge University Press.
- Moroccan Ministry of Justice. 2004. *Dalil 'amali li-Mudawwanat al-'usra [Guiding Manual for Moroccan Family Law]*. Rabat: Ministry of Justice.
- Musawah. 2011. *CEDAW and Muslim Family Laws: In Search of Common Ground*. Kuala Lumpur: Sisters in Islam.
- Musawah (a). n.d. 'Family Law Texts'. <http://www.musawah.org/resources/family-law-texts> (accessed 29 April 2015)
- Moors, A. 1999. 'Debating Islamic family law: Legal texts and social practices'. *A Social History of Gender in the Modern Muslim Middle East*. Meriwether, M. C.; Tucker, J. E. (eds). Boulder: Westview Press.
- Naciri, Rabea. 2007. 'The Moroccan Women's Movement: Dynamics of Reforming Personal Status Code'. Unpublished paper commissioned by the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) office in Cairo, Egypt.
- Nossiter, Adam. 2011. Hinting at an End to a Curb on Polygamy, Interim Libyan Leader Stirs Anger'. *New York Times*. <http://www.nytimes.com/2011/10/30/world/africa/libyan-leaders-remark-favoring-polygamy-stirs-anger.html> (accessed 30 April 2015).
- NWRO, Network of Women's Rights Organizations in Egypt. 2010. 'Legal Guide for Developing a More Just Integrated Family Law'. Cairo: NWRO.
- Rahman, Fazlur. 1982. *Islam and Modernity: Transformation of an Intellectual Tradition*. Chicago: The University of Chicago Press.
- Russia Today. 2012. 'Egypt to revive female genital mutilation in the name of Islam?' <http://rt.com/news/egypt-revive-mutilation-alarm-372/> (accessed 29 April 2015).
- Salime, Zakia. 2009. 'Revisiting the Debate on Family Law in Morocco: Context, Actors and Discourses'. *Family, Gender, and Law in a Globalizing Middle East and South Asia*. Cuno, Kenneth; Desai, Manisha (eds). New York: Syracuse University Press.

- Shaham, Ron. 1997. *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Shari'a Courts, 1900-1955*. Leiden: Brill.
- Sharafeldin, Marwa. 2013. 'Personal Status Law Reform in Egypt: Women's Rights NGOs Navigating between Islamic Law and Human Right'. PhD thesis. Oxford University.
- Al-Sharmani, Mulki; Rumminger, Jana. 2015. 'Understanding Qiwwamah and Wilaya through Life Stories'. *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. London: Oneworld.
- Sonbol, Amira. 2010. 'A Response to Muslim Countries' Reservations Against Full Implementation of CEDAW'. *Journal of Women of the Middle East and the Islamic World*. 8, pp. 348-67.
- Sonbol, Amira. 2003. "'The Woman Follows the Nationality of Her Husband": Guardianship, Citizenship and Gender'. *Hawwa*, 1, 1, pp. 86-117.
- Stowasser, Barbara. 1998. 'Gender issues and contemporary Qur'an interpretation'. *Islam, Gender, and Social Change*. Haddad, Y.; Esposito, J. (eds). Oxford: Oxford University Press.
- Taha, Mahmoud. 1987. *The Second Message of Islam*. New York: Syracuse University Press.
- Tayel, Abeer. 2012. 'Egypt's women urge MPs not to pass early marriage, sex-after-death laws: report' <http://english.alarabiya.net/articles/2012/04/25/210198.html> (accessed 29 April 2015).
- Tucker, Judith. 2008. *Women, Family and Gender in Islamic Law*. Cambridge: Cambridge University Press.
- Tucker, Judith. 1998. *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*. Berkeley: University of California Press.
- UNDP. United Nations Development Program. 2006. *The Arab Human Development Report: 2005. Towards the Advancement of Women in the Arab World*. New York: UNDP.
- Wadud, Amina. 2006. *Inside the Gender Jihad: Women's Reform in Islam*. London: Oneworld Publications.
- Wadud, Amina. 1999. *Qur'an and Woman: Rereading the sacred text from a woman's perspective*. Oxford: Oxford University Press.

Welchman, Lynn. 2011. 'A Husband's Authority: Emerging Formulations in Muslim Family Laws' *International Journal of Law, Policy and the Family*. 25, 1, pp. 1–23.

Welchman, Lynn. 2007. *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*. Amsterdam: Amsterdam University Press.

Women's Learning Partnership. N.d. 'Family Laws Chart'.
<http://www.learningpartnership.org/lib/family-laws> (accessed 29 April 2015).

Wurth, Anna. 2003. 'Stalled Reform: Family Law in Post-Unification Yemen' . *Islamic Law and Society*. 10, 1, pp. 12-33.

Zayan, Jailan. 'Growing ire follows Egypt MP's comments on veil'. 2006.
<http://www.freerepublic.com/focus/f-news/1741530/posts> (accessed 29 April 2015).