

The lived realities of women and families in the 21st century have changed. Women today are providers and protectors of their families, together with men. Female-headed households are on the rise. Yet the discriminatory legal frameworks that govern family life in Muslim contexts remain resistant to demands for law reform to recognise these new lived realities on the ground. Family relationships must be fair, just, and sustainable for all women, men, and children.

Muslim Family Laws Globally

Over 45 countries in the world — some with Muslim-majority populations and some with Muslim minorities — have codified or uncodified laws that govern family relationships. Many of these laws are unfair and unjust towards women and girls.

Through our research on Muslim family laws in over 40 countries, Musawah has identified the 12 most common issues of concern that negatively impact Muslim women. These include issues that arise at entry into marriage, during marriage, and at the time of dissolution of marriage.

The field of FAMILY LAW includes the body of statutes, rules and regulations, court procedures and uncodified practices that govern relationships within family units.

It includes, but is not limited to, areas of marriage and family relations which fall under Article 16 of the CEDAW Convention on marriage and family.

12 PRINCIPAL ISSUES OF CONCERN

Unequal
Legal Framework
on Family Law

Unequal
Capacity to Enter
into Marriage

Forced
Marriage

Child
Marriage

Polygamy

Violence
Against Women
in the Family

Unequal Right to
Transfer Nationality
to Spouses/Children

Unequal Right
to Inheritance

Unequal
Divorce Rights

Lack of Financial
Rights at the
Time of Divorce

No Right to
Guardianship
of Children

Unequal Right
to Custody
of Children



It is evident that contemporary Muslim family laws no longer reflect the justice that is central to the concept of law in Islam. These laws continue to be based on classical *fiqh* rulings and outdated gender norms, and have not evolved to reflect changing times and circumstances.

Several arguments are commonly used to resist family law reform in Muslim contexts; these are often based on religious grounds. Many of those in authority claim that Muslim family laws are God-given and sacred, and therefore cannot be amended or reformed. Conservative religious scholars claim that men are the protectors and providers of their families and thus Muslim family laws must grant men authority and guardianship over women and children. They argue that any attempt to change such laws goes against Islam.

However, over the past decades, scholarship and activism in the Muslim world have made the case for the possibility and necessity of reform.

CHILD MARRIAGE



INHERITANCE



10 FUNDAMENTAL FACTS:

MAKING THE CASE FOR REFORM OF MUSLIM FAMILY LAWS

1 Discriminatory family laws are harmful to women, families, and communities

Many Muslim family laws treat women as minors under perpetual male guardianship. This means that key decisions pertaining to education, employment, livelihood, travel, marriage, and sexual and reproductive health, etc., are determined by male guardians rather than women themselves. Such laws deny women full agency and autonomy.

Women and children are put in vulnerable socio-economic situations by laws that fail to protect their rights. The effects of discriminatory family laws and practices, as well as court systems and procedures that

limit women's access to justice, also contribute to poor mental health and other psycho-social impacts on women and children, effectively diminishing their quality of life.



2 Muslim family laws do not reflect the current lived realities of families

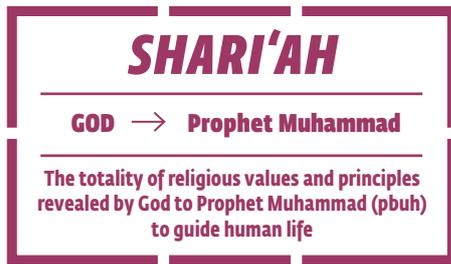
Classical scholars defined marriage based on a contract of exchange: the wife's obedience and submission in return for maintenance and protection from the husband. This legal framework still underpins Muslim family laws today, resulting in provisions, procedures, and practices that discriminate against women.

Lived realities of Muslim families are changing globally. Many women are heads of households, primary breadwinners, and main guardians of their children,

or share equal roles with their partners. Many men are unable to fulfil their traditionally assigned roles of provider and protector. Yet, they continue to enjoy the powers and legal privileges, while women who take on responsibilities to support and protect their families are denied the corollary rights. In fact, regardless of circumstances and roles within families, women continue to be treated as perpetual minors by law and in practice.

3

Muslim family laws are based on *fiqh* — human interpretations of *Shari'ah*



Today's Muslim family laws were written and enacted by governments based on a combination of classical *fiqh* (or centuries-old human interpretations of the *Shari'ah*), local culture, and colonial heritage. There is a clear difference between *Shari'ah* and *fiqh*. While *Shari'ah* is considered divine and eternal in Muslim belief, *fiqh* consists of human-made interpretations from a specific time and place, and is therefore changeable.



Fiqh rulings are divided into two categories:



(1) *'ibadat*, devotional and spiritual acts related to relations between God and the believer; and

(2) *Mu'amalat*, social and contractual acts among humans.

Rulings in the latter category, which include marriage and family matters, have always been considered open to change based on changing circumstances. **Family laws are not sacred; they are human-made.**

4

The Qur'an and *Sunnah* offer values that can serve as the foundation for egalitarian laws

Discriminatory family laws and resulting injustices contradict the guiding ethical principles of the Qur'an, as well as contemporary notions of justice and human rights principles. In fact, the main sources of *Shari'ah*—the Qur'an and *Sunnah*—promote human and marital relations that embody equality, justice, love, compassion, and mutual respect between individuals.

For instance, *Surah an-Nisa'* 4:21 depicts marriage as a 'solemn covenant' (*mithaq ghaliz*), with *mithaq* derived from *thiqa* (trust). Marriage is seen as an intimate and serene union in *Surah al-Baqarah* 2:187 ('They are your garments and ye are their garments') and *Surah ar-Rum*

30:21 ('God created for you mates from among yourselves, that you may dwell in tranquillity with them, and God has put love and mercy (*mawaddah wa rahmah*) between your (hearts)').

QUR'ANIC VALUES



Family laws that are developed or amended in the name of Islam should reflect the Qur'anic values of justice (*'adl*), equality (*musawah*), equity (*insaf*), human dignity (*karamah*), love and compassion (*mawaddah wa rahmah*), and mutual respect among all human beings.

All these values are fully compatible with international human rights standards, including CEDAW, and national constitutional guarantees of equality and non-discrimination.

5 A diversity of tools within Muslim legal tradition supports egalitarian laws and allows for reform

Muslim legal tradition is rich, flexible, and dynamic. It provides the conceptual tools and legal methods to guide a shift towards egalitarian gender relations in families and society. These include:

IJTIHAD

lit. endeavour, self-exertion

Denotes human efforts to understand and interpret the *Shari'ah* in order to find solutions to existing and emerging problems



IKHTILAF

lit. disagreement, difference

Refers to diversity of opinion among jurists that existed since jurists first attempted to interpret the Qur'an and *Sunnah*. Difference of opinion was very much a part of the rigour of Muslim legal tradition

ISTIHSAN

lit. judicial discretion

AND

ISTISLAH

lit. to deem proper

Allows for the formulation of rulings and laws based on what is seen as the better solution for individuals and communities



MASLAHAH

lit. benefit or interest

Allows for reform of rules, laws, and practices to benefit society and meet the changing needs and interests of Muslim communities

DARURAH

lit. overriding necessity

Principle that recognises new and urgent situations and allows for legal flexibility in order to avoid serious harm

6 No two Muslim family laws in the world are exactly the same



There is no such thing as one divine 'Muslim family law' for all Muslims globally and eternally. Muslim family laws were influenced heavily by historical events, local customs, and norms, as well as legal and social values introduced in different periods of history, including during the colonial era. In fact, many of the present-day Muslim family laws are colonial legacy laws. **The diversity of Muslim family laws is evidence of the role that humans have played in developing these laws and how changeable and adaptable these laws can be.**

7 Reform of Muslim family laws is happening around the world

Muslim family laws around the world are in a constant state of evolution and have been changing according to the shifting realities of time and place. Recent reforms in Muslim family laws towards equality and justice show that change is indeed possible with the political will of state leaders and policy makers.

EXAMPLES OF WHERE REFORM HAS HAPPENED

Several Muslim-majority countries have reformed their family laws using an Islamic framework and building on core Qur'anic principles of equality and justice. Such reforms include:

Algeria: The Family Code requires each spouse to: (i) cohabit in harmony, mutual respect, and kindness; (ii) contribute jointly to the preservation of the family's interests, the protection of their children, and the provision of a sound education for them; and (iii) mutually agree in the management of the family's affairs, including the spacing of births.

Morocco: The Family Code (*Moudawana*) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses, which include: (i) cohabitation, mutual respect, affection, and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.

8 Reform of family laws is essential to achieve gender equality

Global surveys on gender equality (WEF, *Global Gender Gap Index 2020*) reveal that up to 21 countries in the bottom 25 are Muslim-majority countries. Family laws and practices are connected with all aspects of women's lives. It is impossible for women to make key decisions pertaining to education, employment, and livelihood without full autonomy in marriage, and equal rights to divorce, inheritance, and nationality.



Equal opportunities in getting a job or starting a business do not exist where legal gender differences are prevalent. Legal restrictions constrain women's ability to make economic decisions and can have far-reaching consequences.

Global data show that more women join the workforce overall in economies that are reforming towards gender equality (*World Bank, Women, Business and the Law Report 2019*). Family laws and other laws (e.g. labour laws) governing these areas are intertwined, so reform of discriminatory family laws is a prerequisite for achieving gender equality.

9 Reform of family laws is necessary to accelerate human development

Governments bear the primary responsibility for implementing the Sustainable Development Goals (SDGs), which have been endorsed internationally as critical goals to address inequalities and human development gaps. In addition to Goal 5 on 'Achieving gender equality and empowering all women and girls,' reform of family laws also impacts progress on other SDG goals such as Goal 3 on 'Ensuring healthy lives and promote well-being,' Goal 4 on 'Ensuring inclusive and equitable quality education for all,' and

Goal 8 on 'Promoting economic growth, full employment and decent work for all.'

Recent studies have found that 'egalitarian reform of family law is one of the most crucial pre-conditions for empowering women economically' (Htun, et al., 2019), and that gender equality benefits national and global economies, and society in general (McKinsey Global Institute, 2015).

10 Equality in the family is the foundation for equality in society

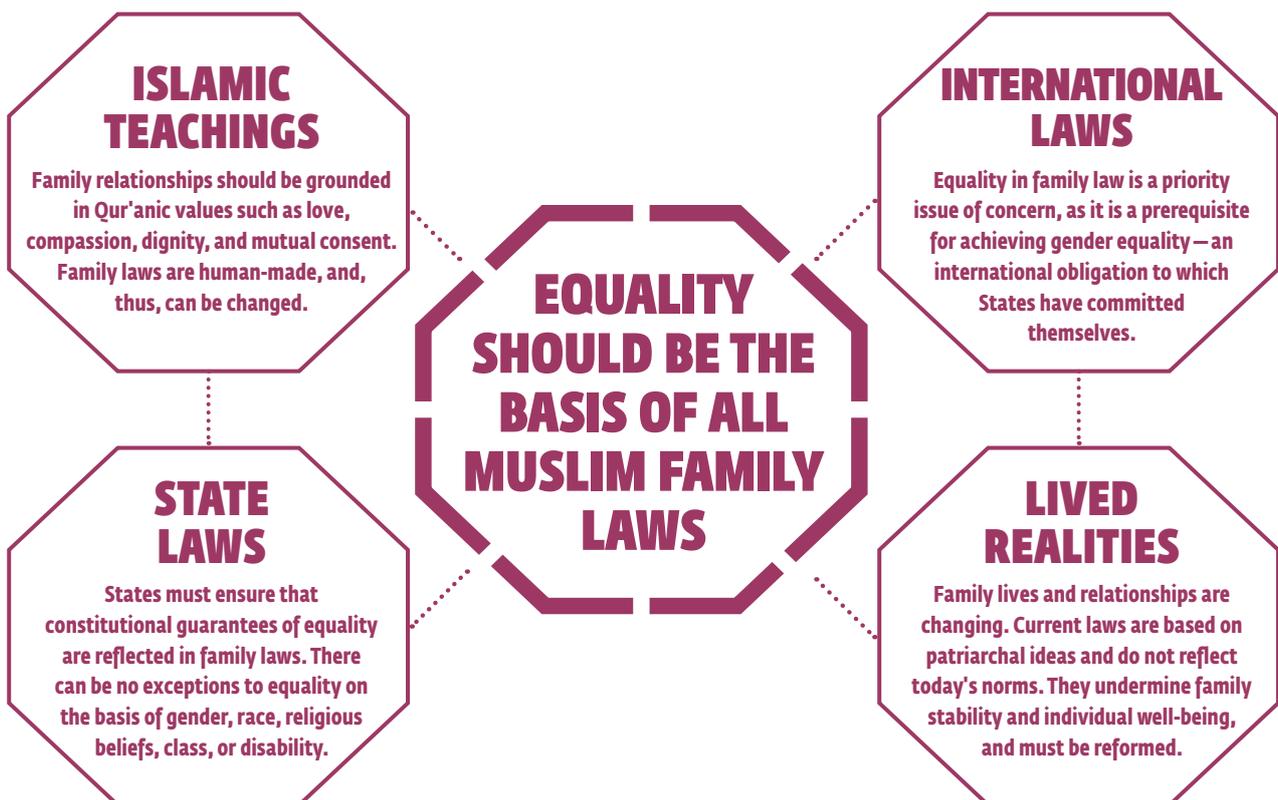
Families, in all their diversities and forms, are at the core of all societies. Families can be both a central support system and a place where individuals experience exploitation and discrimination. Egalitarian family laws foster an environment where family members support one another based on who is best able to do the task at hand, and not on gendered roles.

Musawah advocates for substantive and transformative approaches to equality: gender-sensitive laws, policies,

and programmes that correct women's social and historical disadvantages, with the goal of long-term transformation of institutions, systems, and power relations.

States, religious leaders, civil society, and community organisations must ensure that women have meaningful decision-making power; are full participants in family, society, and state; and are able to enjoy dignity, security, and respect.

Reform of Muslim family laws towards equality and justice is not only possible; it's necessary. In the 21st century, there can be no justice without equality.



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This policy brief is part of a series of briefs on key issues in Muslim family laws. These briefs are available on the Musawah website at: www.musawah.org

For general resources on Muslim family law reform and references to those resources used in this brief, visit the brief's page on the Musawah website.

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