

# MALAYSIA



Malaysia's population is multi-religious; approximately 60 per cent of the population is Muslim. Malaysia has a dual court system, with *Shari'ah*- and *fiqh*-based laws that apply only to Muslims and include matters specified in the Federal Constitution such as matrimonial law, charitable endowments, bequests, inheritance and offences that are not governed by federal law (matrimonial offences, *khalwat* and offences against the precepts of Islam). The power to legislate these matters lies with each state legislature and state Sultan, meaning there are fourteen different sets of Muslim laws in Malaysia.

The Islamic Family Law (Federal Territories) Act of 1984, which was designed to serve as a model for the other Malaysian states, was considered internationally to be among the most progressive codified Muslim family laws in terms of rights and protection for women. Since 1984, however, a series of amendments have effectively rescinded many of the positive provisions for women in the original codification.

## Equality in the Family is Necessary

- ▶ The current Islamic Family Law Act contains a number of provisions that discriminate against Muslim women. These include:
  - The minimum age of marriage is lower for women than men.
  - A woman, regardless of her age, can only marry with her guardian's consent, whereas a man does not need the consent of a guardian.
  - A woman is supposed to obey her husband. Her failure to comply with the 'lawful' wishes of her husband constitutes '*nusyuz*' and means she can lose her right to maintenance.
  - A man can divorce his wife at will, outside of the court system, but a woman must go to court and obtain a judicial divorce on one of a number of very specific grounds that require extensive evidence.
  - A woman (but not a man) can lose custody on several grounds, including 'immorality'.
  - A woman is not entitled to guardianship of her children. Even when the woman has custody of the children, the father as the lawful guardian maintains control over matters where the consent of the guardian is required (e.g. obtaining a passport, registering or changing schools, or undergoing surgery). Similar provisions for non-Muslims were amended in 1999 to afford equal guardianship rights for women. Women's groups successfully lobbied

the Cabinet to issue a directive to various Ministries giving Muslim women some guardianship rights, but the Muslim laws themselves have not changed.

- ▶ In late 2005, regressive amendments to the Islamic Family Law were passed by the Parliament and the Senate. These amendments further discriminated against women by loosening restrictions on polygamy and using gender neutral language to extend a wife's right to *fasakh* divorce to the husband, allow a husband to get a court order to stop his wife from disposing of her property during divorce proceedings, and enable a husband to acquire a share of the matrimonial assets at the time of polygamy. However, because of outcry by women's organisations and the general public, the Prime Minister ordered the Attorney General to redraft the bill. Women's groups were given a seat at the table for this process. A new bill has been finalised and awaits submission to Parliament.

## Equality in the Family is Possible

- ▶ In the general elections on 8 March 2008, the opposition parties had their strongest showing since Malaysian independence, winning 36.9 per cent of the parliamentary seats and five of the thirteen state legislatures. This election has led to an opening of the political and social discourse at both state and federal levels.
- ▶ Progressive Muslim women and men and also those from other faiths are engaging in the discourses on Islam and the rights of women.
- ▶ Sisters in Islam (SIS) has been working for approximately twenty years to create a public space to engage with issues relating to Islam and a public voice of Muslim women. SIS uses a multi-pronged strategy to advocate for comprehensive reform of family law in Malaysia. SIS has drafted a model family law bill based on Islamic principles of equality and justice that can be put forward in Parliament. Some of the key reforms include:
  - An equal minimum age of marriage for men and women.
  - Abolition of the requirement that the guardian must consent to the marriage of a woman.
  - A standard form marriage contract in which all marriages contracted are monogamous and polygamy is prohibited. Polygamy would be allowed only in exceptional circumstances and would be governed by a special and separate marriage contract.
- An equal right to divorce and divorce only by judicial decree.
- An equal division of matrimonial assets, instead of the present practice of awarding only one-third of the assets to the wife.
- An equal right to custody and guardianship of children.
- ▶ Following the Maghreb model, SIS is preparing a Guide to support the provisions in this model bill using holistic framework of arguments from religious, social, domestic law and policy, and international human rights perspectives, as well as examples of positive practices from other Muslim countries relating to each provision.
- ▶ SIS has also begun a national public education campaign to build support across a broad constituency of women's and human rights groups and at the grassroots level to sustain the momentum for reform. In 2008, SIS's public education programme trained over 2000 grassroots women in eleven of Malaysia's fourteen states. In addition, a national network of grassroots women's groups, GAHWI (Coalition on Muslim Women's Rights), was founded to speak out on Muslim women's issues.

Sources: Report of Roundtable 'A Discussion on Muslim Women Issues', organised by Sisters In Islam with Muslim women's organisations, 18-19 October 2008, Kuala Lumpur, Malaysia; Report from the National Symposium 'Pembentukan Keluarga Adil, Stabil dan Bahagia', organised by Sisters in Islam with Gabungan Hak Wanita Islam (GAHWI) and the Joint Action Group for Gender Equality (JAG), 4 December 2008, Kuala Lumpur, Malaysia; Sisters in Islam, *Guide to Equality in the Family: A Just and Equitable Muslim Family Law for Malaysia*, unpublished document, December 2006.