



musawah

For Equality in the Family

MUSAWAH FRAMEWORK FOR ACTION

SUMMARY*

Musawah declares that equality and justice in the family are necessary and possible:

- ▶ **Necessary** because many aspects of current Muslim family laws and practices are unjust. They do not match the needs and experiences of today's Muslim families and individuals.
- ▶ **Possible** if we apply the Musawah Framework. This brings together Islamic teachings, universal human rights principles, fundamental rights and constitutional guarantees, and an analysis of the everyday realities of women and men today.

This conceptual Framework and principles guide the work of Musawah and can be used in various countries to help frame claims for justice and equality in family laws.

It was developed by a group of Muslim activists and scholars from over twenty countries, and was launched at the Global Meeting for Equality and Justice in the Muslim Family in Kuala Lumpur, 13-17 February 2009.

A Vision of the Muslim Family Based on Equality and Justice

To realise equality and justice in the Muslim family, laws and practices must 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.

Injustice in the Muslim Family

Most family laws and practices in today's Muslim societies are based on concepts that were developed hundreds of years ago by the classical jurists. Today's world is a very different historical, social and economic context. The gap between outdated laws and customs and today's reality has created numerous injustices in many Muslim countries and communities. These injustices lie at the root of marital disharmony and the breakdown of the family.

The family is linked with wider aspects of society. When a woman suffers injustice in the family, it affects her dignity, personal security, mobility, property, citizenship, nationality, employment and ability to participate politically.

But Muslim societies and their laws and practices do not have to be like this.

What the Qur'an says

Qur'anic teachings encompass the principles of justice (*'adl*), equality (*musawah*), equity (*insaf*),

* 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.

human dignity (*karamah*), love and compassion (*mawaddah wa rahmah*). These principles reflect universal norms and are consistent with contemporary human rights values.

Fiqh is human-created and can change

Islamic legal theory shows that family laws and practices can be changed to reflect equality and justice, and meet the needs of Muslims today.

Shari'ah is the religious values and principles revealed to the Prophet Muhammad which direct human life. *Fiqh* is the process by which humans try to derive concrete legal rules from the Qur'an and the *Sunnah* of the Prophet. So, human interpretations of the religious texts must not be confused with the *Shari'ah*: *Shari'ah* is revelation, while *fiqh* is a human activity. Therefore, legal rules can change.

Human affairs evolve constantly, so there is always a need for new interpretations of the religious texts to bring laws in line with the changing realities of time and place (*zaman wa makan*). This is the rationale for *ijtihad*, which was practiced widely until the 10th Century CE, and which is often used by those who support equality and justice in the family.

Slavery used to be a part of Muslim societies. But as they changed, laws and practices related to slavery were reconsidered. Similarly, our family laws and practices must evolve to reflect the Islamic values of equality and justice, reinforce universal human rights norms, and address today's realities.

Family laws can change

There are two main categories of legal rulings in Islam: *'ibadat* (devotional / spiritual acts) and *mu'amalat* (transactional / contractual acts). *'ibadat* relates to relations between God and the believer, and therefore have limited scope for change. *Mu'amalat* relate to relations between humans, and therefore are open to change. Family laws and gender relations are part of *mu'amalat*.

Recent constructive reforms in Muslim family laws and the evolution of practices illustrate that change is possible.

Diversity of opinion in Islam

Diversity of opinion (*ikhtilaf*) has always been a part of *fiqh*, even after the formal establishment of the Schools of law. There is not now, nor has there ever been, one 'Islamic law'. The existence of multiple Schools of law, and the variety of Muslim family laws in different countries today, is proof of this. Today, we must recognise and engage with this diversity of opinion to understand how best to serve the public interest (*maslahah*) and meet the demands of equality and justice.

Keeping up with changing realities

Understandings of justice and injustice change over time. In today's world, it is recognised that there cannot be justice without equality, dignity and freedom from discrimination. There are many verses that provide a model for relations within the family and between all human beings that is in line with contemporary notions of justice.

Justice and equality between men and women requires equality in the family, one of the most important areas of human life.

Islam also teaches that all human beings are born equal in worth and dignity, which is echoed in universal human rights norms. Today, this can be understood as the principle that full and equal citizenship, including full participation in all aspects of society, is the right of every individual. In fact, the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are more in line with the *Shari'ah* than family laws and practices in many Muslim societies.

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.