

Muslim Family Laws and CEDAW: A Fact Sheet
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April 2015
Distributed by Sociologists for Women in Society

Muslim family laws and discrimination against women

The terms Shari'a and Islamic law are often used interchangeably, but more precisely, Islamic law is a product of human understanding of the revealed text and the prophetic tradition (Sidebar). Muslim family laws (also known as personal status laws) govern issues such as inheritance, marriage, polygyny, divorce, custody and reciprocal obligations of spouses, parents and children (Table 1). Male jurists in deeply patriarchal societies codified much of Islamic law between the 8th and 10th centuries in what is today Iraq and Saudi Arabia (Imam 2004, Ahmed

1992). These laws discriminate against women and girls living under Muslim family laws (An Na'im 1990), but the level of hardship faced by individual women and girls varies by their class position, ethnic, religious and national context (Jalal 1991). Discriminatory family laws run counter to the objective of the Convention on the Elimination of Discrimination Against Women (CEDAW), which nearly all Muslim-majority countries have ratified (UN Women 2015).

Key Terms

Sharia: the total way of life commanded by God

Islamic law: legal aspects of *Sharia*. It is based on two primary sources: the Qur'an, which Muslims believe is God's word, and the examples set by Prophet Muhammad (*sunna*) as recorded in collections containing his words and deeds (*hadith*). Secondary sources of Islamic law include consensus of judges (*ijma*) and a jurist's interpretation or reasoning to deduce a response to a new problem (*ijtihad*).

Fiqh: human (scholarly) understanding of divine law. Muslim feminists often argue that what is called Islamic law is comprised of *fiqh* as formulated by different *mazhabs*.

Mazhab: School of Islamic legal tradition. There are four Sunni *mazhabs*, and three main Shi'a ones.

Islamic norms may be more influential at the informal, and almost subconscious psychological level than they are at the official or legal level. Conversely, one should not overestimate the importance of legal codes as the underlying social and political values may frustrate declared legal principles (An-Na'im 1990). Nevertheless, family laws shape gender norms, rights and responsibilities between men and women. They distribute resources and reproduce unequal power relations. Insofar as Muslim family laws mediate women's relationship to the state, they also impinge on women's rights as citizens and their children's access to benefits (Freeman 2009).

At the root of the unequal treatment of Muslim women are the twin concepts of *qiwamah* and *wilayah*, which Muslim jurists have commonly interpreted to mean that men have authority over women. The term *qiwamah* appears, albeit in a different form, only once in the Qur'an, which says "Men are *qawwamun* [protectors/maintainers] in relation to women, according to what God has favored some over others and according to what they spend from their wealth" (Qur'an 4:34). *Wilayah* appears several times in the Qur'an, and refers either to "authority/guardianship" or "friendship and mutual support" (Mir-Hosseini 2015). Self-ascribed Muslim feminists Zainah Anwar and Ziba Mir-Hosseini (2012) argue that in the context of marriage, the term refers to mutual support and friendship – not authority.

The dominant orthodox interpretation of the terms *qiwamah* and *wilayah* animates the letter and spirit of contemporary Muslim family laws, which prescribe the husband's obligation to financially provide for his wife and the wife's corresponding duty to obey him (Welchman 2015). From this central premise follow other laws that discriminate against women. For example, laws that give daughters half of sons' share of their inheritance are often justified on grounds that men, and not women, are obligated to spend out of their wealth to provide for their families.

Diversity in Islamic law today

There is no single code that applies to the more than one billion Muslims in the world today. Variations exist among the laws in effect in Muslim societies and communities due to (a) significant theological and legal

differences between different schools or legal traditions (*mazhabs*) and (b) the fact that Islamic law has been modified by customary practices and as a matter of state policy (Imam 2004). In addition, within each legal tradition, there are differing interpretations of divine revelation. Polygyny, the prevalence of which varies by region and socio-economic status, is a good example. The Qur'an permits men to marry up to four wives, with the *proviso* that each wife be treated “justly” (Qur'an 4:3; see also 4:129). The historical context in which this permission was revealed (after a battle that left many women widowed), and whether it is possible for any man to meet the condition of treating each wife justly have long been, and continue to be, debated.

Muslim family laws have been reformed in various national contexts and vary across countries (Htun and Weldon 2011, Kandiyoti 1991). The British in India, the French in North Africa and the Dutch in Indonesia have all utilized juridical and social tensions between customary law and Islamic law, and codified both to consolidate their rule (Roff 2010, Charrad 2001).

In addition to shaping the legal landscape, European colonial rule had political consequences as well. Starting in the 19th century, many countries in the Middle East and North Africa had adopted European administrative and commercial codes. In the tug of war between different approaches to “modernization,” between nationalist reformers and their opponents, women came to be identified with an “authentic culture” (Ahmed 1992), and the family came to be seen, particularly by conservative religious scholars and jurists, as the last bastion of a dismantled Islamic legal system (Lama Abu Odeh 2004). To this day, the efforts to reform discriminatory family laws are caught up in contemporary variations of these political rifts.

Turkey is an exception in the Muslim-majority world in many ways. The country was not colonized, but the Turkish Civil Code (1926), adopted from the Swiss Civil Code, supplanted Islamic law altogether, ending men's right to unilateral divorce, expanding women's custody rights, making polygyny illegal, and instituting equal inheritance rights. Similarly, Tunisia's Code of Personal Status (1956) instituted the earliest and most far-reaching legal changes to family laws in the Arab world. As in Turkey, reforms in Tunisia came from above, not from a well-organized women's movement.

More recently, feminists, and their main ally, King Muhammad VI of Morocco, amended that country's Code of Personal Status (*Mudawwana*). The reformed Code (2004) does not end men's right to unilateral divorce (*talaq*), but makes it subject to court review. It does not abolish polygyny, but makes it subject to the first wife's permission (Charrad 2014). Moroccan reforms have been the most far-reaching reforms to Muslim family laws in the twenty-first century. Following these three countries, in terms of the expansion of women's rights within the family, are Algeria, Lebanon, Egypt, Jordan, Palestine, Kuwait, Bahrain, Syria, Libya, the UAE, Iraq, Qatar, Oman, and Iran. Yemen and Saudi Arabia lag significantly behind (Kelly and Breslin 2010: 4 cited in Charrad 2014). In many Gulf countries, Shari'a courts – separate for Shi'as and Sunnis – rule based on the individual judges' interpretation of Islamic law (Home Truths 2009).

Table 1. Some contemporary issues concerning Muslim-majority countries' compliance with CEDAW

Select Issues	Prevalence and Change
Child marriage	Many countries (e.g. Turkey, Tunisia, Algeria, Morocco, Bangladesh) have minimum marriage age requirements (16 or 18), but child marriage in these and other countries is still common. No legislated minimum age requirement in some Gulf countries (e.g. Yemen, Saudi Arabia).
Marriage and consent	Women who have reached legal majority have the right to contract their own marriage, but many delegate this right. Many countries (e.g. Saudi Arabia, United Arab Emirates, Nigeria) require the consent of the <i>wali</i> (guardian) to a woman's marriage. Islam prohibits forcing someone into a marriage. It also gives women the right to stipulate a marriage contract.
Divorce	Muslim law makes it easy for men, and difficult for women, to initiate and get divorce. There have been recent changes or proposed changes (e.g. Egypt and Jordan) for judicial <i>khul</i> , which makes it easier for women to initiate divorce without showing fault on the part of the husband.

Custody	Generally favors men. In most countries women can have custody only up to a certain age (varies by country, dominant <i>mazhab</i> , and sometimes by the sex of the child) after which time the father has automatic custody. Recent reforms in Iran and Egypt's expanded women's custody rights (to ages 7 and 15, respectively).
Inheritance	Generally favors boys and men (e.g. Iran and most Arab countries). Some families (e.g. in Iran) write wills that give daughters more than what the law would entitle them to.

Source: Musawah 2011, Home Truths 2009.

CEDAW and Muslim-majority states: ratifications and reservations

Feminist efforts to end discrimination against women have registered many successes since the 1970s including CEDAW, which the UN adopted in 1979. Ratified by 187 states, CEDAW defines discrimination against women and sets up an agenda for national action to end such discrimination (UN Women 2015). Despite the near-universal ratification of the Convention (the U.S. has also not ratified CEDAW), and despite sustained lobbying and activism by women's groups in many countries, discrimination against women is still a legal and practical reality around the world. It is a particularly unique challenge in Muslim-majority countries.

Of the fifty-seven members of the Organization of the Islamic Conference, all but Iran, Sudan and Somalia have signed and ratified CEDAW, which has been called “an international bill of rights for women” (UN Human Rights 2015). However, many Muslim-majority state parties to CEDAW entered reservations on key articles (Table 2), citing the supremacy of *Shari'a* law (UN Women 2015, Freeman 2009).

Table 2. CEDAW articles to parts or all of which many Muslim-majority states maintain reservations

Article	Purpose
Article 2	Change discriminatory laws, policies & institutions to implement the Convention
Article 9	Ensure women's right to acquire, change & retain their nationality, and transfer it to their children
Article 15	Ensure women have full legal capacity, right to freedom of movement & choice of their domicile
Article 16	Eliminate discrimination against women with respect to marriage, divorce, custody & inheritance

Source: UN Women 2015

Women's activism for legal reform and CEDAW

The primary mechanism monitoring states' compliance with the Convention is the CEDAW Committee comprising 23 experts from a variety of countries (UN Human Rights 2015). This independent body periodically reviews “progress reports” submitted by state parties as well as “shadow reports” submitted by nongovernmental organizations. Women's organizations participate in the implementation of CEDAW in two ways. First, they monitor their respective states' compliance with CEDAW, and submit “shadow reports” that highlight ongoing discrimination against women. Secondly, as women's rights activists work to reform discriminatory laws on the ground in their countries, they make reference to CEDAW and hold their governments accountable.

Many activists in Muslim-majority countries argue for gender equality within a secular discourse of human rights. Others argue within the framework of “Islamic feminism,” which advocates women's rights, gender equality and social justice within a framework that advocates the compatibility of the ethical message of Islam with human rights principles (Rinaldo 2014, Badran 2002). Islamic or Muslim feminists – both contested terms – argue that gender inequality results not from the Qur'an *per se*, but from patriarchal interpretations of Islam.

Table 3. State justifications for noncompliance with CEDAW and Muslim feminists' critique

State party justifications for non-compliance	Muslim feminists' critiques of justifications
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<i>Shari'a</i> is the principal source of law, and defines the rights and responsibilities of men and women	<i>Shari'a</i> is divine in origin. What is called “Islamic law” (and what should be called the “Islamic legal tradition”) is really <i>fiqh</i> , a product of human (until recently only men’s) engagement with the revealed text.
Cannot implement changes that are inconsistent or in conflict with <i>Shari'a</i>	Islamic law is not monolithic, unitary, fixed or unchangeable. Disagreement or diversity of opinions (<i>ikhtilaf</i>) among different <i>mazhabs</i> is widely recognized and respected in the Islamic tradition. If Islam is to be relevant for all times, Muslims must take account of the disconnect between lived realities of men and women, and what Islamic law considers “settled matters.” Classical jurists lived in vastly different social and economic contexts than the ones Muslims live in today. Human understanding of <i>Shari'a</i> is an ongoing process.
Islam emphasizes complementarity, and provides sufficient or superior justice for women	For 7 th century Arabia, Islam was revolutionary in expanding women’s rights, but classical jurists lived in deeply patriarchal societies and allowed many pre-Islamic customs to continue. Many Muslim activists today advocate rights-based interpretations of Islamic principles, but others (e.g. Ali 2003) have argued for a whole-sale engagement with Islamic law of marriage, which was, from the beginning, modeled after a contract of sale (of a woman’s sexual services to her husband).
Culture, customs and traditions, including respect for minority rights, prevent full implementation	Addressing women’s rights in contexts where cultural rights are being articulated seems to pit individual rights against collective rights. Islam is interpreted differently according to local customs, and at any one time, and in any one context, there exist multiple interpretations of religion and culture. Women’s voices, and not just the voices of authorities representing a community, should be heard in the search for a more just and compassionate society.

Synthesized from the Musawah report (2011)

The future of discriminatory family laws

In the past half a century, most Muslim-majority countries have curtailed men's right to unilateral divorce, required registration of marriages in state courts, expanded the grounds on which women may seek divorce, and restricted men's right to polygyny (Welchman 2015, Home Truths 2009). In the past three decades, in particular, women's activists have taken advantage of political opportunity structures to reform discriminatory laws in their respective national contexts (Welchman 2015, Htun and Weldon 2011). There seems to be a trend in favor of more egalitarian laws despite some movement in the other direction – notably in Iran and Pakistan in 1979, and in Indonesia in 1991 (Htun and Weldon 2011).

Egalitarian reforms are not secure in conventional politics that marginalize women and gender issues. In war-torn countries they are even less secure as the US-led “war on terror” contributes to the rise of extremist movements that are anchored in a misogynist politics of gender. There is little doubt that these movements in Afghanistan, Iraq, Syria and elsewhere will seek to reverse gender egalitarian reforms if and when in power.

RESOURCES

Women Living Under Muslim Laws <http://www.wluml.org/>
Sisters in Islam <http://www.sistersinislam.org.my/>
Musawah <http://www.musawah.org/>
Women's Learning Partnership <http://www.learningpartnership.org/>
Islamic Family Law Study. 2002. <http://aannaim.law.emory.edu/ifl/index2.html>

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