

Introduction: Why Equality and Justice Now

Zainah Anwar

Equality and justice are values intrinsic to Islam. So why do Muslim family laws and practices treat women as inferior to men?

The papers in this resource book for Musawah, the Global Movement for Equality and Justice in the Muslim Family, seek to understand the genesis of Muslim family law, how it was constructed within the classical *fiqh* tradition, and how the wealth of resources within *fiqh* and Qur'anic verses on justice, compassion and equality can support reform towards more egalitarian family relationships. Importantly, the papers demonstrate that current discriminatory Muslim family laws are not divine, but constructed by humans within particular socio-political contexts. The authors argue that equality and justice are both possible and necessary from within the Islamic tradition, within international human rights and constitutional frameworks, and given the lived realities of women and men in the Muslim world today.

The aim of this book is not to provide a template or a uniform model for family law that will be applicable to all Muslims and in all contexts, but to open horizons for thinking constructively about change and reform and to claim back the diversity and dynamism that were once so integral to the Islamic legal tradition.

Very often Muslim women who demand justice and want to change discriminatory laws and practices are told 'This is God's law' and therefore not open to negotiation and change. To question, challenge or demand reform will supposedly go against *Shari'ah*, weaken our faith in God and lead us astray from the straight path.

In a world where women's rights are considered part of human rights, where modern constitutions of Muslim countries recognise equality

and non-discrimination, where women's daily realities make them the providers and protectors of their families, the continuing discrimination found in family laws in much of the Muslim world is increasingly untenable and indefensible.

For decades now, women activists and rights groups in Muslim societies have been pushing for law reform to recognise equality between men and women and to protect positive provisions where these exist. Many have focused on family laws because inequality and discrimination against women, which often begin in the 'private' space of the family, have affected their engagement and their rights in the public sphere.

But law reform and the protection of existing rights have been uphill battles for activists in most Muslim countries and communities. Opposition to these efforts comes from very powerful forces, in the name of religion and state-sanctioned patriarchy. The success in 2004, however, of the women's movement in Morocco in pushing for comprehensive reform of their Personal Status Code, the *Moudawana*, within a framework of equality between men and women, provided new impetus for activists in other countries to rethink and re-strategise their campaigns and demands regarding family laws.

Why Musawah

The idea for Musawah ('Equality' in Arabic) was first proposed at a Sisters in Islam International Consultation on 'Trends in Family Law Reform in Muslim Countries' in March 2006 in Kuala Lumpur, Malaysia. The meeting brought together Muslim activists and scholars from South-East Asia, Turkey and Morocco (two Muslim-majority countries with recent successful family law reform campaigns), Iran, Pakistan, the United Kingdom, and the United States, to share knowledge and strategies. The participants at that meeting felt a compelling need to build an international

network of women's groups in the Muslim world that have for decades been working on family law to share strategies, scholarship and best practices. This sharing would develop the international discourse, public voice and momentum to propel forward efforts to protect existing rights and promote reform at the national and regional levels.

Many groups have not made the hoped-for progress in their reform efforts because they have worked in isolation—at both national and transnational levels—and because of opposition from conservative groups within society and a lack of support from their governments. In other contexts, especially in the Gulf states and some African countries, family law reform efforts are relatively new. And in yet other countries, rising identity politics and Islamisation policies threaten to roll back past achievements in family law reform.

While women's rights groups like Sisters in Islam have engaged with the religion for over 20 years, many other feminists in the Muslim world have been reluctant to do so, preferring to advance women's rights within the human rights framework. Over the past ten years or so, there has been increasing demand from women activists to also look at addressing issues relating to Muslim women's rights from within a religious framework, but using a rights-based perspective. This need and demand come from activists who believe in the paradigm of justice and equality but need additional effective tools for dealing with resistance, opposition and demonising by Islamist groups and those in traditional positions of religious authority.

In countries such as Algeria, Morocco, Tunisia, Indonesia and Malaysia, women's groups and supportive men have begun to explore a broader, more holistic framework that argues for reform from multiple perspectives—religious, international human rights, constitutional and fundamental rights guarantees, and women's lived realities—to put forward positive, progressive practices and examples of reform. This holistic framework uses Islamic arguments, but is grounded in the

realities of modern-day life in democratic constitutional states and a world linked by international law.

Musawah is designed to bring together scholars and activists who wish to work within a holistic framework to ensure that Muslim women are treated as human beings of equal worth and dignity in the law, in the family and the community. Since so much of the injustice against Muslim women and the resistance to law reform are justified in the name of Islam, we feel that it is important that Musawah's key focus as a knowledge-building movement be on acquiring knowledge and understanding why equality and change are possible and necessary within Islam.

It is for this reason that the international planning committee of Musawah spent almost two years building a foundation for the initiative by commissioning theoretical papers to provide the basic grounding to understand why change is possible, developing a Framework for Action and principles to guide Musawah's work, consulting scholars, activists and practitioners from over thirty Muslim countries, and organising a Global Meeting to bring people together to demand equality and justice.

Justifying Equality and Justice

In this book, the groundbreaking work of scholars such as Ziba Mir-Hosseini, Amina Wadud, Muhammad Khalid Masud and Khaled Abou El Fadl reveals the possibility of finding justice and equality for women within Islam. Mir-Hosseini's research on the construction of gender in Islamic legal theory enables us to understand the legal logic of classical juristic texts that discriminate against women. The conception of marriage in the early centuries of Islam, which produced rules that led to the control and subjugation of women, can no longer be the basis for regulating marriage and divorce in the twenty-first century. Mir-Hosseini argues in her paper that Muslim family laws are not divine, but are 'man-made'

juristic constructs, shaped by the social, cultural and political conditions within which Islam's sacred texts were understood and turned into law. She asserts that the classical *fiqh* definition of marriage between the providing, protecting husband and the submissive wife has become irrelevant to the contemporary experiences and ethical values of Muslims, and that a 'paradigm shift' in Islamic law and politics is well underway.

Masud's paper focuses on the significance of *ikhtilaf*, or diversity of opinion among the jurists, and how this doctrine serves as a rich source for understanding the development of the Islamic legal tradition and an important juristic tool for reinterpreting Muslim family laws. He emphasises the need to understand that *fiqh* is not divine law, but is humanly constructed to deal with the changing times and circumstances. When new times and circumstances emerge, new juristic rules and understandings must also develop.

Amina Wadud's paper points to the several references in the Qur'an where women and men are acknowledged as equal and examines how these can provide a source for the concept of equality as an essential component of Muslim family laws and relationships. She proposes a *tawhidic* paradigm of reform. As long as Allah is supreme and is unique, there can be no other relationship between any two persons except one of horizontal reciprocity. She asserts that patriarchy, which places one person as superior to the other, is a form of *shirk* (polytheism or association of partners with God) because it violates *tawhid*, where the presence of Allah is always the highest focal point.

Khaled Abou El Fadl's paper discusses the major points of tension between the Islamic tradition and the human rights system of belief and explores the possibilities for achieving a normative reconciliation between the two moral traditions. The paper focuses on the doctrinal potentialities or concepts constructed by the interpretive activities of Muslim scholars that could legitimise, promote, or subvert the emergence of a human rights practice in Muslim cultures. He believes that even if Islam has not

known a human rights tradition similar to that developed in the West, it is possible, with the requisite amount of intellectual determination, analytical rigour, and social commitment, to demand and eventually construct such a tradition.

This set of four theoretical papers on Qur'an and the Islamic legal tradition provide us with key understandings on the possibility and potential for deriving concepts of equality and justice from within the Islamic framework. This will enable activists to move forward in arguing for reform and protection of existing rights while also being able to respond to the accusation that their demands are somehow 'against Islam'.

The next set of papers were commissioned to look at the realities on the ground. Amira Sonbol's paper on the genesis of family law shows how today's Muslim personal status codes are in fact a construct of the modern state, influenced by medieval *fiqh* rules, local custom and tradition, and European colonial laws regarding gender relations. By tracing the origins of modern personal status codes and the influences on their construction in some illustrative countries, Sonbol debunks the myth that Muslim family laws are divine and therefore immutable and unchangeable.

Cassandra Balchin's paper provides an overview of the immense diversity in legal systems and laws relating to the family in Muslim countries and communities. She highlights the variety of strategies activists have used to demand reform and promote equality and justice in family laws and, in some contexts, to defend gains made in the face of a backlash because of rising identity politics. Both Balchin and Sonbol's papers further illustrate how reform and protection of rights is possible within Muslim contexts.

Kamala Chandrakirana uses available data to show how global forces of the twenty-first century have affected, shaped, and even changed the many faces of the Muslim family. She warns that given the new realities of Muslim women's and men's lives today, a stubbornly

unchanged vision of Islam that regards women as inferior to men, and therefore undeserving of a life of equal worth and dignity, could eventually lead to the religion losing its relevance in the future. And yet, she believes a new vision of Islam that affirms women's humanity and articulates itself in the form of gender-sensitive laws adopted by states is both necessary and possible. The time to make this a reality throughout the Muslim world is now.

These seven contributions are preceded by the Musawah Framework for Action, the conceptual framework and principles that guide the work of Musawah and can be used in various countries to help frame claims for just and equal family laws. The Framework for Action builds on the seven papers, using a holistic approach that brings together Islamic teachings, universal human rights principles, fundamental rights and constitutional guarantees, and the lived realities of women and men today.

Why Now?

Musawah has a long pedigree. At the time of Revelation, Islam's message was revolutionary in spirit and gave women rights not available in most cultures of the era. It is time to reassert this revolutionary spirit and show how Islam can stand on the side of the women's movement and other rights movements. Today, the right to freedom from non-discrimination on the grounds of gender is regarded in international human rights law as non-derogable. This means that, like torture and slavery, gender discrimination is increasingly accepted as something for which there can be no excuse. Gender discrimination cannot be justified by a lack of resources, by a declaration of a state of emergency, by arguing that the perpetrators are non-state actors, and certainly not by culture and religion.

Many women, including those from Muslim contexts, have played a key role in making it clear that women's rights are human rights. At the same time, women in Muslim societies have also played a major role in insisting on a nuanced approach to universal human rights. While sisterhood is indeed global, it is now acknowledged that this is experienced differently in various contexts. Musawah is thus part of a global trend whereby women who work through religious frameworks have promoted and developed alternative interpretations of their faith in ways that challenge patriarchal domination of religion, and highlight women's rights as human rights. This has occurred in other faith contexts, through the work of organisations such as Catholics for a Free Choice, the International Women's Partnership for Peace and Justice working in Buddhist contexts, and *Lilith Magazine* developed by Jewish women, as well as in Muslim contexts through the work of Women Living Under Muslim Laws, Women's Learning Partnership, Women's Islamic Initiative in Spirituality and Equality, and of course Sisters in Islam, which initiated Musawah.

In many ways, Musawah offers a contrast to the image and experiences of Muslims in this current 'War on Terror' context. Whereas Muslims are stereotyped as intolerant and backward, and Muslim women as oppressed and victimised, Musawah reveals how we are forward-looking, embracing change and determined to highlight diversity in interpretations and to challenge any human claims to know the One Truth. It also offers a challenge to authoritarian forces within our own societies that seek to use the United Nations platform to roll back gains made in human rights language, and to use national social and political platforms to roll back gains women and men have made in building just and tolerant societies.

This is a trend that women and men are challenging not just in Muslim societies, but everywhere that religion has a public face. Their aim is to build societies where religion forms not the sole element but,

instead, one aspect of a holistic framework that influences public policy. The right to define what these religious beliefs are and what role they should play in public law and policy must be open to public debate and pass the test of public reason.

It is our hope that Musawah as a global movement will lead to that day when those in the Muslim world will realise that women's demands for equality and justice are neither alien nor a threat to Islam, but are rooted in the Islamic tradition. Equality and justice are non-negotiable—and these values must be at the core of what it means to be Muslim today.