

DISCUSSION PAPER

HOW DOES CHANGE HAPPEN? SOCIAL NORMS, RELIGION AND MUSLIM FAMILY LAWS IN THE MIDDLE EAST AND NORTH AFRICA REGION

No. 46, February 2026

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ACRONYMS AND ABBREVIATIONS

CAPMAS	Egyptian Central Agency for Public Mobilization and Statistics
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
KUPI	Congress of Women Ulama in Indonesia
MENA	Middle East and North Africa
OIC	Organization of Islamic Cooperation
PSL	Personal Status Law
SDG	Sustainable Development Goals
VAW	violence against women

SUMMARY

This discussion paper examines how gender norms embedded in Muslim family laws and practices across the Middle East and North Africa (MENA) region are shaped, reinforced and contested through the interplay of religion, law, state institutions and lived social realities. Drawing on Musawah's contemporary global work for equality and justice in the Muslim family, alongside a historical case study of legal reform in Egypt, the paper analyses how feminist actors have engaged with public religious-legal discourse to challenge discriminatory norms and reconfigure gender relations within Muslim family law systems.

The paper situates gender norms within a multi-layered institutional framework, arguing that efforts to transform discriminatory norms must address the structural nexus of religion, family, law and state power. It makes a distinction between divine sharia and human jurisprudence (*fiqh*), underscoring that many contemporary inequities in Muslim family laws stem from patriarchal interpretations rather than immutable religious mandates. Through a critical examination of key concepts such as *qiwama* and the "maintenance for obedience" framework, the analysis shows how gender hierarchies have been institutionalized in legal codes, social norms and political structures, while also demonstrating how such hierarchies can and have been challenged.

The examination of the amendment to the *khul'* divorce law in Egypt (Law 1/2000), unpacks how inequitable laws were reformed through feminist engagement with the state-religion nexus and how, arguably, the amended law reshaped norms governing spousal relationships. The amendment enabled women to initiate a no-fault dissolution of marriage without proof of harm, marking an important shift from the exclusive unilateral authority previously held by husbands. This reform opened new spaces

for women to negotiate their rights within the judicial system as well as to navigate, negotiate and bargain within their families to demand better treatment. The paper shows that such reforms – when supported by strong advocacy and responsive institutional actors – can enhance women's capacity to exit harmful marriages, improve their bargaining power within families and courts and contribute to gradual shifts in social norms governing gender relations.

Drawing on evidence from Egypt and other contexts, the paper identifies key steps that have enabled meaningful change. These include producing credible, context-specific feminist knowledge rooted in Islamic sources; democratizing religious interpretation by including women's voices in knowledge production; engaging adequately with the existent power terrain; building broad coalitions of activists, legal practitioners, scholars and civil society; engaging strategically with political institutions and identifying moments of opportunity for reform; and combining legal, social and discursive strategies to shift both formal laws and underlying norms. The paper concludes with reflections on the conditions and pathways necessary for advancing gender justice in Muslim family laws, offering recommendations relevant not only to Muslim-majority contexts but also to settings where religion – both visibly and invisibly – plays a central institutional role in shaping gender norms and relations.

RÉSUMÉ

Ce document de réflexion analyse la façon dont les normes de genre inscrites dans les lois et pratiques musulmanes relatives à la famille en vigueur dans la région du Moyen-Orient et de l'Afrique du Nord sont façonnées, renforcées et contestées dans le cadre des interactions entre religion, droit, institutions publiques et réalités sociales. Partant des travaux contemporains de Musawah pour l'égalité et la justice dans la famille musulmane et d'une étude de cas historique de la réforme juridique en Égypte, il étudie la prise de position des féministes dans le débat public sur les questions religieuses et juridiques pour remettre en question les normes discriminatoires et repenser les relations de genre au sein des systèmes de droit de la famille musulmane.

Le document situe les normes de genre dans un cadre institutionnel multidimensionnel, et avance que les actions visant à transformer les normes discriminatoires doivent s'attaquer au lien structurel entre religion, famille, droit et pouvoir étatique. Il distingue la charia divine de la jurisprudence humaine (*fiqh*, en anglais) et montre que de nombreuses iniquités contemporaines comprises dans le droit familial musulman découlent davantage d'interprétations patriarcales que de mandats religieux immuables. Par l'examen critique de certains concepts clés comme la tutelle (*qiwama*, en anglais) et le cadre « entretien contre obéissance », il montre comment les codes juridiques, les normes sociales et les structures politiques ont institutionnalisé les hiérarchies de genre, tout en prouvant que ces dernières peuvent être remises en cause et l'ont été par le passé.

L'étude de l'amendement apporté au droit du divorce *khoul'* (*khul'*, en anglais) en Égypte (loi 1/2000) révèle comment certaines lois inéquitables ont été réformées grâce à la mobilisation féministe auprès du lien État-religion et comment la réforme a refaçonné les normes régissant les relations conjugales. Cette dernière a permis aux femmes d'engager une dissolution

du mariage sans faute et sans preuve de préjudice, marquant un tournant important par rapport à l'autorité unilatérale exclusive dont jouissaient auparavant les maris. La réforme a ouvert de nouveaux espaces permettant aux femmes de défendre leurs droits au sein du système judiciaire ainsi que de négocier et débattre au sein de leurs familles pour exiger d'être mieux traitées. Le document montre que, lorsqu'elles sont appuyées par un plaidoyer solide et par des acteurs institutionnels réactifs, ces réformes peuvent améliorer la capacité des femmes à sortir de mariages préjudiciables, renforcer leur pouvoir de négociation auprès de leur famille et des juridictions et contribuer à une transformation progressive des normes sociales régissant les relations de genre.

En s'appuyant sur des données issues de l'Égypte et d'autres contextes, le document présente les principales étapes qui ont ouvert la voie à un changement significatif : production de connaissances féministes crédibles et spécifiques au contexte ancrées dans des sources islamiques ; démocratisation de l'interprétation religieuse par l'inclusion des femmes dans la production de connaissances ; mobilisation adéquate auprès des pouvoirs sur le terrain ; construction de coalitions générales d'activistes, de juristes, d'universitaires et de la société civile ; mobilisation stratégique auprès des institutions politiques et identification des moments propices à la réforme ; combinaison de stratégies juridiques, sociales et discursives pour modifier à la fois les lois formelles et les normes sous-jacentes. Le document se termine par des réflexions sur les conditions et trajectoires nécessaires pour faire avancer la justice de genre dans le droit familial musulman, et offre des recommandations pertinentes non seulement pour les contextes à majorité musulmane mais aussi pour les contextes où la religion joue, de manière visible ou invisible, un rôle institutionnel central dans le façonnement des normes et relations de genre.

RESUMEN

Este documento de debate analiza el modo en que las normas de género inscritas en las leyes y prácticas familiares musulmanas en vigor en toda la región de Oriente Medio y Norte de África se conforman, refuerzan y cuestionan en el marco de la interacción entre la religión, el derecho, las instituciones públicas y las realidades sociales. Basándose en la labor que Musawah viene desempeñando a nivel mundial en favor de la igualdad y la justicia en la familia musulmana, así como en un estudio de caso histórico sobre la reforma jurídica en Egipto, se analiza la participación feminista en el discurso público religioso-jurídico para cuestionar las normas discriminatorias y replantear las relaciones de género en los sistemas islámicos de derecho de familia.

El documento sitúa las normas de género en un marco institucional estratificado y sostiene que los esfuerzos para transformar las normas discriminatorias deben atender al nexo estructural entre religión, familia, derecho y poder del Estado. Distingue entre la sharía, de carácter divino, y la jurisprudencia humana (*fiqh*, en inglés), subrayando que numerosas desigualdades contemporáneas en el derecho familiar islámico tienen su origen en interpretaciones patriarcales, no en mandatos religiosos inmutables. Mediante un examen crítico de conceptos clave como la tutela (*qiwama*, en inglés) y el marco de “mantención por obediencia”, se explica cómo las jerarquías de género se han institucionalizado en los códigos jurídicos, las normas sociales y las estructuras políticas, y también que tales jerarquías pueden cuestionarse y, de hecho, así se ha hecho en el pasado.

El análisis de la modificación de la ley de divorcio jul (*khul'*, en inglés) en Egipto (Ley 1/2000) aclara cómo se reformaron leyes injustas gracias a la intervención feminista en el nexo entre Estado y religión y por qué cabe afirmar que la nueva ley reconfiguró las normas que rigen las relaciones conyugales. La reforma

posibilitó que las mujeres iniciaran la disolución del matrimonio sin culpa y sin prueba de perjuicio, lo que marcó un antes y un después respecto a la autoridad unilateral exclusiva que correspondía a los varones hasta entonces. Asimismo, abrió nuevos espacios para que las mujeres defendieran sus derechos en el sistema judicial y hablaran y negociaran con sus familias para exigir un trato mejor. El documento muestra que tales reformas, si están respaldadas por una labor de promoción decidida y actores institucionales receptivos, pueden potenciar la capacidad de las mujeres para poner fin a matrimonios nocivos, reforzar su poder de negociación en las familias y los tribunales y propiciar cambios graduales en las normas sociales que rigen las relaciones de género.

A partir de los datos de Egipto y otros contextos, el documento presenta las etapas principales que han hecho posible una transformación significativa, entre ellas la producción de conocimiento feminista fiable adaptado al contexto y fundamentado en fuentes islámicas; la democratización de la interpretación religiosa al incorporar a las mujeres en la producción de conocimiento; la movilización adecuada ante las esferas de poder; la formación de coaliciones amplias de activistas, sociedad civil y profesionales del derecho y el ámbito académico; la interacción estratégica con instituciones políticas y la identificación de momentos oportunos para la reforma; y la combinación de estrategias jurídicas, sociales y discursivas para modificar tanto la legislación como las normas subyacentes. Para concluir, se reflexiona sobre las condiciones y vías necesarias para promover la justicia de género en el derecho de familia islámico y se formulan recomendaciones pertinentes no solo para los contextos de mayoría musulmana, sino también para aquellos en los que la religión, de forma visible e invisible, desempeña un papel institucional decisivo en la configuración de las normas y relaciones de género.

INTRODUCTION

This paper discusses how gender norms governing the family in the Middle East and North Africa (MENA) region have been contested and challenged through feminist activist engagement with public legal religious discourse.¹ It draws mainly from two cases: the recent work of Musawah, the global movement for equality and justice in the Muslim family; and the local work of a group of Egyptian advocates in the 1990s. The paper demonstrates that a multi-layered institutional approach, through serious constructive engagement with religion, law, family and the state, is necessary for change. It is an approach that democratizes the production of religious knowledge on gender through a feminist lens, involving astute activist and political engagement through the collaborative work of movements and coalitions led by civil society that can lead to important changes in laws and, arguably, norms on gender.

In the first section, I discuss the context of the MENA region as it pertains to religion, family, law and gender norms. In the second, I briefly present a general conceptual framework of law and norm change, then move to a more specific framework that is relevant to Muslim contexts, with examples of its application from select Muslim countries around the world. The third section presents and analyses a case study from Egypt to show how this framework was applied in the 1990s to successfully reform religious divorce practices in Law 1/2000,² which affected gender norms and practices on divorce in the country. The paper concludes with

reflections on what we can learn about change in gender laws and norms and offers some recommendations for moving forward towards gender equality and justice. Even though the focus of this paper is on the Islamic faith, these general conclusions and recommendations can be relevant to other contexts where different faith traditions play an institutional role in the public and private spheres, affecting gender norms, laws and relations.

Since the paper will focus on religion in general and Islam in particular, I am mindful that it can potentially be misused to fuel Islamophobia and racism against Muslims and brown people. So, a few disclaimers need to be made first. As I wrote elsewhere,³ and agreeing with Elsadda,⁴ I believe that any potential exploitation of this kind of work should not censor us from critically engaging with important and real questions facing our societies today, especially, as Kandiyoti highlights, when we attempt to find answers from within our own local resources, which include religion.⁵ We should refuse being forced to ‘choose’ between local religious heritage and feminist consciousness, what Leila Ahmed called ‘betrayal or betrayal’.⁶ Women – and anyone, for that matter – can be both feminist and a believer in a faith. Being forced to choose between feminism and faith today would only benefit racism, Islamophobia and/or patriarchy that is using religion for its own purposes. Like some other religious-based family laws around the world, Muslim family laws are important sites

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1. I will be using the term ‘gender norms’ in this paper when speaking of both ‘social’ and ‘legal’ norms on gender.
 2. Government of Egypt 2000.
 3. Sharafeldin 2020.
 4. Elsadda 2018.
 5. Kandiyoti 2015.
 6. Ahmed 1984, p. 122.

for the collusion between patriarchy, political authoritarianism and religious absolutism.⁷ These end up inflicting violence, primarily against women, so it is not simply religion or race or geographical location that does so. There is no place on earth today that is free of patriarchy, including countries of the Global North where it continues to find different locations and forms to manifest.⁸ So instead of succumbing to xenophobia and othering each other, a much better way forward would entail solidarity between all against patriarchy, for equality and justice for everyone.⁹

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7. Comparative studies show that state-enforced religious-based family laws from the Christian, Jewish and Hindu faiths have also been found to discriminate against women and vulnerable groups (Sezgin 2013, 57–8). Other studies show that violations against both human and women’s rights can and have occurred due to both secular and religious family law frameworks (Peters and Wolper 1995, quoted in *ibid.*, p. 54).
 8. Based on recent reports by the United Nations on the Sustainable Development Goals, CNN reported that “No country in the world is on track to achieve gender equality by 2030, according to the inaugural SDG Gender Index, which measures the state of gender equality against a set of global targets. Even among the index’s top performers, which are dominated by Nordic nations, not one is set to meet the gender targets in 14 of the 17 United Nation’s Sustainable Development Goals (SDGs)” (John 2019). See also Whiting 2022.
 9. Abu-Lughod 2022.

1. CONTEXT

1.1. RELIGION, FAMILY, LAW AND SOCIAL NORMS ON GENDER

Religion and gender norms in the MENA region

In spite of the heterogeneity of this extensive region – which contains significantly divergent populations culturally, religiously and economically – when we talk about social norms affecting women in most MENA contexts today, we inevitably have to talk about religion.¹⁰ Social norms find root in religion along with culture and tradition; they also mirror and reproduce existing power relations and hierarchies within society.¹¹ The issue of power is very relevant to our discussion because religion is a particularly ‘powerful’ factor shaping gender-related norms and laws in many countries of the MENA region, as will be explained below. Yet precisely because of this power – which is often used in fierce political contestations over political and economic gains by various institutions and groups – engaging with it is often avoided. Even though religion is a diverse and dynamic structure that can contain various gender discourses,¹² yet as Zainah Anwar, prominent Muslim feminist activist and co-founder of Musawah, states: ‘[v]ery often Muslim women who demand justice and want to change discriminatory law and practices are told “this is God’s law” and therefore not open to negotiation and change’.¹³

Moustafa explains that many lay Muslims regard Islamic law as uniform and unchanging, believing that it is the state’s responsibility to implement it as ‘neglecting such a duty constitutes a rejection of God’s will’.¹⁴ Those who venture to question religion or its manifestation in laws and norms often get derided and accused of fighting Islam and tradition,¹⁵ which can result in serious consequences (alluded to below). This has led many feminists around the Muslim world to side-step religion, seeing it as part of the problem.

To make the situation even more complex, in many Muslim post-colonial contexts ‘women’s rights’ and ‘gender equality’ came to be synonymous with neo-colonialist attempts to attack Muslim and Middle Eastern societies.¹⁶ ‘Religion’, especially the patriarchal interpretation of it, was often perceived as a marker of identity and resistance against colonization, not to be questioned or criticized. In such a charged context, engaging with religion was seen to complicate an already difficult conversation on gender issues because of legitimate fears of fierce backlash from the state and society.

Against this backdrop, in many Arab and Muslim contexts we find a strong relationship between religion and politics on the one hand and laws and norms governing gender and family relations on the other. Bernard-Maugiron states,

10. ‘Social’ norms are used in this paper as ‘the informal rules that govern behaviour in groups and societies’ (Stanford Encyclopaedia of Philosophy 2023).

11. Wazir 2022, p. 4.

12. This is further explained in the section entitled ‘Religion and gender relations today: Sharia, fiqh and law’.

13. Anwar 2008, p. 1.

14. Moustafa 2013, p. 169.

15. Ibid.

16. See Tucker 1993, p. xi; Al-Ali 2000, pp. 208–209; Shaheed 2005, pp. 238–239; Moghadam 1994, p. 22; Mir-Hosseini 2003, pp. 14–19; Hallaq 2004, p. 43.

'[f]amily law in the Arab world is characterized by such political and religious symbolism that the reference to religion has become a means of participation in public debate that cannot be ignored. No actor questions its predominance anymore and even feminist organizations have finally come round to this discursive framework dominated by the quest of the "true meaning" of religious sources in personal status matters.'¹⁷

Amid the diversity of feminist activity in the MENA region,¹⁸ many feminists have had to contend with religious discourse in one way or another. This is understandable in light of Kandiyoti's description of 'the privileged place of women and family in discourses about cultural authenticity',¹⁹ which Welchman explains as involving the conflation between the 'cultural' and 'national' with a specific version of the 'Islamic'.²⁰ Therefore, it has not been uncommon for secular feminists in MENA to engage with religion as a tactical step in bringing about

some change in gender relations because they recognize its importance in gender debates.²¹ Others, however, have happily engaged with religion, seeing in it a local, culturally appropriate and effective faith-based framework that they themselves believe in. They find that it provides adequate protections for equal and just gender rights, often in better ways than international universalist ones, given the local socio-political context.²²

This importance of religion applies not only in Muslim contexts but in many other places around the world. Data indicate that, overall, 83.7 per cent of the global population identifies with a religious group.²³ In terms of Muslim communities, various surveys indicate that a sizeable number – which include women, of course – find religion to be an important and much desired aspect of their lives.²⁴ This importance translates into power when it extends to the public sphere, and the constitutions of many post-colonial Arab and other Muslim-majority countries proclaim Islam to be the official

17. Bernard-Maugiron 2011.

18. Feminist struggles for gender equality and justice in the region have taken different avenues vis-à-vis religion to address the diversity of these contexts. Some feminists have preferred to situate their struggle within a secular framework that clearly calls for the separation of religion from the state, especially on aspects related to women and their rights (see, for example, Al-Ali 2000). Others have chosen to engage with religion, given its permeation through the legal and social frameworks in many of these contexts. Some activists who engaged with religion were religious believers privately and had no problem with it in the public sphere; some were religious in their personal lives but aligned themselves with a secular politics in their public work, seeing these as two separate spheres; others chose to engage with religion as a pragmatic pathway despite their own personal critique of religious frameworks in their private lives (see Sharafeldin 2013).

19. Kandiyoti 1991, p. 7.

20. Welchman 2007, p. 38.

21. See Sharafeldin 2013 for examples of Egyptian secular feminists engaging with religion for Personal Status Law reform. For the same by Moroccan secular feminists who worked towards the reform of the Moroccan family law in 2004 (Government of Morocco 2004) and of Muslim inheritance laws, see Eddouada and Pepicelli 2010; Salime 2009; Naciri 2007.

22. Al-Ali problematizes binary classifications that divide feminists, stating that this strict separation between the 'modern, secular and westernizing voice' on the one hand and the 'conservative, anti-western and Islamic voice' on the other obscures the overlappings, contradictions and complexities of the discourses and activism that took place against a background of anti-colonial and anti-imperialist struggle (2000: 58-9).

23. In a more recent study, and despite decreasing numbers of people identifying with a religion in both the United States of America and Western Europe, projections for the future nevertheless 'anticipate that the vast majority of the world's people will continue to identify with a religion' (Pew Research Center 2022).

24. For specific percentages per country, see Pew Research Center 2013. The Arab Barometer also found that data from their recent surveys in 2021-2022 show 'that religion continues to play a key role in the lives of most people across the MENA region and likely will continue to do so for the foreseeable future' (Arab Barometer 2023). In addition, the World Values Survey found that, contrary to the rising wave of secularization witnessed in parts of the world in recent years, 'The populations of the 18 Muslim-majority countries for which data are available [...] have stayed far below the tipping point, remaining strongly religious and committed to preserving traditional norms concerning gender and fertility' (Inglehart 2020, 116).

state religion, often taking sharia as a primary source of legislation.²⁵ This entails that state laws and policies have to be in compliance with Islamic law, thus officially institutionalizing religion in the country's legal framework. Beside inscribing it into the constitution as a source of law, other forms of its institutionalization include giving religious organizations quasi-governmental status and including them in legislative processes, having government ministries tasked with handling religious affairs and state-funded public religious schools and universities and having publicly owned religious radio stations, among others.

This structural institutionalization of religion is not always a reflection of the piety of political regimes and groups in MENA; it is sometimes the result of competition between political opponents over popularity and power and also serves as a strong tool for legitimation and social control by powerful elites.²⁶ The end result for our discussion here is that religion permeates the fabric of many MENA countries socially and legally, and it needs to be adequately addressed as part of a multi-layered analysis informing interventions aiming for social norm change.

So how can we address religion then? Where can we find it, and where is it affecting gender norms and laws in the region most? Religious knowledge, discourses and interpretations of scripture are essentially 'ideas' created by humans to understand what is believed to be the divine message. This knowledge needs to occupy specific institutional

locations in society to transform from mere abstract ideas and gain form and potency in real life. It is therefore important to engage with religion in these very locations of structural power where it becomes institutionalized, consistently affecting gender relations and women's day-to-day life. In this regard, nowhere is religion more apparent than in the norms and laws governing the family.

Religion and gendered family laws and social norms

The MENA region contains mostly Muslim-majority countries that have adopted religious-based family laws to govern their diverse multi-faith populations.²⁷ For Muslims, regional family laws also reflect the diversity present within Islam, such as Sunni and Shia schools of thought, gender-sensitive and patriarchal Qur'anic interpretations, egalitarian and discriminatory discourses and classical and contemporary Islamic jurisprudence, among others.²⁸ These Muslim family laws also sometimes draw from custom, colonial laws, science and secular foundations.²⁹ Despite this diversity of legal sources, the religious one clearly predominates, and the gender assumptions and philosophy of classical Islamic jurisprudence pervade most of these Muslim family laws and norms. The laws' power and reach are not only restricted to the private family sphere, governing relations between family members, but also extend to the public sphere, affecting women's status as full citizens of their nation States. This affects their

25. Sharia is often conflated with Islamic law, but it is much broader than that. According to Khaled Abou El Fadl, it is 'the way or path to well-being or goodness [...] In essence, Shari'ah is the ideal law in an objective and noncontingent sense, as it ought to be in the divine's realm. As such, Shari'ah is often used to refer to the universal, innate, and natural laws of goodness' (2014, p. xxxii). I discuss the meaning of sharia in a more detailed way in section 2.

26. Kandiyoti 1991 and 2009.

27. Even though Muslims constitute the majority, the region also contains a diversity of other religious faiths, including Christianity, Judaism, Yazidism and Zoroastrianism. Historically, since Ottoman times, non-Muslims were governed through the Millet 'religious community' system through which religious minority communities were allowed to manage their affairs while being overseen by the Ottoman administration (Aviv 2016). Remnants of this system remain where each community is governed by its own set of personal status laws (van den Boogert 2012). For more on the historical and contemporary context of religious diversity in MENA, see Weiz 2015.

28. See Musawah undated-a for the Islamic sources and influence on these different MENA countries' Muslim family laws.

29. Sonbol 2010, p. 349.

ability to work, travel, move freely, assume public office, conduct legal and financial transactions and enjoy other rights equally with men.

So, as in other contexts, in Muslim contexts we cannot speak about gender-related social norms in a vacuum. It is inevitable that we talk not only about the institution of religion but also about the institutions of family and law.³⁰ These are the sites where a patriarchal – as opposed to an egalitarian – religious discourse is located and has the power to affect women in a consistent structural and systematic way.

The importance of the family comes as no surprise since we know that, globally, the family deeply affects and shapes women's lives. Just as families can be places of nurturance and growth, they can also be places of violence and threat.³¹ The family plays such a pivotal role in shaping women's lives that 'failure to ensure the equality of women and girls within the family undermines any attempt to ensure their equality in *all* areas of society' [emphasis mine].³²

In this section, I will focus mainly on family laws as formalized norms governing women's lives. I am cognizant of the dialectic relationship between laws and social norms where they both affect each other, despite problems related to the

implementation of laws in lived reality. I focus here on laws also because they are some of the most concrete manifestations of how gender relations are shaped and regulated in any given context using the powerful arms of state institutions such as educational systems, police, judiciary, state media, state-funded mosques and churches and so on.³³ We find these regulations written in tangible legal code to be implemented by the state and, in that sense, laws can be seen and discussed concretely. Even in contexts with rule of law deficits and weak legal implementation, laws still symbolically signify which kinds of behaviours are acceptable (or not).³⁴

Looking more closely at Muslim family laws in the MENA region, we find that no two laws are identical even though they purport to originate from the same Islamic sharia. We also find that most of these laws have gone through varying levels of change and reform throughout their lives. This signifies that different interpretations of Islamic scripture created by humans underlie these laws and norms, stripping them from any perceived divinity or assumed fixity.³⁵ We also find a general underlying worldview on gender relations that is rooted in a patriarchal rather than an egalitarian 'human' reading of sacred Islamic religious texts.

30. In this paper I understand institutions to be a set of organized and interconnected beliefs and norms that are systematically arranged to serve certain social needs in society. I will be using North's definition of institutions, as quoted by Kabeer and Subrahmanian: 'a framework of rules for achieving certain social or economic goals; organizations refer to the specific structural forms that institutions take (North 1990)' (1996, p. 25). According to North, institutions help us deal with the unpredictability of human interaction, in the form of controls that bound this interaction. They can be broadly defined as 'the formal and informal rules that organise social, political and economic relations' (Joshi and Carter 2015, p. 4).

31. UN Women 2019.

32. UN HRC 2018, p. 7.

33. The strong link between law, religion and gender norms in the MENA region clearly shows that religious precepts are not merely relegated to the informal realm but, as a result of this intertwining between religion and state institutions, are officially formalized in concrete laws to be implemented by powerful actors affecting day-to-day lives.

34. Htun and Jensenius 2022, p. 2. It is important to note that laws alone are not enough to change social norms, as in some contexts they may even 'provoke resistance or simply be unenforced' (Bedford and Brosio 2024, p. 38). One way to mitigate this is through an integrated approach that reforms the different inter-connected parts of any given legal system, not just individual laws. Bedford and Brosio also refer to studies showing how a 'bundle' of both legal and non-legal interventions, such as 'feminist activism and supportive media coverage raising awareness of domestic violence as a rights violation', is necessary to bring about social norm change (*ibid.*, pp. 38–39).

35. For more on the significant differences in the interpretation and application of Muslim family laws between countries (Arab and non-Arab) and regions (MENA, South Asia, South East Asia and Sub-Saharan Africa), see Musawah undated-a; Sezgin 2013, 2023.

It is important at the outset to make the distinction between the text and the 'reading' of the text, which is an agreed-upon distinction throughout the history of scholarly Islamic jurisprudence.³⁶ There is a big difference between that which is considered of 'divine' origin and that which is a 'human' interpretation. Islamic jurisprudence considers Islamic source texts, such as the Qur'an, to be sacred and of divine origin, hence untouchable and unchangeable. However, any 'human reading' of these texts, whether patriarchal or egalitarian, cannot be considered similarly divine but is rather a human creation and can therefore be questioned, challenged and reformed. This is significant because – capitalizing on the power religion has over hearts and minds in much of the Muslim world – some modern proponents of the patriarchal reading informing most Muslim family laws today claim that it signifies 'God's law' and is therefore to be considered divine, unchangeable and sacred. By doing so, they preclude any efforts towards change and reform of Muslim family laws and norms, as these efforts are said to be a blasphemous and dangerous sacrilege. That is why in contexts where religion is important socially, legally and politically, it is fundamental at the forefront of any discussion to make this distinction between what is seen as divine and sacred on the one hand and what is human and fallible on the other. Therefore, in the following sections, whenever I talk about religious-based state laws, norms or jurisprudence created by humans, I remind the reader that these are 'man-made', 'human' or 'humanly constructed' and are not sacred but rather

human, fallible and changeable. Doing this with clarity will help us investigate how the institutions of religion, law and family – where a patriarchal reading of sacred texts is often located and perpetuating discrimination – are also the same sites where change towards gender equality and justice can and indeed have happened in some Muslim contexts.

Looking at Muslim family laws today, we find them to be mostly premised on a man-made juristic equation that is not as sacred and divine as is often claimed. It is an equation that was created by classical jurists over the centuries, according to which a man is obliged to provide financial maintenance for a woman in return for her obedience.³⁷ If a woman does not comply, she is punished by depriving her of her right to financial maintenance by law. This patriarchal juristic reading of Islam's sacred texts is still alive and kicking in the majority of contemporary Muslim family laws and practices, legitimating male guardianship and authority over women.³⁸ Whether this was the intent of the sacred texts or not will be discussed below, but for now this equation with its hierarchical view of gender relations remains the lynchpin on which most Muslim family laws, norms and gender relations are premised.³⁹

We also find that this equation, with its gender hierarchies and assumptions, is not only limited to family laws but seeps into other laws as well. For example, the criminal/penal laws of some MENA countries give the male guardian the right to 'discipline' the woman, also known as punishing, striking or lightly beating.⁴⁰ According to the Penal Code

36. Hallaq 2004, 2005.

37. For more on the concept of obedience in Muslim family law, see the section entitled 'Religion and gender relations today: Sharia, fiqh and law'.

38. For the laws referred to in this section, see Musawah undated-a for 31 Muslim majority and minority countries and UNDP et al. 2019b. For real life-stories of women recounting their own experiences with the different provisions of these laws, see Musawah 2016b.

39. For more on this, see Mir-Hosseini et al. 2015; Anwar and Mir-Hosseini 2012.

40. This is based on a particular reading of the Qur'anic verse 4:34, which was mostly interpreted to allow males to physically discipline women. 'Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand' (Sahih International Translation at Quranic Arabic Corpus 2017). See section 2 for more on this and the concept of *qiwama*.

of Iraq (Law 111 of 1969, article 41), for instance, “There is no crime if the act is [...] the punishment of a wife by her husband”.⁴¹ On the other hand, the Penal Code of Libya in article 375 extends the right to discipline beyond the wife to include other females in the family. It reduces punishment of a man who strikes or kills his wife, daughter or sister if they are found committing unlawful sexual intercourse.⁴² As such, this juristic humanly constructed – as opposed to divinely ordained – equation becomes a means by which different sorts of violence against women are legitimated and condoned in various laws.

Also, many of these family laws restrict women’s right to divorce in comparison to men, effectively locking women into what may be an abusive relationship because it is much more difficult for them to leave procedurally (and often financially). Whereas a husband can simply utter the words ‘I divorce you’ verbally anywhere for the divorce to take effect, whether the wife is present or not, a wife does not have a corresponding right to divorce herself unilaterally without reason using her autonomous will. She needs to go to court and has a limited set of reasons by law to ask for divorce. She carries the burden of proof to show her reason(s), and only a judge has the power to divorce her from the husband.⁴³

Another important and related issue is that of child marriage, which is still condoned in several countries in the MENA region, whether in the law or in social

practice. For example, the law in Yemen has no set age for marriage, while in Bahrain, Iran, Qatar and the Syrian Arab Republic the legal age is under 18.⁴⁴ Paradoxically, countries like Bahrain, for example, have parallel laws in place that are supposed to combat violence against women and girls while condoning child marriage in their family laws at the same time.

Perhaps one of the most blatant manifestations and effects of this man-made juristic equation is that to date none of these laws in the MENA region criminalize marital rape. Because ‘obedience’ under the marriage contract is largely defined in classical jurisprudence as providing unhampered sexual access to the wife’s body by the husband,⁴⁵ the words ‘marital rape’ become an oxymoron. Modern lawmakers chose to use this patriarchal hierarchical conception of marital relations, rather than a more gender-just one that better manifests Qur’anic ethics and values governing marriage⁴⁶ and could have justified prohibiting marital rape in contemporary Muslim family laws.⁴⁷

In this context, social norms interventions that aim to educate women and men on the ‘wrongs’ of intimate partner violence and marital rape may not work, since this behaviour is ‘believed’ to be sanctioned by religion. That is why serious religious engagement must take place if real change is to happen. This includes co-creating knowledge and highlighting

41. Government of Iraq 1969.

42. Government of Libya 1956.

43. See the divorce section in Musawah undated-a.

44. UNDP et al. 2019a.

45. Mir-Hosseini 2003.

46. These values found throughout the Qur’an – especially chapters 30:21, 4:1 and others – include peace, mercy, compassion, equality, justice, fairness and beauty, among others. For more on the Qur’anic ethical worldview as it pertains to marital relations, see Mir-Hosseini et. al. 2022.

47. In countries where the Penal Code contains articles criminalizing rape, without mention or exception of marital rape per se, judges can sometimes have discretion to apply these articles to cases of marital rape that come to their courts. For example, in early 2019 a court of first instance in Moroccan Tangiers sentenced a husband to two years imprisonment on the basis of ‘domestic violence’, not the wife’s claim of ‘marital rape’. However, when the case went to the Tangiers Court of Appeals, the court in a landmark judgement recognized the existence of marital rape, basing its judgement on evidence as well as articles 486 and 488 of the Penal Code, which criminalize rape for all women, stating that these articles do not explicitly exclude married women. The Court explained that ‘the conjugal bond is not a pretext for rape [...] the conjugal bond must ensure the protection of the wife and must not be used as a pretext to conduct sexual intercourse in a way to which she has not consented’ (Al-Mufakirah Al-Qanuniyyah 2019).

the presence of another religious discourse that unequivocally condemns this kind of domestic and sexual violence as well as lobbying for reflecting it in laws, norms and court judgements by institutions of power. In the sections below, I show an example of this gender-sensitive religious discourse, where the Congress of Women Religious Scholars in Indonesia (KUPI) issued a fatwa prohibiting marital rape using religious argumentation, which was later reflected in the Law on Elimination of Sexual Violence in Indonesia in 2022.

Additionally on the matter of rape, this time outside the marital relationship, several countries in the region – e.g., Algeria, Bahrain, Iraq and Kuwait – exonerate a rapist from punishment if he marries the rape survivor,⁴⁸ which is an attempt to protect her perceived honour and that of her family.⁴⁹ It is worth noting that, in some countries, this particular provision came with French colonialism that brought the Napoleonic code into their legal systems.⁵⁰

The maintenance for obedience equation also affects women's lives and rights outside the home. It often entails the necessity of a male guardian's permission for a woman to move out of the house, work, get an education, travel, access medical care, conduct contractual agreements, have guardianship over children in her custody and generally make autonomous decisions for herself and her children.⁵¹ This leaves us with a paradoxical situation where the constitution may give a woman the equal right to public office, but family-related laws, decrees and

norms necessitate securing her husband's permission for her to travel to meetings related to work or even to take up the job in the first place.⁵² In this case, such laws contradict and undermine the constitutional rights of female citizens. Therefore, simply bringing in new laws related to the public sphere that give women the right to work, freedom of movement, public office and other rights can be easily neutralized if changes in family laws and norms related to the private sphere do not take place.

This comes as no surprise for, as Kabeer and Subrahmanian state,

'the processes by which gender inequalities are socially constructed are not confined purely to household and family relationships, but are reproduced across a range of institutions, including many of the policy making agencies whose avowed objectives are to address the different forms of exclusion and inequality within their societies.'⁵³

The contradiction between the constitutional right to equality and the provisions of Muslim family laws and norms exists because gender hierarchy and inequality are embedded within institutions that have the power to further reproduce inequality. Such institutions include religion, law and family as well as other institutions functioning within the state.

If we are to decipher a way forward towards more justice and equality in gender relations in the MENA context, it is important to do so by addressing this

48. Classical Sunni Islamic jurisprudence mostly classified the issue of rape as 'illicit intercourse by coercion' (*al-zin'a bi'l-ikrah*), which made it very difficult to prove procedurally due to stringent requirements that include 'the testimony of four upright male eyewitnesses to the act of intercourse, and their testimony must agree in all aspects, such as the time and place of the offence' (Lowe 2022, p. 4). In an attempt to deter slander (*qadhif*) by unsubstantiated accusations of sexual violence, severe punishments to both victims and witnesses may result if they report the crime without adhering to these requirements. This has resulted in deterring victims and their families from reporting or testifying to a rape (*ibid.*, pp. 4–6). In communities where sexual chastity and family honour are deeply intertwined, this situation posed a serious problem that needed to be addressed, sometimes through marriage.

49. Begum 2017. It is worthy of note that recently several MENA countries have abolished this provision from their legal frameworks: Morocco (2014), Lebanon (2017), Tunisia (2017) and Jordan (2017).

50. Mesbahi 2018, p. 52. See Dupret 2002 on how Egypt repealed a similar provision in 1999 that had roots in French law.

51. For details, see Musawah undated-a for 31 Muslim majority and minority countries; UNDP et al. 2019b.

52. For the contents of these laws, see *ibid.*

53. Kabeer and Subrahmanian 1996, p. 25.

structural nexus of religion, family, law and norms. This kind of layered institutional analysis is pertinent for any kind of policy recommendations and efforts,

‘since all such efforts occur in institutional contexts: they are intended as responses to problems which are outcomes of specific institutional operations and they are designed, implemented and have consequences within specific institutional settings. If such efforts are to be gender-aware, then the use of [an] institutional framework [...] as an analytical tool for understanding the institutional construction of gendered development outcomes is only the start of the process.’⁵⁴

The institutionalization of the ‘maintenance for obedience’ equation in religious discourse, as well as in state and societal structures, continues to have important effects on women’s lives. The next section outlines some of these social, economic and political repercussions, which have not always been favorable to women but instead caused significant discrimination and injustice. Ironically, it is precisely this kind of injustice that the Qur’anic ethical worldview on human relations was aiming to dismantle.

1.2. IMPLICATIONS OF MUSLIM FAMILY LAWS ON GENDER NORMS AND REALITIES

The kind of socio-legal landscape described above has significant effects on the lived realities of women in the MENA region and the Muslim world in general. This can be seen in some of the indicators assessing the well-being of women reported by the Organization of Islamic Cooperation (OIC), which includes 57 Muslim-majority member States from around the world.

Despite significant progress achieved in the last decade by the majority of OIC countries (36 out of the 51 member countries for which data are available), the countries’ average score on the Gender Development Index (GDI) – which measures human development and gender disparity – remains the lowest in the world at 0.87 (the world average is 0.94 and that of developed countries 0.98).⁵⁵ This indicator highlights the overall situation of gender disparity and human development for women in Muslim contexts today.

OIC countries have the lowest literacy rate for women in the world at 72.8 per cent (compared to the global rate of 82.8 per cent), as well as the largest gap between male and female literacy worldwide. That is the case despite important improvements in the total average of female literacy rates in OIC countries overall between 2010 and 2018.⁵⁶

Levels of violence against women (VAW) also provide a disheartening picture. Compared to the global average prevalence of 29 per cent, OIC countries had the highest prevalence at 36 per cent, with developed countries having the lowest figure at 20.4 per cent.⁵⁷ This comes as no surprise since some forms of VAW are sometimes considered a legal right, including the right to ‘discipline’ the wife and female kin, as mentioned above, and the ability to marry children below the age of 18,⁵⁸ not to mention norms and laws that institute male guardianship and power over women.

Labour force participation of women in OIC countries at 42.3 per cent is also lagging behind the world average of 47.2 per cent, with MENA being the lowest region in the world at 27.8 per cent.⁵⁹ Family laws and norms that necessitate a husband’s permission for women to work do not help this situation.

54. Ibid, p. 31.

55. OIC 2021, p. 8.

56. Ibid., p. 15.

57. Ibid., p. 30.

58. Ibid.

59. Ibid., p. 23

Additionally, the amount of unpaid domestic and care work that women are expected to do by law and/or social norms contributes to this low labour force participation, with the time spent by women on unpaid domestic work in the MENA region the highest in the world.⁶⁰

Some MENA countries go a step further in institutionalizing the burden of domestic work on women by having laws that refer to this work as women's responsibility.⁶¹ This is in direct contradiction with the majority opinion in Islamic jurisprudence on the matter, which does not obligate a woman to do domestic labour and care work because the Muslim marriage contract is seen as one of companionship rather than of service.⁶² In fact, based on this, several Muslim family laws around the world grant a woman compensation by the husband if she conducts this kind of work. This can take the form of a share in the matrimonial property accumulated during marriage, getting economic compensation for breastfeeding and/or being the custodian of the child(ren) after divorce.⁶³ This is yet another example of how laws that are claimed to be based on Islamic jurisprudence can sometimes contradict that very jurisprudence by legally obliging women to conduct domestic labour. It shows as well that Islamic jurisprudence can also provide some form of recourse, even if sometimes contested, to perennial problems such as women carrying the burden of domestic labour alone.

Despite this challenging landscape, it is important to note that Muslim family laws around the world do include provisions that reflect varying levels of gender justice and equality. Some of these laws abolished the wifely duty of obedience, instilling equality between the spouses and mutual responsibility to care for the family. Others set a minimum age of marriage at 18 and gave both custody and guardianship of children to their mothers. Some gave women a share in matrimonial property and enabled them to put conditions in their marriage contracts whereby they can divorce, work, travel and live wherever they want freely.⁶⁴ All this and more was done with justifications from within the Islamic framework. It is therefore useful to learn from what is already there on the ground when deciphering a conceptual framework for future interventions to bring about change in gender-related laws and norms.

60. UN ESCWA and UN Women 2020. For more on this issue in the MENA region, see UN Women Arab States 2020.

61. For example, article 38 of Omani law states that a wife's duty is to be 'responsible for the home and looking after their children' (Musawah 2017). Article 58 of Qatar's family law, states that the wife should 'take care and obey [the husband]... look after her and his property well...look after the household [and] take care of his children' (Emir of Qatar 2006).

62. Al Hibri 1997, p. 22.

63. For example, mothers breastfeeding their children in Morocco are entitled to additional maintenance according to article 201 of the 2004 Muslim family law (the Mudawwana). Also '[i]n Iran, the 1992 Amendment to Divorce Regulations enables the court to place a monetary value on women's housework, and to force the husband to pay her *ujrat al-mithl* ('wages in kind') for her work during marriage, provided that divorce is not initiated by her or caused by any fault of hers' (Musawah 2018, p. 39). See also Musawah's country tables for how countries such as Indonesia, Malaysia, Morocco, Singapore and Tunisia recognize women's contribution to marital wealth and regulate the sharing of matrimonial assets between the spouses (Musawah undated-a).

64. Musawah 2019.

2. CONCEPTUAL FRAMEWORK

2.1. UNDERSTANDING GENDER NORMS IN CONTEXT: A MULTI-LAYERED INSTITUTIONAL APPROACH FOR CHANGE

As Kabeer and Subrahmanian state, ‘gender relations do not operate in a social vacuum but are products of the ways in which institutions are organized and reconstituted over time’ and are affected by laws and norms that also influence how resources, roles and power are assigned.⁶⁵ Wazir also states that,

‘[i]n the real world, received norms are part of a complex web of systemic, structural challenges that interplay with each other. They can lend legitimacy and consent to unfair and unjust practices by posing them as ‘normal’, and even provide justifications for them. They can play a role in hegemonizing societies, and in maintaining the status of dominant powers [emphasis mine].’⁶⁶

That is why an institutional analysis that addresses religion, law and family helps us recognize the interacting and overlapping layers that need to be carefully untangled in any conversation about Muslim family laws and the gender norms they concretize. One layer is that of religion and the dominance of a patriarchal religious discourse that governs most family laws and gender norms today, to the exclusion of a more gender-sensitive one. Another layer is that of the state and how it purposefully selects and uses this patriarchal religious discourse and family

law with its gender assumptions to control society and promote certain socio-political and economic interests. A third layer relates to the international context in which all of this is happening, which includes conflicting forces such as past and present colonialism, neoliberalism, Islamophobia and international human rights standards all at the same time. And finally, the fourth and most important layer is the changes happening in the lived realities of women and men in Muslim contexts today that influence gender norms, such as material changes in socio-economic conditions affecting gender roles and relations as well as activism to address the repercussions of this.

In many Muslim settings, all four layers overlap and interact together within family laws and norms, significantly affecting the possibilities of change. In this section, I will mainly focus on the layer of religion and its relation to gender norms and the state while situating it in the above holistic interconnected framework. That is because religion is one of the main foundational factors shaping family laws, norms and practices in Muslim contexts and the MENA region today, yet it is one of the least discussed in both a critical yet constructive manner as part of the overall puzzle. I will then present a general framework of norm change developed by Werner Menski,⁶⁷ followed by a more specific framework of change relevant to Muslim contexts that was adopted by Musawah, the global movement for equality and justice in the Muslim family.⁶⁸

65. Kabeer and Subrahmanian 1996, p. 25.

66. Wazir 2022, p. 15.

67. Menski 2012.

68. Musawah 2009.

Religion and gender relations today: Sharia, fiqh and law

Earlier I touched on the very important distinction between two aspects of religious knowledge: that which is considered of divine origin and that which is a human interpretation.⁶⁹ Discussions on Islam and gender relations often suffer from a convenient conflation between the two. This ends up giving patriarchal human understandings of religion, norms and laws a misplaced sanctity of divine sacredness, effectively shielding them from questioning, development and reform.⁷⁰ This is especially important in Muslim contexts where questioning what is popularly perceived as the unchangeable, untouchable words of God can lead to very dire consequences, ranging from harassment, persecution, imprisonment and exile to execution or assassination.⁷¹ That is why it is critical to differentiate between the divine and the human in religious knowledge if we are to release the potential for change in gender norms that are informed by this religious knowledge.⁷²

The difference between 'divine' sharia and 'human' fiqh (jurisprudence) has been a salient feature throughout the history of the Islamic legal tradition. sharia, according to Islamic jurisprudence, is the divine message contained in the Qur'an and

the practices and sayings of the Prophet, revealed from God to humanity to live the good life in this world and the hereafter. It is 'the sum total of religious values and principles that can guide Muslims' lives'⁷³ and is considered eternal and fit for all times and places.⁷⁴ However, for us to understand sharia and create legal rulings from it, humans need to exercise their thought faculties. This human effort of exercising the mind to understand the sacred texts and extract legal rulings out of them that would help humans live a good life according to Islamic precepts is called fiqh (jurisprudence). Fiqh itself is considered fallible, changeable and context-based, certainly not sacred. It comprises a set of substantive rulings as well as a legal methodology called *usul-al-fiqh* by which rulings are derived from the sacred texts.

There are several schools of Islamic jurisprudence, all of which can differ in terms of their rulings on any given matter.⁷⁵ For example, Muslim jurists from different schools of law differ about the grounds a woman may have to initiate divorce and about the necessity – or not – of a husband's consent to certain procedures such as khul' divorce.⁷⁶ This difference in opinion, or *ikhtilaf*, has been accepted and valued throughout Islamic legal history and viewed as

69. In this section I draw considerably from my doctoral dissertation (Sharafeldin 2023) and my chapter in Mir-Hosseini et al. 2015.

70. Abou El Fadl 2001.

71. Examples include but are not limited to Farag Fouda – assassination (Egypt), Mahmoud Mohamed Taha – execution (Sudan), Salwa Bughaighis – assassination (Libya), Taher Haddad – expulsion and early death (Tunisia), Fazlur Rahman – exile (Pakistan), Nasr Hamed Abou Zeid – exile (Egypt), Nawal el Saadawi – death threats and exile (Egypt), Wafaa El Khadra – litigation harassment (Jordan), Asma Lamrabet – harassment (Morocco), Naguib Mahfouz – stabbing (Egypt) and Islam el Beheiry – imprisonment (Egypt), among many unfortunate others.

72. The distinction between the unchangeable divine and changeable human aspects of religion is very important to break down the 'immutability' of laws and social norms on gender inequality. See Kabeer and Subrahmanian 1996 – among other sources – on how this immutability stems from "naturalist' ideologies", which entrench and legitimize discriminatory norms, making them hard to change if not challenged.

73. Musawah 2016a.

74. Sharia is an overarching divine discourse that contains ethical, spiritual, cosmological, economic and political sub-discourses within it (Sharafeldin 2015). My own understanding of it comes from the following works, notwithstanding the differences between the authors: Abou El Fadl 2014; Brown 1997; Mitchell 1988; Messick 1993; Sonbol 2003; Moors 1999; Cuno 2009; Tucker 1998, 2008; An-Na'im 1990; Esposito and DeLong-Bas 2001

75. The Hanafi, Maliki, Shafi'i and Hanbali are examples of different schools in Sunni Islam, and the Twelvers, Isma'ilis and Zaydis are examples of Shia schools of thought.

76. For example, the Maliki school of law gives women more broad grounds for divorce than the other Sunni schools. Khul' is a type of no-fault divorce in Islam that is initiated by the wife, and in some countries does not require the husband's consent. Classical jurists also differ about the necessity of the husband's consent to khul' divorce initiated by the wife, with the majority declaring it necessary and the minority not (Tucker 2008).

a reflection of a very human process by which individuals interpreted the sacred texts based on their unique situations and contexts.⁷⁷ In that way also, fiqh with its variety and changeability is believed by Muslims to be different from sharia, which is regarded as eternal, unitary and unchangeable.

Innumerable volumes have been written on how fiqh has understood and regulated gender relations in Islamic law over time. Following Ziba Mir-Hosseini's example,⁷⁸ it is thus better to talk about the different strands of discourses developed on gender rights in Islamic legal thought. Broadly speaking, Mir-Hosseini divides these discourses from classical times till now into three: traditionalist, neo traditionalist and reformist. According to her, the first two discourses construct their conceptions of gender rights and obligations on an assumption of inequality between the sexes, which justifies the authority of males over females. However, to the contrary, the third (reformist) discourse bases its arguments on an assumption of equality between women and men, using Islam's sacred texts to justify their position. It is worth noting that contemporary family laws and norms draw heavily from the first two but only occasionally contain strands of the third.

Under the first two discourses, the marriage contract was patterned on the contract of sale by jurists and is seen as a contract of exchange that legitimizes sexual relations where women are perceived as sexual beings rather than social ones. Under this marriage contract, the man is to pay a dower

in return for having the monopoly over accessing the sexual faculties of the wife. Jurists were aware that marriage here was only similar to sale in form rather than in substance as wives were not full-fledged slaves.⁷⁹

This classical juristic logic reflects socio-cultural conditions of classical times where hierarchy and slavery were socially accepted phenomena, making their way into the jurisprudence on marriage.⁸⁰ According to Tucker, this differential treatment between the sexes has always been recognized and justified within the Islamic legal tradition,⁸¹ as it was seen by classical jurists to be fully appropriate for the status of women and men in their societies and historical contexts. However, Mir-Hosseini finds such gender conceptions in the traditional and neo-traditional discourses in contradiction with the core message of the Qur'an, which reflects more equality and justice between human beings.⁸²

This classical worldview of gender relations was also the basis of understanding a foundational concept that continues to regulate most Muslim family laws and norms in Muslim contexts, including the MENA region: *Qiwama*. This term is understood differently by different discourses. Traditionally, it is understood as male authority, superiority and guardianship over females. However, a reformist understanding defines it – in the context of family and gender relations – as a mutual and equal responsibility between males and females for the care, protection and maintenance of the family.⁸³ The traditional understanding of *qiwama* has been

77. For more on the doctrine of *Ikhtilaf*, see Masud 2009.

78. Mir-Hosseini 2003.

79. *Ibid.*, pp. 5–6.

80. Ahmed 1992, 85.

81. Tucker 2008, pp. 27–28. Interestingly, Tucker shows how this openness in recognizing the differential treatment of the sexes in the Muslim legal tradition is different from what is found in more recent Western-based legal ones, which usually claim equality between all even though they contain 'hidden forms of discrimination' within their folds. Additionally, the work of Carole Pateman, which focuses on the Anglo-centric world, also shows how marriage contracts still subjugate women in favour of male interests (Pateman 1988). This is partly because these contracts are still governed by a modern patriarchy that continues to oppress and exploit women. What this shows is that patriarchy and discrimination run through all legal systems past and present, North and South. See footnote 8 above on the status of gender equality globally in the world today.

82. Mir-Hosseini 2003, pp. 5–6.

83. For more on the deconstruction and reconstruction of the concept of *qiwama*, see Mir-Hosseini et al. 2015, 2022.

the lynchpin on which the whole edifice of Muslim family laws and norms are built, effectively shaping gender norms and laws to this very day.⁸⁴

Welchman shows how eventually *qiwama* became the justification for legal rulings and norms inscribing the wife's obligation of obedience male *wilaya* (or guardianship) over women wishing to contract their own marriage,⁸⁵ husbands' ability to unilaterally effect divorce while wives have to resort to judicial divorce based on pre-determined and proven grounds, conditioning a wife's freedom of movement on a husband's permission and other such differential treatment.⁸⁶

However, Mir-Hosseini and others questioned how classical jurisprudence conceived marriage and gender relations in ways that were in clear disharmony with Qur'anic equity and justice, stripping women of free will and subjecting them to male authority.⁸⁷ She provides three answers for this: ideological, epistemological and political. These answers are important for us if we are to decipher and trace ways to bring about change to gender-related laws and norms today.

First, ideologically, because the strength of patriarchy at that time and in that context made it inevitable for this to influence how classical jurists read the sacred texts. Even though the Qur'an condemned this prevailing patriarchy and its effects, yet it still found its way through *fiqh* in different forms.⁸⁸ We have seen through works of many scholars⁸⁹ that there

can be radically different and egalitarian readings of these same texts that fight patriarchy and support gender equality. Mir-Hosseini makes it clear that this was not a conspiracy among classical jurists against women, but rather that they were limited by the dominant gender assumptions of their time.⁹⁰

Second, epistemologically, because despite the fact that marriage was mostly considered part of worldly rulings known as *mu'amalat* in jurisprudence, which according to *fiqh* could be subject to change and development, the rulings gradually became seen to be as fixed and unquestionable as the rulings of *'ibadat* on worship and devotion that regulate a believer's relationship with God.⁹¹ Treating the changeable as unchangeable has resulted in what Sachedina – quoted by Mir-Hosseini – calls an 'epistemological crisis' in Islam, where social conditions are not adequately addressed by rulings that refuse to change despite their increasing irrelevance.⁹²

Third, politically, because women's voices and experiences were gradually silenced and made irrelevant in the process of producing religious knowledge.⁹³ Tucker and Mir-Hosseini show that the farther we move from the time of revelation, the more women's voices were sidelined intellectually and politically in Muslim society. Even though women were integral in transmitting the sayings of the Prophet, *hadith*, and were active participants in the process of interpreting Islam at the time of the Prophet and first Caliphs, Tucker shows that there was a slow but

84. See Anwar and Mir-Hosseini 2012.

85. For the close association and difference between *qiwama* and *wilaya*, see Masud (2013).

86. Welchman 2011, p. 8.

87. Mir-Hosseini 2003, 8.

88. It should be noted however, that jurists did play a role in blunting the edge of patriarchy based on the Qur'anic ethos. For example, '[t]hey made women parties to, not subjects of, the contract, and the recipients of *mahr* [an obligatory gift from the husband to his bride]. Likewise, by modifying polygamy and divorce regulations, they curtailed men's scope of dominion over women in the contract, without altering the essence of the contract or freeing women from the authority of men – whether husbands or fathers' (Mir-Hosseini 2003, p. 9).

89. See, for example, Hassan 1987; Mernissi 1991; Wadud 1999; Mir-Hosseini et. al. 2015, 2022.

90. Mir-Hosseini 2003, pp. 8–10.

91. *Ibid.*, p. 11.

92. Sachedina 1999.

93. Mir-Hosseini 2003, p. 8.

sure subsequent weeding out of their voices to be replaced by male interpretations and constructions of knowledge.⁹⁴ It is these male-created constructions that were eventually reflected in gender-related laws and practices in the Muslim world today.

On the other hand, what Mir-Hosseini calls a reformist gender discourse takes gender justice and equality as the premise of gender relations in Islam.⁹⁵ Marriage here is regarded as a 'partnership of equals' where no spouse has sole authority over the other. It finds that gender inequalities found in the traditional discourse are not divine injunctions but rather human constructions created by male jurists that contradict the divine intent of Islam's message. It is a discourse that deconstructs religious knowledge, focusing on how that knowledge was produced, and thus reconstructs an alternative knowledge that comes closer to the purposes of sharia.⁹⁶ I focus more on this discourse and provide examples of it in subsequent sections.⁹⁷

But the important question here is: Why, despite the presence of both a traditional and a reformist Islamic discourse on gender relations, both rooting themselves in the sacred texts, was one made more dominant than the other in our day-to-day lives? Which one is reflected in contemporary family laws and norms, giving it authority and sanctity that eventually preclude change and reform? How can the framework presented in the beginning of this section on the patriarchal religious discourse, state interests, international context and lived realities help us decipher an answer to move forward with change?

Religion and the state: The politics of patriarchy

We can trace part of the answer here from scholars who focus on the effects of politicizing religion in the public sphere.⁹⁸ Their work demonstrates that the institutionalization of religion – which includes co-optation and alliances between the state and religious groups or authorities – has serious implications for gender laws and norms.⁹⁹ Across different religious faiths, countries that institutionalize religion within the state are more likely to endorse and propagate family laws and norms that discriminate against women.

'When religion is institutionalized, patriarchal interpretations – and interpreters – of family law gain greater authority and more immunity to contestation. They become increasingly insulated from external influences and more closely linked to the public status of religion. Challenges to particular versions of family law are seen as challenges to the entire church-state relationship.'¹⁰⁰

Calls for change or reform of gender-related laws and norms therefore become a dangerous endeavour because they challenge this alliance of interests between the state and religion. Such calls for change propose a new configuration of how religion is made to manifest in the public sphere, thus disrupting the old arrangement where the power that religion holds has been used by state and non-state actors to accumulate power. That explains why

94. Tucker 2008, p. 30.

95. Examples of such works include but are not limited to: Haddad 1930; Zeineddine 1998; Abou El Fadl 2001; Wadud 1999, 2006; Mir-Hosseini et al. 2015, 2022; Abou-Bakr 2015; El Banna 2008; Rahman 1982; Abu Zayd 2004, 2005; Al-Faruqi 2000; Taha 1987; An-Na'im 1990; and all of Musawah's publications online, among many others.

96. Mir-Hosseini 2003, pp. 20–23.

97. In contemporary post-colonial contexts, this reformist discourse is particularly important in refuting the claimed incompatibility of local religious frameworks with modernity, civilization and women's liberation.

98. Such as Mayer 2019; Htun and Weldon 2015; Sezgin 2013.

99. It is important to note that in authoritarian contexts it is not likely that a religious institution or group critical of the government would be allowed to thrive (Almeida 2015, p. 151). Indeed, as Singerman states 'Even in nations which claim religious legitimacy or whose laws are heavily influenced by Islam, such as Morocco, Jordan, and the Kingdom of Saudi Arabia, religious authorities are subordinate to dynastic rulers and/or the military' (2005, p. 150).

100. Htun and Weldon 2015, pp. 452–453.

religious-based family law 'has a greater tendency to remain sealed off from political contestation and external influences' than other areas of law and social practice.¹⁰¹ This is especially the case when the state – as Hasso observes in some MENA countries – uses family law to govern and regulate the population through shaping family and gender-related norms, relationships and practices.¹⁰²

In some MENA contexts where regimes suffered a legitimacy crisis due to low development, high poverty rates and wide disenfranchisement, political Islamists usually stepped in with their goods and services along with their patriarchal gender discourse and became popular.¹⁰³ These States were under pressure to compete with their Islamist opposition on their commitment to 'orthodoxy', and the area where they both commonly intersected and allied was the control of women.¹⁰⁴ Kandiyoti explains as one of the underlying causes that these States were cautious not to antagonize the prevalent patriarchal order of family laws and society that was usually supported by different religious groups.¹⁰⁵

Indeed, Kabeer and Subrahmanian state that,

'[I]t is not just that the 'rules' are unjust and hence give rise to unjust practices. The power relations of different organizations mean that different organizational actors not only have differential capacity to define and interpret the rules [...] but they also have a differential stake in defending them. Conflict of interests between different stakeholders will make any attempt to alter organizational behaviour problematic. Those whose interests are best served by the prevailing configuration of rules and resources are not only most likely to resist,

*but also have the greatest capacity to resist, any attempt at redistribution or transformation. Hence [...] the struggle to achieve gender equity in development policy is in the ultimate analysis a political project and it is essential to think tactically as well as strategically about how it is to be achieved [emphasis mine].'*¹⁰⁶

So, what we end up with is in fact a political question, not merely a theological one where it is just a matter of different religious discourses vying for authenticity, each claiming to be the one endorsed by God. The demarcating lines between politics and religion become significantly blurred when state institutions purposefully pick up a particular religious discourse and endorse it in laws and policies to regulate society and in gender norms in ways that serve state interests. Deliberately choosing this discriminatory religious discourse – despite the presence of an alternative egalitarian reformist one – constitutes an intentional act by the state and its representatives for which it is to be held accountable. This co-optation of religion by politics to serve certain interests is one of the reasons why Muslim family laws and norms have been habitually obstinate against reform, as Htun and Weldon demonstrate. It is why they conclude that: 'When state power and religious power are fused, particularly in highly devout societies, it is difficult to reform family law toward greater equality, and patriarchal norms endure'.¹⁰⁷

What this shows us then is that changing gender laws and norms is a political process that necessitates engaging with religion as embedded in institutions of power. In contexts where religion is used in intense political contestations, it is these institutions that have the necessary strength and authority to embark on the very difficult process of

101. Ibid., p. 470.

102. Hasso 2011, p. 168.

103. Kandiyoti 1991, p. 17; Jad 2003, p. 1.

104. Kandiyoti 1991, p. 17; Al Ali 2000, p. 183.

105. Kandiyoti 1991, pp. 12–13.

106. Kabeer and Subrahmanian 1996, pp. 29–30.

107. Htun and Weldon 2015, p. 471.

change. What is needed then is not only to unearth new gender-sensitive religious interpretations and knowledge but also to engage in political action with these often-powerful institutions. This is not the work of an individual or an organization; rather, it is the concerted effort of strong diverse movements that have the capacity to build and affect political will over time. Part of these movements' work is to provide a very strong incentive for state and non-state institutions to change the status quo, as risky as that process of change might be for the interests of some of those in power.

We can learn a lot from the often-untold reality of these supposedly 'unchangeable' Muslim family laws and norms, which is that they do indeed change and evolve with time. States that were previously reluctant to undertake reforms in the name of protecting 'God's law', or respecting popular societal will, do at certain points in time find it convenient to their interests to change these very laws when a number of forces come together to make the benefits too big to ignore or the costs too high to bear.¹⁰⁸ One example is Egypt's passage of the khul' divorce law in 2000, which finally gave women the possibility of no-fault divorce. This took place right before the country's 2001 submission of its periodic report to the Committee on the Elimination of Discrimination against Women, which was allegedly one of the important political factors leading to the reform. As will be shown below, the women's movement campaigned for at least 15 years with little tangible success until a set of circumstances came together to make the reform happen. Another example is Morocco's extensive reforms of the Muslim family law in 2004, one year after the 2003 Casablanca terrorist bombings and the ascension of a young king to the throne with a new vision for Morocco and a 'modern' Islam that was to mark his reign.

These two political moments were key openings through which the 2004 reform finally saw the light. In these two cases from Egypt and Morocco, the local women's movement had been working and advocating for decades for these changes in both countries only to be met with the state's persistent resistance. When the opportune political moments arrived, both States built on the years of hard work by women's movements and finally brought about the changes because it was beneficial for state interests to do so at that time.¹⁰⁹

2.2. EXAMPLES OF CONCEPTUAL FRAMEWORKS: MENSKI'S KITE AND MUSAWAH'S FRAMEWORK OF ACTION

Menski's Kite

How do these changes come about then? What kind of conceptual framework can help us understand how to navigate and bring about change in gender laws and social norms? Bearing in mind the importance of an institutional analysis that takes into consideration the interplay of several factors shaping these changes, Menski's theory on 'living law' may be a helpful place to start. After presenting Menski's general framework, I will then focus on Musawah's more specific one that is particularly relevant to contemporary Muslim contexts.

Menski provides us with a kite model that has four corners constituting the various components of law.¹¹⁰ These include different sources of normative authority: 'Nature' (religion/ethics/morality); 'Society' (social norms); 'State Law' (constitutions, laws and policies); and 'International Law'. Each corner is itself plural, dynamically interacting with all other corners in different ways particular to any given context.¹¹¹

108. See Musawah 2019, which is a compilation of recent reforms of Muslim family laws worldwide.

109. See Sonneveld 2012 and Singerman 2005 for khul' in Egypt; Salime 2009 and Naciri 2007 for the Mudawana in Morocco.

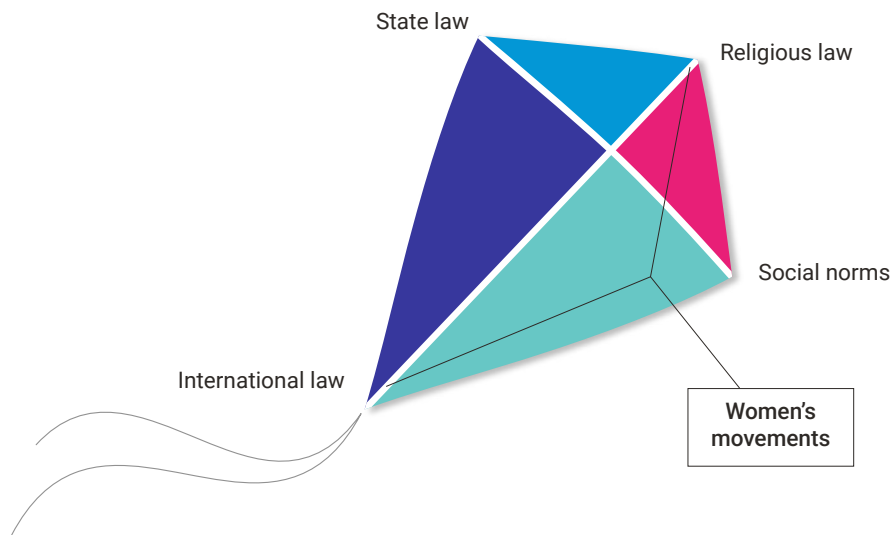
110. Menski 2012, p. 79.

111. Menski 2006, p. 595.

But who is doing the difficult work balancing the four corners of the kite to persistently fly it towards gender equality and justice amid the winds resisting

change? In this paper I adapt the kite model and focus mainly on one important group of actors (Figure 1).

FIGURE 1
Menski's Kite adapted



Research and lived reality confirm that the work of women's movements around the world has been one of the main factors affecting change in gender-related laws and norms. From the most democratic to the most oppressive of political environments, women's groups have been integral in changing norms around gender relations and combating violence against women. Even if States eventually adopt these changes in laws, policies and practices, research shows that they usually do so after years of work and pressure by women's groups.

For example, Weldon and Htun's work analysing measures taken to address VAW in 70 States for 30 years from 1975–2005 'reveals that the most

important and consistent factor driving policy change is feminist activism'.¹¹² Sally Engle Merry also shows how hard it is to understate the role activists play in social change and law reform as mediators between different and often conflicting stakeholders and discourses, connecting the local with the global and vice versa.¹¹³

Anecdotal evidence from my own work on the ground with different Muslim women's groups around the world confirms this. These were usually the ones who took the risks, organized, did the research, lobbied, protested, cajoled, proposed solutions, pushed, shoved, embarrassed and inspired the way towards change. We eventually see the

112. Weldon and Htun 2013.
113. Merry 2006, p. 134.

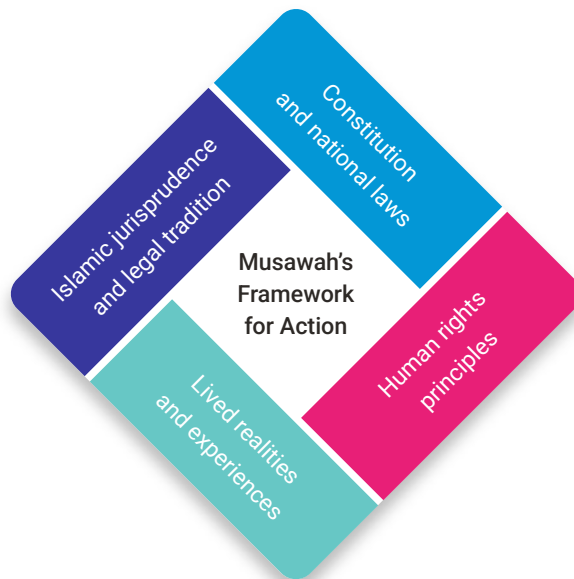
effects of their work when States slowly and reluctantly embark on change, often taking the credit for it in the end.

Musawah's Framework of Action

Given this important role played by women's movements in using and activating conceptual frameworks for change towards gender justice and equality, the experience of one particular organization can be informative for Muslim contexts.¹¹⁴ Musawah, the global movement for equality and justice in the Muslim family, was birthed by the feminist Malaysian organization 'Sisters in Islam', which had been working locally for gender equality

and justice in Islam since 1988. Musawah was launched in Malaysia in 2009 to bring together scholars and activists seeking gender equality and justice in Muslim contexts.¹¹⁵ For several years before its launch, the 12 Musawah co-founders from 11 countries representing the different regions of the world spent a lot of time honing a Framework for Action to guide its work (see Figure 2). The framework outlines how gender equality and justice in the Muslim family are both necessary and possible through a holistic approach that brings together Islamic teachings, human rights principles, constitutional and legal guarantees of equality and the lived reality of women and men today.

FIGURE 2
Musawah's Framework for Action



Source: Musawah 2009.

114. Other global Muslim feminist organizations exist, such as Women Living Under Muslim Laws, and WISE for example. However, Musawah's ways of work differs in that it critically yet constructively engages with religious discourse in order to create new knowledge and solutions from within the Islamic framework that unequivocally support gender equality and justice. In collaboration with Musawah's partners worldwide, this knowledge is then used both globally and locally on the ground for transformative change in gender laws and norms in different Muslim contexts.

115. I have been one of the core team members who built Musawah since its launch in 2009 and a Board Member from 2010–2020. At the time of writing, I am a Senior Advisor for the movement.

It 'was conceptualised and written through a series of meetings and discussions with Islamic scholars, academics, activists and legal practitioners from approximately thirty countries'.¹¹⁶ It also built on the successful experience of the Moroccan women's movement, mentioned above.

Similar to Menski's kite, each of the four corners of this diamond-like structure contains within it a plurality of sub-elements. Musawah also believes that the interaction between all four corners together is very much dependent on the context in which it is utilized to achieve change and reform. Taking child marriage as an example, in any given context those working on addressing this norm will first engage with its 'lived reality', trying to find out its rates of prevalence, the reasons for it (which include poverty levels, natural disasters, religious/cultural factors), statistics on death at childbirth of child-brides and so on. They will study this lived reality along with relevant 'Islamic teachings', looking at the sacred 'text' using the lens of the 'context'. This exercise will assist them in determining which elements of Islamic knowledge would help to address the issue. For example, in a highly religious cultural setting, reformers may opt to focus on recent historical scholarship in Islam proving that the Prophet's wife Aisha, who was thought to have married him at age 9, had in fact married him at an age not less than 19.¹¹⁷ This choice of religious discourse/arguments will also interact with and activate the 'human rights principles' in treaties that this particular country is party to, such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), etc. Reformers would also take into consideration the 'legal framework' of the national

constitution, laws, policies and decrees governing children and marriage in that context that can be part of the solution, e.g., child laws, health regulations, educational policies, laws combatting violence against women and girls, etc. Depending on the interaction between all these four corners within any given context, reformers may then decide to work towards completely banning child marriage below the age of 18 or allowing it with certain exceptions that only judges may authorize.¹¹⁸ Reformers would be balancing these four corners together in the best way possible to come out with the optimal change or reform they would be able to extract at that political moment and in that socio-economic context.

Building an alternative gender-sensitive religious discourse with women

Located and working in the lived realities of the global South, Musawah understands that religion is integral in the formulation of laws and norms governing gender relations in Muslim contexts and works in diverse settings, whether Sunni or Shia, majority or minority communities, religious or secular.¹¹⁹ It started out as a knowledge-building movement and decided to focus on the missing link in the bigger puzzle, which was to build an alternative feminist religious discourse that argues for gender equality and justice from within an Islamic framework.

What is interesting here is Musawah's structural approach in engaging with established religious knowledge, separating what is divine from that which is human and deconstructing humanly created knowledge to understand how it was built and influenced by patriarchal contexts over time. In so doing, it starts a conversation between the religious 'text' and the 'con-text' and brings into the conversation

116. Musawah 2009, p. 1.

117. See Amin 2020.

118. See Musawah 2019 for the different ways child marriage is regulated in different Muslim-majority and minority countries.

119. Musawah is not a political movement that calls for either secularizing family laws or basing them on religious edicts. Rather, its remit starts when religious – specifically Islamic – laws are used to discriminate against women and girls. It creates knowledge from within the Islamic framework using a holistic approach that argues for gender equality and justice and is rooted in Islamic teachings, human rights standards, laws and lived realities.

a feminist perspective along with human rights and national laws as well. It then attempts to construct an alternative religious discourse that is more aligned with the Qur'anic ethical worldview and values governing marital relations – such as justice, beauty, goodness and others – and the purposes of sharia, in addition to contemporary notions of gender equality and justice. In doing so, Musawah builds on Islamic legal methodologies and feminist epistemology.

Knowing that the process of knowledge-creation is affected by the power relations in which it is embedded – and agreeing with Harding¹²⁰ – Musawah is cognizant of how the dominant and powerful in any given context decide which kind of knowledge is created and given priority. It is usually a type of knowledge that is reflective of their interests, here patriarchal interests that use religion for patriarchy's aims. Harding states that it is only by being at the margins of these prevalent epistemologies 'that one can detect strengths and limitations of it that are invisible from "inside it"'.¹²¹ So it is usually the women and men on the margins, those negatively impacted by prevalent laws and norms, who need to be brought back into the process of creating this knowledge. Hence, the Musawah model puts emphasis on working with those who are most impacted and in need of change. It builds knowledge that takes the realities and experiences of women living in Muslim contexts seriously, giving them voice and agency in its creation.

For Musawah, creating knowledge in that way is itself a form of advocacy. One example of this kind of work was its five-year research project on *qiwama* and *wilaya*,¹²² which are two foundational Islamic concepts on which male authority and superiority are justified in the laws and gender norms of many Muslim contexts. The project contained two elements that spoke to each other. One was

the Global Life Stories Project (GLSP), which was a book documenting the life stories of 55 women in nine countries (Bangladesh, Canada, Egypt, Gambia, Indonesia, Iran, Malaysia, Nigeria and United Kingdom), narrating and analysing how different Muslim women experienced both *qiwama* and *wilaya* in their day-to-day lives.¹²³ Some of these women became active participants in the project and later started their own campaigns.

The second component was an academic volume entitled *Men in Charge? Rethinking Authority in Muslim Legal Tradition*,¹²⁴ which was in conversation with these life stories and written by reputable Islamic legal scholars from around the world. In light of these stories and lived realities, scholars discussed *qiwama* and *wilaya* from an alternative gender-sensitive perspective while engaging with the Qur'an, Sunna, fiqh, law and Sufism. By bringing in the voices of those who are most impacted by the prevalent *qiwama* and *wilaya* model that is found in laws and norms today, and who can see its shortcomings clearly, all participants in the project were then able to co-create transformative knowledge that reframed *qiwama* into a more just and equitable model. This entails equal and mutual responsibility between the spouses for the protection, maintenance and well-being of the family and each other, instead of giving authority and superiority of one spouse over another.

Musawah believes that this kind of knowledge production process – which looks at the text from the perspective of context and lived reality, with feminist principles and methodologies, rooted in the Islamic tradition, human rights principles and national laws – is an important first step before going out to advocate change of laws and norms on gender relations in the Muslim world.

120. Harding 1996.

121. Ibid., 444.

122. Musawah undated-b.

123. Musawah 2016b.

124. Mir-Hosseini et al. 2015. For a feminist reader's guide to this title, see Rehman 2022.

Spreading the knowledge and supporting partners globally

This knowledge-building work, which engages structurally with religion as an institution, is one of the most important strategic initiatives that Musawah adopts in its Theory of Change.¹²⁵ From the beginning, Musawah has defined its role as a bridge connecting scholarship with activism. Under its capacity-building strategic initiative, it then takes this knowledge and turns it into accessible tools and concepts through the courses it delivers to its different partners involved in changing gender norms and laws around the Muslim world. These include activists, policymakers, parliamentarians, judges, lawyers, artists, journalists, young women and men as well as others involved in this process. Musawah then provides a space for mobilizing and organizing on local, regional and international levels to make these changes through joint campaigns such as the Campaign for Justice in Muslim family law.¹²⁶

Impact

Musawah's Framework for Action – the knowledge it produces, as well as the spaces it provides for knowledge-sharing, organizing and solidarity – has been used by its various partners around the world in their own local quests for change in religious-based gender laws and norms. These diverse partners have each used the knowledge and the framework in the way that is most appropriate for their context. It is almost as if the knowledge that was initially co-produced by Musawah grows wings,

flying to different locations around the globe where it is adapted by local partners, becoming very much their own in the process.

For example, in the South Asia region, Musawah's knowledge and framework were part of the resources that its partners in India used in a local campaign to strike down the triple *talaq* practice through a Constitutional Court ruling.¹²⁷ Their subsequent parliamentary lobbying resulted in the Muslim Women (Protection of Rights on Marriage) Act, 2019,¹²⁸ which criminalized triple *talaq*, making it punishable with imprisonment for a maximum of three years.¹²⁹ They are currently lobbying for a draft Muslim family law for the Indian Muslim minority based on Islamic precepts along with principles of gender equality and justice.¹³⁰

In South-East Asia, Musawah's partners in Indonesia, the Congress of Women Ulama in Indonesia (KUPI), developed and adapted the Musawah Framework for Action to issue three ground-breaking fatwas. For the first time in contemporary history, an Islamic ulema body¹³¹ produced fatwas that deemed sexual violence both inside (marital rape) and outside marriage as '*haram*' (forbidden), preventing children from any dangerous marriage as '*wajib*' (duty) and protecting nature from any damage, including in the name of development, as also '*wajib*'.¹³² By 2019, KUPI's fatwa against child marriage had led to the raising of the legal age of marriage for girls from 16 to 19 years old to be the same as boys.¹³³ Their fatwa and opinions on domestic and sexual violence were also used by the Ministry of Women Empowerment and Child Protection, the National

125. Musawah undated-c.

126. Musawah undated-d.

127. This is a controversial practice in India where a Muslim man can divorce his wife by uttering the word '*talaq*' (divorce) three times without the necessity of the wife's consent or presence even during the utterance.

128. Government of India 2019.

129. Supreme Court of India Observer undated.

130. Soman and Niaz undated.

131. A body of Muslim scholars who are recognized as experts in Islamic doctrine and law.

132. BBC 2017.

133. UNICEF 2019.

Parliament and the National Commission of Women in drafting the Law on Elimination of Sexual Violence, which eventually passed successfully in May 2022.

In the MENA region, Musawah's knowledge and framework of action were also used by an Egyptian national network of women's rights organizations to formulate their own family law reform proposal in 2010. One of the member organizations further developed the proposal, which was adopted by a member of parliament in 2022, approved by 60 members and is now in the Office of the Head of Parliament to transfer it to the specialized parliamentary committees as per the procedure to take it forward in the legislative process.¹³⁴

In South Africa, Musawah's partners used their knowledge and support to mobilize and form a Muslim Personal Law (MPL) Network that started addressing the pressing needs of South African Muslim women seeking divorce. Filling the gap created by the state's non-recognition of Muslim marriages, and the often-patriarchal judgements by informal male-led ulema bodies regulating marriage affairs for the Muslim community, the Network stepped in with a much-needed new approach and solution. Female scholar activists reclaimed the space and authority to start conducting khul' divorces for women who were stranded in these marriages with little recourse.¹³⁵ The Network has also been part of a collective effort that in June 2022 resulted in the South African Constitutional Court finally upholding the necessity for the state to recognize Muslim marriages, and it is currently involved in figuring out the way forward with the community.

All these changes in religious-based family laws, norms and practices in Muslim contexts are relatively recent, and – given the long-term process of

changing gender norms – it will be some time before we begin to see changes in the actual lives of women. However, the Egyptian case study presented in section 3 will show that reforms of religious-based family laws that are built on gender-just readings of religious texts do eventually produce changes in gender relations and norms when coupled with other factors such as feminist activism and the cultivation of political will. Such shifts in laws are being used today by women to navigate, negotiate and bargain within their families to demand better treatment. What is important to see here as well is that the work of Musawah and its partners described above has debunked the myth that religious-based laws, rulings and norms are untouchable. It shows that change towards more gender equality and justice is indeed possible using a gender-just religious discourse through various ways depending on the context.

The Musawah model of (1) starting with lived reality and co-creating knowledge based on its Framework for Action (Islamic teachings, human rights, constitutional and legal guarantees of equality, lived reality); (2) spreading this knowledge in different forms and spaces for joint work and alliances; and (3) supporting community organization, mobilization, activism, cross-regional coordination and solidarity seems to be bearing fruit on an institutional level, judging by some of the results mentioned above.

Even in studies where a political and institutional analysis seem to be lacking, we find that a model similar to Musawah's has been used in other contexts when attempting to change gender norms. Cislighi et al. investigated processes of social norm change that used what they called an 'organized diffusion' strategy.¹³⁶ They analysed three case

134. Mahmoud 2022.

135. Seedat 2021.

136. Organized diffusion here is defined as 'the sharing of knowledge encouraged by practitioners and led by program participants' (Cislighi et al. 2019, p. 937). It is a form of intentional sharing of knowledge that aims to mobilize community action and/or awareness for change. This is similar to the snowflake theory developed by Marshall Ganz (in Harvard Kennedy School) on distributive leadership, where '[i]nstead of trying to spread good practices in a top-down fashion, the snowflake model promotes peer-to-peer diffusion of ideas' (Safir 2018, p. 71).

studies from Mali, Nepal and Nigeria that exhibited what they say were successful social norm changes on a local level. In all three cases, local organizations followed a similar strategy of creating and/or spreading knowledge, along with community organization and engagement through organized diffusion of this knowledge. In one case, change at the institutional level by passing laws that enhanced women's rights and supported their participation in political structures was considered an important dimension of the intervention.¹³⁷ They conclude that '[i]f future community-based interventions intend to achieve social norms change within participants' communities, they should equip participants with knowledge and skills to engage others in their network in *transformative* conversations' [emphasis mine].¹³⁸ In other words, knowledge building and community mobilization together are important factors in social norm change processes.

The importance of serious community engagement and organization for norm change cannot be understated, especially in light of the realization that changing harmful practices through factual information and economic inducements alone is not effective.¹³⁹ Bearing in mind the institutional and structural embeddedness of gender norms, the effects of providing factual information alone – as in 'awareness-raising' interventions – is very different from engaging in knowledge-building and community organization processes. There is a crucial methodological difference between co-creating knowledge in communities for community action on the one hand and merely providing external 'factual information', hoping that this would be sufficient to change social norms, on the other. It is not only about providing the 'correct' gender-

sensitive narrative but also about co-building it with the community, seeing them as equal sources of knowledge, and following that with supporting community organization and mobilization for change. It is no wonder then that Htun and Weldon's decades-long cross-country investigations show that women's movements – as experts in the continuously unfolding knowledge of lived reality and community organization – play a primary role as loci of organized action in bringing about gender-sensitive change around the world.¹⁴⁰

2.3. A NOTE ON MEASURING SOCIAL CHANGE

In her seminal work on a 'feminist ethic of risk', Sharon Welch was concerned with how groups of people continue to resist oppression in the face of multiple defeats and incomplete successes.¹⁴¹ She recognizes how social problems are complex, subject to several interplaying structural factors, often making reformers unclear on how best to engage with these problems. After studying experiences of resistance by groups of oppressed people over time, especially women of colour, she proposes an ethic of risk that has three components, 'each of which is essential to maintain resistance in the face of overwhelming odds: a redefinition of responsible action, grounding in community, and strategic risk-taking'.¹⁴² She explains that,

"Responsible action does not mean the certain achievement of desired ends but the creation of a matrix in which further actions are possible, the creation of the conditions of possibility for desired changes." It is found in taking steps toward a desired goal, and focusing on

137. Cislighi et al. 2019, p. 941.

138. Ibid., p. 944.

139. Gelfand and Jackson 2016; Kumar et al. 2015; Cislighi et al. 2019, p. 937.

140. Htun & Weldon 2013.

141. Welch 1990.

142. Quoted in UUA undated.

possibilities, rather than outcomes, choosing “to care and to act although there are no guarantees of success”.¹⁴³

By focusing on the creation of ‘conditions of possibility’ rather than immediate quick outputs or outcomes; by accepting time with its long trajectories of trial and error, success and failure that come with transformative change; and by making a choice to continue caring and working despite all the uncertainties and structural difficulties, Welch gives us a plausible way forward when we talk about measuring change in gender norms.

Measuring social change, especially changes in social norms, is a big topic that cannot adequately be addressed in a paper of this length. Such change is a complex process that takes years to materialize and for its impacts to bear fruit. This section is therefore a modest contribution to an ongoing and more in-depth debate about measuring social change in nuanced ways that are cognizant of power relations, limited information and phenomena that cannot be quantified.¹⁴⁴ It is also focused on measuring change as it pertains to contexts where religion, particularly Islam, plays a significant role in shaping gender laws and social norms.

Since we recognize the important role that institutions also play in shaping social norms, it makes sense that any measurements will have to take into consideration an institutional analysis while formulating adequate indicators of change. Since certain institutions deeply affect these gender norms, it makes sense to track changes taking place in and by these particular institutions.

Guided by Musawah’s Theory of Change in Muslim contexts,¹⁴⁵ discussions on measuring change can be done on three levels, measuring (1) changes in

public religious discourse on religion and gender; (2) changes in laws and policies; and (3) changes in the lived realities of women and families in Muslim contexts.

Tracking changes in public religious discourse

For the first level, where religion is institutionalized within the state, measuring changes in public religious discourse on gender can be done in the various spaces where religion resides and has power, especially within the state. These include the public pronouncements of state-appointed officials who are given authority by the state to transmit its public religious discourse, such as those in the Ministries of Religious Affairs, the Grand Imams of religious institutions, Muftis, religious councils and their representatives to the public. This also includes publications addressing gender relations and norms produced by their respective organizational structures. Other spaces where change can be traced are in sharia court judgements, curricula of state-owned public religious and non-religious schools and universities, state-owned religious radio stations, Friday sermons and religious classes of state-funded mosques and places of worship. The list can go on, but what matters here is to track whether a change is taking place in how religion is used in public discourse on gender relations within these spaces where the state asserts power and authority over citizens in shaping public discourse.¹⁴⁶

Tracking changes in law

Another location where religion is institutionalized and asserts considerable power is the law. Tracing changes in gender-related laws, policies, ministerial

143. Ibid.

144. For more on developing nuanced indicators, see Merry 2016.

145. Musawah undated-c.

146. There are other non-state, informal and popular spaces where social norms are affected and re-shaped, such as pop culture, social movements and social media, to name a few. Post-Arab Spring, social media especially emerged as a space where social norms are increasingly being challenged, questioned and going through significant transformations in the MENA region.

decrees and other state-led directives that aim to regulate gender relations and to enforce compliance by other state institutions such as the police, for example, is another important area. It gives us an indication of where the coercive power of the law and law-enforcement agencies is supposed to go with regards to gender relations in any given context. It is not enough to have changes in the law; women must also be able to use the provisions in the law aimed at balancing gender relations and rights and the law must in fact be implemented, e.g., using new and easier divorce provisions to get out of abusive marriages or activating recent legal provisions that protect women's rights to work, freedom of movement, legal agency, etc. We know that legal implementation can often be a problem, especially when countries embark on cosmetic legal changes with no interest in real change. So even though legal reform remains one of the most visible manifestations of how gender relations norms are reshaped in any given context, having law as the only indicator may not be sufficient in measuring social norm change in this context.

Tracking changes in the lived realities of women

That is why the third level is perhaps one of the most important indicators of change in social norms governing women's lives, and that is measuring changes in their lived realities. Having a religious discourse that condemns intimate partner violence, for example, and a corresponding law in place that combats domestic violence are important, but the ultimate signifier of change is going to be the rates of domestic violence that women experience in their day-to-day lives. While we can organize behavioural change interventions and ask people about their 'opinions' on domestic violence after any social

intervention, the fact remains that unless rates of domestic violence are decreasing then something is amiss in the framework of intervention. Other examples of lived reality changes that can help indicate a change in social norms, as well as create what Sharon Welch called the 'conditions of possibility' for transformation, are the number of women decision-makers in workplaces, women land/property ownership rates and guardianship transactions by women on behalf of their children, for example.¹⁴⁷ In addition, we should not only resort to numbers and statistics to verify the change as other qualitative measures can help guide the process, such as collecting life-stories from a wide sample of different women in any given context.

Focus on understanding the how and where of change

Finally, in measuring change our focus should not only be on 'what' has changed but also on 'how' this change happened and 'where' it is happening. For example, as to 'how', questions to be asked are: did the change happen by democratizing knowledge-production, did it give voice to the voiceless in this process, did it open public debates on these issues to address the new needs of lived reality while empowering those involved and building new and expanding leadership? As to 'where' change is happening, lived reality should not be seen only as the place where problems manifest or where change is to be rigorously traced. It is also a place where creative solutions and new ways of being can be discovered, studied and developed further. Like any community in the world, Muslim communities contain marriages reflecting gender justice and equality that are also rooted in the precepts of religion, and these need to be studied and brought to the fore.¹⁴⁸ Muslim couples have always used

147. Welch 1990.

148. Musawah is currently undertaking an ethnographic research project that precisely seeks to explore conceptions and experiences of marriage that foreground Islamic notions of *'adl* (justice) and *ihsan* (beauty and goodness) in diverse Muslim family structures on the ground.

their marriage contracts in various ways to achieve gender justice and equality between them by, for example, including in their contracts equal divorce rights, monogamous marriage and shares in matrimonial assets, among other contractual conditions. Muslim parents make legal arrangements for their daughters to inherit equally with their sons prior to their death, and Muslim husbands share domestic and care work with their wives following Prophet Muhammad's example.¹⁴⁹ These and other examples need to be studied, understood and highlighted as real-life solutions that people are actually using in their lived realities to address contemporary problems created by dominant patriarchal gender norms while using their own local frameworks such as gender-sensitive religious knowledge. When the lived reality of women and families starts clashing with patriarchal laws and norms that are rooted in a man-made religious discourse, culminating in the epistemological crisis referred to by Mir-Hosseini above, nowhere is it better to look for solutions than with those who are most affected by this crisis; in this case women and men suffering under these gender-related laws and norms, as well as their movements seeking change in our day-to-day lives.¹⁵⁰

To achieve real and wide-scale changes in social norms and laws governing gender relations, therefore, what is required is a conceptual framework that engages in an institutional analysis that is mindful of the different layers involved in the process of change. This includes being cognizant of dominant power relations, politics and interests between different stakeholders operating within that framework, as well as the role women's movements play in this very political struggle. Through this analysis it becomes apparent that what is needed here is work

that involves structural interventions by and with institutions of power. It is not up to the individual citizen to bring about these changes; rather, change starts when a community or movement of citizens organizes and pushes for reform, putting persistent pressure on these institutions to respond and bring about the desired changes in gender-related laws and norms on a wider scale. Without this institutional level of engagement, a social norms approach would quickly descend into what Wazir quotes Green (2017) describing as 'an approach for small-scale tinkering, not large-scale transformation'.¹⁵¹

149. See Rahemtulla and Ababneh 2022 challenging contemporary notions of patriarchal masculinity using Prophet Muhammad's marriage to Khadija as a model for non-patriarchal masculinity and marriage.

150. Mir-Hosseini 2003. Although Robert Chambers' work is focused on alleviating rural poverty, relevant here is his methodology of involving and centring the marginalized in the process of designing and executing interventions related to them, as they are more able than 'external' experts in conceptualizing the issues in their communities, and finding ways to address them. For more, see Chambers 1983, 1995, 1997.

151. Wazir 2022, p. 5.

3. PRACTICE

3.1. TRANSFORMING LAWS AND NORMS IN EGYPT: THE CASE OF KHUL' DIVORCE

As indicated above, the inaccurate conflation of what is believed to be divine and sacrosanct sharia with human and changeable fiqh, along with the modern process of legal codification of religious family laws by States in MENA, has contributed to calcifying such norms and laws, making their reform and further development particularly sensitive.¹⁵² In addition, women and their bodies have become a battleground between political opponents competing for power in many Muslim contexts.¹⁵³ As Htun and Weldon state, “the goal of opponents is not to defend religion, culture, and tradition but to uphold the status quo. Family law reform, like other political conflicts, revolves around the struggle for power”.¹⁵⁴

Yet a closer look reveals that change, even if slow and cautious in the region,¹⁵⁵ does indeed happen when it is convenient for States at any given political moment. There have been different pathways through which Muslim family law reform has happened in recent years, including different methodologies within Islamic legal jurisprudence and different legal, judicial and administrative conduits that reformers resorted to in making some of these changes.¹⁵⁶

The Egyptian case study presented in this section on the famous Procedural Law 1/2000,¹⁵⁷ which later came to be known as the khul' divorce law, provides us with important insights as to the complexities of change that involves gender norms, religion and the law in the MENA region. It is an example of how, instead of lamenting the primacy of religion in socio-political spheres and seeing it as an obstacle, women's groups considered religion a resource to be tapped into. It also shows how a careful multi-layered institutional approach to change in gender relations has better chances of success, taking its time to develop while avoiding inadequate quick fixes to complex multi-dimensional problems.

The Egyptian khul' campaign and the subsequent implementation of this divorce law in courts has been written about extensively throughout the years since its promulgation in 2000.¹⁵⁸ This paper does not aim to add yet another description of the campaign but rather seeks to further analyse the strategies adopted by its organizers, specifically in relation to engaging with religion in a multi-layered institutional approach while working towards gender equality and justice.

Egypt's family law is based on Sunni doctrine, with elements of Shia doctrine embedded within.¹⁵⁹ In 1920, it became the first codified family law in the region and the one that other MENA

152. For more on this process in the MENA region, see Welchman 2007. Also, recent United Nations reports show how personal status/family laws in the region have been more difficult to reform than other laws such as penal codes and labour laws (UNDP 2019a, pp. 57–58). See this United Nations matrix for a more visually clear depiction of this situation (UNDP 2019b).

153. Singerman 2005, p. 166.

154. Htun and Weldon 2011, p. 62.

155. See Musawah undated-c for the changes that do indeed happen; and UNDP et al. 2019b for the slow pace of these reforms.

156. Yassari 2016; Stilt et al. 2018; Welchman et al. 2022.

157. Government of Egypt 2000.

158. Sonneveld 2009, 2010, 2012; Singerman 2005; Al-Sharmani 2008, 2017; Zaki 2017.

159. For example, inclusion of the wife's medical treatment as part of her due maintenance was based on the Zaydi Shi'a school (Fawzy 2004, p. 33). Also, allowing a Muslim person to bequeath one third of their estate to one of the legal heirs without the consent of the rest of the heirs is a ruling of Shia origin (An-Na'im 1992, p. 45; Shaham 1997, p. 200).

countries followed and based their own codifications on (with modifications).¹⁶⁰ The experience presented here from Egypt is therefore relevant to other MENA countries with all their diversity, not only because the Egyptian code formed an important basis for other family laws in the region, but also because this particular campaign encouraged the launch of similar reform initiatives in other countries such as Jordan in 2001, Morocco in 2004 and Algeria in 2005.¹⁶¹ However, before delving into this case study, several points need to be made at the outset.

First, it is important to note that the Egyptian Personal Status Law (PSL), with its divorce regime, is a highly political site. Like many other Muslim family laws, it shapes society in its past, present and future as it arranges the transfer of resources between generations through regulating inheritance, manages the reproduction, custody and guardianship of the next generation and regulates sexual and marital relations in the present.¹⁶² Unlike other laws in the Egyptian legal system that have undergone varying processes of secularization, it is the last remaining law with clear roots in the Islamic legal tradition, thus serving as the symbol of the nation's Islamic identity. This identity is often asserted in contrast to the colonialist past as well as what is perceived as a recurrently neo-colonialist Islamophobic present.¹⁶³ This law is therefore 'charged with a strong political symbolism' that makes changing it a difficult task.¹⁶⁴ Second, it is also the site where the regime and its strong Islamist opposition continue to compete vehemently, vying for an Islamic authenticity that often accrues political power and popularity. Third, there is an international dimension to the PSL in that it often put

Egypt in a less than favourable light vis-à-vis its international human rights obligations due to some of its discriminatory provisions against women, thus affecting the country's ability to tap into international development aid funds.¹⁶⁵ Successive Egyptian political regimes have had to juggle their seeming Islamic authenticity and preserving the country's standing and position in the international community, with varying consistency and results. And fourth, when it comes to divorce, the issue of the husband's exclusive unilateral right to effect divorce by merely uttering the words 'I divorce you' verbally wherever and whenever he wishes, without necessarily producing a reason to do so, has also been a strong and well-guarded norm and signifier of male superiority and power over women in Egyptian society.

It is in this historical, local, international and socio-political context that Procedural Law 1/2000 was birthed with its famous *khul'* article, which after many years of activism finally allowed women the option of filing for a no-fault divorce in court. Let us see how that happened.

Historically, as alluded to above, a man can divorce a woman by his unilateral will and without having any grounds. In contrast, a woman has to show and prove the reason she is asking for divorce based on a set of pre-determined grounds in the law, such as the husband's harm, imprisonment, non-payment of maintenance and so on, before a judge can grant her a divorce. Prior to 2001, divorce cases initiated by women could take up to 10 years for resolution, often prolonged by a husband's ability to delay the procedure if he so wished. This was further exacerbated by an overwhelmed court system that was

160. See Welchman 2007, p. 13.

161. Zaki 2017, p. 2.

162. Moors 2003.

163. For more on how the Egyptian family law was deeply connected to issues of identity in relation to the encounter with colonialism, and how this affected subsequent efforts of reform, see Abu-Odeh 2004.

164. Bernard-Maugiron 2011, p. 118.

165. Sonneveld 2012, p. 51.

burdened by the sheer number of its caseload. All this contributed to, and elongated, the suffering of women seeking divorce in Egypt at the time.¹⁶⁶

It took around 15 years of persistent activism by a diverse coalition that was brought together by a group of Egyptian women and activists to make a change in this situation. The coalition consisted of 'activists, lawyers, government officials, civic leaders, legislators, and scholars', who together worked for this law to become a reality.¹⁶⁷

Strategic targeting of procedural law

Learning from disappointing past experiences of the reversal of changes to the substantive family law under President Anwar Sadat that had increased women's rights,¹⁶⁸ the coalition decided to work on reforming the personal status procedural law instead of the substantive one so as not to stoke opposition. It aimed to consolidate several hundred procedural laws governing personal status into one unified law, as well as indirectly give women better substantive rights through it.¹⁶⁹ One of these substantive provisions was the *khul'* procedure of no-fault divorce for women through which a woman can file for divorce and obtain it without having to prove harm, and without the consent of the husband, in exchange for returning the dower paid to her by

him at the beginning of the marriage. *Khul'* is a procedure that was conducted by Prophet Muhammed himself and is also mentioned in a Qur'anic verse that allows it, hence its religious roots.¹⁷⁰ It is worth noting that the majority of classical Muslim jurists agreed to the necessity of the husband's consent to *khul'*. However, the new Egyptian Procedural Law 1/2000 did not necessitate it, marking a clear break with classical Islamic jurisprudence on the matter.¹⁷¹ This is a very important development that de-sanctifies classical juristic rulings in contemporary times, showing that when there is a political will by the state and its representatives, change can happen even if there are settled jurisprudential rulings on the matter.

Building an alternative religious discourse and political engagement

Coalition members understood well from the beginning that any reform of the Muslim family law in this context would not happen without first engaging with religion. Explaining this, renowned lawyer Mona Zulficar – who was one of the pivotal instigators of this coalition – stated,

'we reclaimed for the first time our right to redefine our cultural heritage, as Muslim women under the principles of shari'ah. It was evident

166. Singerman 2005, p. 165.

167. *Ibid.*, p. 162.

168. In 1979, Sadat passed amendments to the PSL during parliament's summer recess using his power to issue presidential decrees. The amendments gave women important rights that would have been contentious had they gone through the normal parliamentary procedure. These included a working wife's right to financial maintenance by her husband; suspending police enforcement of obedience rulings against the wife; her ability to divorce the husband without proving harm as a result of the husband's polygamy; and her right of residence in the matrimonial home post-divorce as a custodian of the children. The amendments caused an uproar in several quarters of society, especially among the political Islamists whom Sadat alternately allied with and opposed. After Sadat's assassination in 1980 by Islamist groups, the law was eventually deemed unconstitutional by the Supreme Constitutional Court on the ground that it violated proper procedures as there was no emergency necessitating the use of presidential decree to pass such amendments during parliament's recess (Sharafeldin 2013).

169. Al-Sharmani 2008, p. 10.

170. This is supported by the *hadith* on the wife of Thabit ibn Qays (Tucker 2008, p. 96 citing Bukhari 1974, pp. 7, 150–151). The Qur'anic verse is 2:229, which states 'if ye do indeed fear that they would be unable to keep the limits ordained by God, there is no blame on either of them if she give something for her freedom' (Fawzy 2004, p. 67). Tucker, however, informs us that classical jurists differed on three basic features of *khul'*: how much a woman should pay as compensation; the role of the court or judge in evaluating a *khul'* case; and whether the husband's agreement was necessary (2008, p. 96). Jurists differed less on the latter issue, however, 'while the jurists always assumed that the husband's agreement was a basic part of the *khul'* process, in the context of a total breakdown of the marriage that agreement might be made obligatory' (*ibid.*, p. 99).

171. Government of Egypt 2000.

that we could not rely on modern constitutional rights of equality before the law, as these did not equally apply under Family Law, which claimed to be based on the principles of shari'ah. We could not afford to shy away from the challenge and continue using solely a strategy based on constitutional and human rights. We had to prove that the religious discourse could be used by women to defend their cause.¹⁷²

The coalition framed their efforts simply as that Islam gave women protections and rights that women were later deprived of by strong patriarchal customs and traditions, as well as Western and Ottoman influences on the law, and so it was now time to re-examine this situation and restore these Islamic rights.¹⁷³ Their 'reclaiming of Islam' was one of the factors that helped them eventually beat their opponents by using the same language and frame of reference that had always been employed earlier to successfully to block any reform in gender relations and norms. Singerman asserts that without this Islamic rootedness, the campaign would not have succeeded in its endeavours.¹⁷⁴ Not only did it help the coalition to successfully de-fuse subsequent strong religious objections to the bill,¹⁷⁵ but it also helped them convince and bring in 'government insiders' to help the coalition throughout its khul' campaign.¹⁷⁶

Zeinab Redwan, professor of Islamic philosophy, parliamentarian and one of the founding members of this coalition explained that,

'Islam had many features to it that were worthy of bringing forward in our battle for the right of women to end their marriages. It is our

conviction that Islam is a religion that does promote a message of equality, and that it is the classical interpretations of Islam that date back to the middle ages that make it hard for women to realize their rights. But more importantly, using Islam as the framework for our initiative will enable us to gain sympathy from the wider public.¹⁷⁷

The coalition's work was also part of a global movement that was forming around engaging with religion for gender-sensitive legal change. The scholars that the coalition worked with made alliances with other scholars from the Muslim world who helped in enhancing their scholarship and work supporting this campaign.¹⁷⁸ This global dimension and connection with movements worldwide is important to note here, as it is part of building the power, solidarity and strength necessary to embark on this kind of work and change. It will be referred to below when discussing other aspects of the international context that significantly affected this work.

The coalition's strategy revolved around two important pillars. The first was building the knowledge and arguments that supported reform from both inside and outside an Islamic framework through working with various scholars and academics. But they were also cognizant that scholarship and knowledge alone were not going to be sufficient in light of the powerful groups resisting reforms that might be harmful to their interests. So, the second pillar of their endeavour was engaging in political work within the institutions of power that were usually seen as part of the problem, choosing to see them as a potential part of the solution. These included the law, the judiciary, religious authority, the executive branch, parliament and others. In the process,

172. Quoted in Singerman 2005, p. 161.

173. Singerman 2005, p. 167.

174. Ibid., p. 165.

175. Ibid., p. 168.

176. Ibid., p. 170.

177. Redwan 2000, p. 45.

178. Singerman 2005.

they worked with a diverse set of partners including cabinet ministers, judges, government officials, religious leaders, academics, civil society activists and others who were all integral in this process. Over the years, this kind of work involved ‘hundreds of meetings, interviews, conferences, strategy sessions, phone calls, lobbying efforts, and studies [that] generated enough support across diverse constituencies for the bill to succeed’.¹⁷⁹

It is hard to understate the extent to which this political situated-ness and action contributed to the success of this endeavour. The women who instigated the campaign were very much aware that while working with others in the women’s movement is important,¹⁸⁰ it was not enough in such an authoritarian patriarchal context such as Egypt’s at the time. They had to engage with the institutions of power in the state and to also ‘play with the “big boys”, enlisting the president, the law, parliament, the judiciary and, most importantly, religious authorities in their campaign’.¹⁸¹ They built on and cultivated their own connections with these various institutions by virtue of their professional experience and previous work with them. The women’s activism mobilized these institutions and the sympathizers within them to coax the way to change. As true social movement maestros do, they brought together and coordinated different groups including powerful elites; packaged difficult ideas into more palatable bites; and made use of unique political moments to effect change that would have otherwise been impossible.¹⁸²

This strategy might seem counter-intuitive, because it is these very state institutions that had been using religion and its patriarchal version in the public

sphere to consolidate their interests and maintain social order during the Sadat and Mubarak regimes.¹⁸³ However, the Egyptian case shows that, since one of the main reasons for the situation at the time was precisely because of this state policy, the solution then had to involve addressing both religion and these powerful state institutions in creative and intentional ways and to capitalize on available opportunities both locally and internationally to attempt to bring about transformation.

In that context, a word should be said about the international setting in which all these efforts were operating. In retrospect, some contemporary Egyptian feminist activists believe that in the year 2000 – when the law finally passed – an important political moment had presented itself. As a signatory to CEDAW, the Egyptian Government was preparing for its constructive engagement with the CEDAW Committee in 2001. Some Egyptian feminists claim that it was important for the ruling regime at the time to go to the United Nations with a significant achievement for women under its belt. They find that the regime was keen to showcase the country’s deserved inclusion in the international community as a leader of the Arab world that respects women’s rights and a worthy recipient of continued international development aid support.¹⁸⁴ *Khul’* held the perfect combination with its roots in Islamic law to assuage the Egyptian Muslim population while providing relief to women who had been seeking divorce for many years. As such, if Egypt passed this law, it would be in compliance with its obligations under the Convention while still respecting its religious and cultural heritage.

179. *Ibid.*, p. 162.

180. There were differences and divisions among the broader Egyptian women’s movement regarding the coalition’s activities, including concerns about it working closely with such an authoritarian government as well as whether the engagement with religion would further solidify the role this already played in the public sphere. Others critiqued the focus on *khul’*, which they feared would only benefit upper class women who could afford to pay back their dower in return for the no-fault divorce procedure (Sonneveld 2012, p. 50).

181. *Ibid.*, p. 164; Zaki 2017, pp. 17–18.

182. Singerman 2005, p. 164.

183. For more on ‘state feminism’ in the Egyptian context, see Hatem 1992, 2016.

184. Sharafeldin 2013.

In any event, after 15 years of work – note the length of time needed here – and in an opportune political moment that geared political will for change, the law finally made it to parliament. Unsurprisingly, a raging debate ensued, with religion being used by all parties to try and trump the others.¹⁸⁵ Singerman notes the misogynist tone of the debate, which reflected the terror that many men had at the notion of women's rights.¹⁸⁶ To soften the blow, the coalition eventually agreed to a compromise, adopted at the end of the process during parliamentary debate, and a clause was added that required a three-month reconciliation period set by the court.¹⁸⁷ Despite this new procedural delay, the law still considered the court's decision granting khul' to be final, not allowing for any appeals by the husband.

Notwithstanding tactics such as compromise, the long-term strategies and work of this coalition are of particular interest here. These not only included engaging constructively with religious discourse to build knowledge that offered solutions from within but also, notably, working on and with institutions that intersect in the nexus of religion, law and gender, which was integral for the eventual passing of the law.¹⁸⁸ The outcomes of this work could be seen at varying points during the process, such as when the bill was vocally supported by representatives of institutions that included the Minister of Justice, the Grand Imam of El Azhar and the Academy for Islamic Research as well as various parliamentarians.¹⁸⁹

Of course, there was opposition from within these same institutions, including from within the ruling party, which had paradoxically proposed the bill in parliament in the first instance. But eventually, with a combination of the factors described above coming together over time, along with some manoeuvring tactics,¹⁹⁰ the balance of power tipped in favour of passing the bill in January 2001.

It is also worthy of note that, despite the support coming from high-ranking religious leaders and officials, the most vehement opposition still came from other religious scholars and their allies inside and outside the state's religious institutions. For many of them, this kind of work threatened their very existence because the 'PSL coalition and its project of reinterpretation of the Islamic canon is a new claimant to religious authority'.¹⁹¹ It was effectively chipping away at their power over the production of the religious knowledge that eventually gets reflected into law and society. This again confirms the above assertions that the battle is more about politics and power than merely religion.

Impact

Right after the law passed, in the context of a fierce media campaign that derided women who filed for khul' as immoral, dishonouring their husbands and children, courts were also dragging their feet to implement the law.¹⁹² Many judges, as socially

185. Al-Sharmani 2008, p. 12.

186. Singerman 2005, p. 177.

187. See Bernard-Maugiron and Dupret 2008; Al-Sawi 2003; and Halim 2006 for more details on the problems of the reconciliation process and the khul' procedure.

188. This did not go without criticism from other parts of the Egyptian women's movement, who expressed discomfort at working in such close proximity with an authoritarian regime (Sonneveld 2012, p. 50). In the post-2011 Egyptian uprising, critiques against the law were renewed, slamming it as the work of the old regime, particularly of the former first lady, Suzanne Mubarak. However, women's groups rose to defend the law and highlight their own work for a decade and a half before the entrance of the first lady onto the scene and its eventual passing in parliament (Zaki 2017, p. 23).

189. Such public proclamations of powerful government and religious leaders can be important indicators of how public discourse is made to engage on issues related to gender and religion. In some contexts, it may help in shaping a more gender-just public religious discourse leading to norm change, while in others it may backfire and produce the opposite effect depending on the socio-political context.

190. This included the Head of Parliament cutting the parliamentary debate short on the day of voting when the debate started to turn misogynist in tone and moving quickly into voting (Singerman 2005, p. 178).

191. *Ibid.*, p. 179.

192. *Ibid.*, p. 182; Tucker 2008, p. 130.

situated beings, had their own resistant personal gender beliefs and inclinations, which affected how their judgements were delivered initially, especially in the absence of an explanatory memorandum of the law in the early stages.¹⁹³

However, 19 years after the law was passed, the 2019 and 2021 reports of the Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS) show that of the different types of divorces women can resort to in court, khul' recorded the highest percentage of usage in Egypt: 82.2 and 88.4 per cent, respectively, of all divorce cases in those years.¹⁹⁴ This has been largely due to it being the fastest type of divorce available to women, making the whole procedure also less costly for them.¹⁹⁵

Sonneveld's doctoral fieldwork and research shows that khul' was mainly resorted to by 'women from the lower (middle) classes who were married to husbands who were not adequately providing for them'.¹⁹⁶ Indeed, subsequent research shows that – contrary to initial expectations that the law would benefit richer women more – it was in fact used by women from all classes but especially middle- to lower-class women.¹⁹⁷ Halim also reported that among low-income plaintiffs filing for divorce, the percentage using khul' was much higher (60.6 per cent) than used other forms (31.3 per cent).¹⁹⁸ In situations where the husband is not financially maintaining the family, whether due to poverty or any other reasons, it becomes futile for the wife to file for other types of divorce whose main advantage – despite their typically long proceedings in court and meagre

compensations – is to secure post-divorce financial maintenance for women. In this situation, khul' makes more sense for its quick, effective and less costly proceedings.

Perhaps one of the most important impacts of khul' has been in relation to the earlier mentioned 'maintenance for obedience' equation that entrenches husbands' overall dominance over wives, making it impossible for women to implement unilateral divorce in the same way that men do. 'Making the consent of the husband irrelevant [...] khul' as a unilateral divorce clearly reflects changes that are occurring in Egypt in the institutions of marriage and the family'.¹⁹⁹ It gave women a quicker exit from abusive marriages and more bargaining power than they previously had in spite of their husbands' disapproval. It affected the severe imbalance of power relations between the spouses, especially for vulnerable women with limited support from their families.²⁰⁰ Al-Sharmani correctly asserts that these legal reforms did not completely transform gender norms, but they were certainly 'eroding at the privileges and the authority that men claimed at least in theory according to the legal and social norms on marriage'.²⁰¹ The anxiety caused by this turbulence to the spousal balance of power is clearly apparent in the following exclamation by one of Al-Sharmani's male informants,

'A man is now afraid to talk to his wife if she does something or to put pressure on her. A woman is not afraid of her husband anymore. Now many men are afraid that their homes will be destroyed. Things have become reversed.

193. Bernad-Maugiron 2011, p. 134.

194. CAPMAS 2019, 2021. This is also confirmed through statistics compiled from the Ministry of Justice by civil society organizations such as the Centre for Egyptian Women's Legal Assistance (CEWLA) showing khul' divorces accounted for significantly more than any other regular form of divorce (CEWLA 2013).

195. Sonneveld 2009, p. 250.

196. Ibid.

197. Samaha 2017, pp. 64–65.

198. Halim 2006.

199. Sonneveld 2010, p. 115.

200. Ibid., p. 114.

201. Al-Sharmani 2017, pp. 87–88.

Instead of women being afraid, it is the man who is afraid that the home will be destroyed. The man does not exist anymore. The woman does not heed his word. Men have no value in the society anymore because of khul'.²⁰²

Whether this statement was an expression of exaggerated panic at losing male privileges or an accurate reading of the situation, the fact remains that the irrelevance of the husband's consent in the khul' procedure is gradually chipping away at the norm of male dominance at a discursive level. This impact seems to have also affected other material issues pertaining to the marital relationship, such as levels of intimate partner violence.

Corradini and Buccione show that the 'effect of the [khul'] reform on domestic abuse is large, negative and statistically significant' depending on how encompassing the definition of 'violence' is.²⁰³ In particular, violence was found to decrease more for three sets of women no matter how we define it: (1) women with young children, as custody remains with the mothers, who get to live longer in the marital home by law despite the divorce; (2) women with education levels less than high school as well as those in the highest two levels of wealth; and (3) women living in urban households.²⁰⁴

This perceived spill-over effect is also identified by Bernard-Maugiron, who finds that khul' may have sparked new social behaviours contributing to 'strengthening the cohesion of families by restoring a certain equality between husband and wife. It allows the wife to strengthen her place within the couple and recognizes her as an independent, emancipated being, capable of making decisions individually'.²⁰⁵

Although not as pronounced as in the earlier days of the law, khul' continues to have social implications for both husband and wife. Being 'repudiated' by a wife can still stigmatize the husband, putting him in a perceived emasculated position by affecting his supposed honour and virility. It is a position that many men would want to avoid. Some wives are also reported to give up khul' midway for fear of scaring away daughters' marriage suitors, who might fear that the daughters would follow in the mother's footsteps and subject them to this humiliation.²⁰⁶

However, Al-Sharmani and Sonneveld report the other side of this social situation, with women who file for a khul' case using this social stigma for many reasons, such as putting pressure on the husband to spend more on the family, circumventing obedience cases filed by the husband in court or accessing social security support available only to women divorcees.²⁰⁷ Sonneveld shows that the filing and subsequent withdrawal of khul' cases by women is often explained not just by the social costs borne by the couple but also by the fulfilment of the different ends behind such a case, with courts effectively becoming a space to negotiate spousal disagreements.²⁰⁸ It is therefore important to trace the different ways the law actually manifests in lived reality, not just in delivering its original intent of facilitating divorce out of bad marriages for women but also achieving other ends within the marriage itself.

This is related to our earlier discussion on measuring social change through assessing law reforms and their effects on lived reality. The late judge Fathi Naguib, former Chief Justice of the Supreme Constitutional Court and one of the architects of Law 1/2000, states,

202. *Ibid.*, pp. 88–89.

203. Corradini and Buccione 2023, p. 9.

204. *Ibid.*, pp. 10–12.

205. Bernard-Maugiron 2011, p. 131.

206. *Ibid.*, pp. 131–132.

207. Al-Sharmani 2017, pp. 81–82; Sonneveld 2012.

208. Sonneveld 2012, pp. 127–128.

'When we assess the benefit of the law we have to consider the position of those women who were trapped either in a miserable marriage or in the vicious circle of court procedures over the years, before and after the new law. Khul' cannot be assessed through the eyes of those who suffer no problems and yet disapprove of its use by the ones who are suffering.'²⁰⁹

This brings us back full circle to lived reality as in order to measure the social impact of a law such as this one, we need to look at those who were suffering in its absence and study the material effects on their lives. Yet again, lived reality is where we start and where we end to assess and measure impact, as indicated above.

To summarize, this kind of work started with addressing problems that were experienced and felt in the actual lived realities of women and families. The complexities and wider context in which these problems were embedded had to be well understood and researched to disentangle the different layers contributing to their persistence. The work then involved looking at the religious sacred texts that informed the relevant laws and norms through the lens of lived reality, understanding whether the intent of the texts – such as justice, harmony and equality – was indeed delivered in women's day-to-day lives. Feminist religious knowledge was co-created from the religious 'text' with the 'context' in mind as part of a holistic framework of other resources used nationally and internationally to offer context-appropriate solutions. This knowledge was then used in long-term advocacy and astute political action with institutions of power in a process that lasted more than 15 years. Advocacy also involved

interventions and campaigns for community organization to mobilize pressure for change. Even after the law finally passed, it took considerable time for the impacts, both intended and unintended, to start bearing fruit in the lives of Egyptian women and families.

3.2. STEPS, ANALYSIS AND RECOMMENDATIONS

In the end, it is important to note that the strategies adopted by women's movements and reformers always have to take into consideration the socio-political context and the kind of resources and challenges it affords. At that particular political moment in Egypt, the set of chosen strategies seems to have worked in passing a law such as this one with these effects. In another political moment, another set might have to be adopted. Indeed, this very campaign for khul' faced many challenges threatening its success throughout its 15 years of existence until the right moment came along.²¹⁰ Notwithstanding this, some generally applicable lessons and recommendations could be gleaned from this case study as well as that of Musawah's presented above. I will start first by tracing the common steps that reformers usually undertook despite the diversity of contexts, followed by an analysis of these and then recommendations for moving forward.

Lessons learnt: The steps towards change

Whether it is the global Musawah model adopted in different countries, or the local Egyptian case study presented above, the work on changing gender laws and norms started with one task: to deeply

209. Quoted in Singerman 2005, p. 172.

210. For the successive setbacks this coalition faced throughout their campaign, see Zaki 2017; Tadros 2006; Singerman 2005; Zulficar 2009. For example, the coalition worked on reforming the marriage contract prior to their work on khul' divorce. However, they eventually had to set their marriage contract work aside because of vehement attacks from conservative religious leaders and a lack of capacity at the time to widely mobilize women and other supporters to their cause. Nevertheless, Zaki highlights how the coalition's ensuing media battle with these leaders succeeded in paving the way for important gains and shifts in the public discourse to support women's rights in Islam in the Egyptian context. This gradual shift helped bring in more supporters and was one of the factors contributing to the eventual passing of the khul' law (2017, p. 17).

understand the lived reality of people on the ground. What are the governing norms and laws and how are they affecting people and gender relations in real life? Who is suffering, who is benefitting, what is the cost and why? Are there similar people or communities who have already managed to find a solution? Finding all this out can involve doing field research, launching surveys, furnishing statistics, collecting stories and conducting historical research, among other ways. This would help us to not only understand the problems of lived reality but also find resources and solutions within it.²¹¹

The second step in many of the Muslim contexts shared above was to engage seriously, not cosmetically or defensively, with religion as an important component of lived reality.²¹² This was especially pertinent when it came to religious-based gender-related laws and norms that needed reform. At one point or another, most of the reformers had to engage with the religious texts while having the context of lived reality present in their minds. They brought out and highlighted important Qur'anic ethics and values such as justice, beauty, goodness and others, and questioned whether these laws and norms were achieving the intended ethical values or not. They asked whether the purposes of sharia were being served and used Islamic legal methodologies to produce knowledge that reclaimed religion for gender justice and equality. They often adopted a feminist, gender-sensitive lens and methodology when engaging with religious texts to argue for gender justice from within the religious framework itself.

This engagement with religion often produced alternative religious knowledge that is gender-sensitive and situated in lived reality. The process of knowledge production was also democratized through working with those most affected by the laws and norms under question. This kind of co-produced knowledge wedded the expertise of different kinds of scholars, activists, policymakers, women, men and others to produce situated knowledge. It was a type of knowledge rooted in Islamic source texts, human rights standards and constitutional guarantees of equality – as well as the lived reality of people living in Muslim contexts.

The third step then involved cultivating political will by engaging in political, activist and campaign work to use this knowledge on the ground for change. This meant spreading the knowledge to different kinds of actors who have the power – either now or later – to change the status quo, both inside and outside the state apparatus. The long-term work of relationship and alliance building with both the usual and unusual suspects was essential. Most importantly, it involved the hard work of building and growing a diverse movement for change that collaborated over a long period of time, notwithstanding the uncertainty of the outcomes throughout, which Sharon Welch pointed to in her 'ethic of risk' presented above.²¹³ There seem to be no apparent shortcuts to this kind of process, and 'time' was an essential ingredient in bringing about transformation. In order to make use of a fleeting, long-awaited, opportune political moment, years of persistent hard work had to have happened earlier to be able to capitalize on it and confidently give that momentous push for change.

211. For example, Pascale et al. state that a method such as Positive Defiance can solve the most difficult and pernicious of problems thanks to its 'embrace of the social system from the onset, seeing it not as a barrier to the implementation of somebody else's solutions but a means to a community's indigenous solution' (2010, p. 78). For more, see their case study on addressing social norms and practices on female genital mutilation in Egyptian rural settings.

212. Abou El Fadl criticizes those who defended religion automatically against human rights standards claiming religious superiority, without engaging seriously with either tradition. 'This led to an artificial sense of confidence, and an intellectual lethargy that neither took the Islamic tradition nor the human rights tradition very seriously' (Abou El Fadl 2009, p. 119). The same applies to those who sideline religion, ignoring its power and importance in many Muslim contexts and superficially considering it to be the source of all gender problems.

213. Welch 1990.

This third step almost always started and continued with the support of committed civil society actors who brought it all together. In all the examples above, it was the coordination, collaboration, dedication and behind-the-scenes leadership of civil society actors that eventually bore fruit in terms of change. They were usually the people who made a choice to care and continue working over long periods of time despite difficulties and uncertainties, thus creating the 'conditions of possibility' for transformational intergenerational change referred to by Welch.²¹⁴

Analysis and recommendations: Strategies for change

These were the general steps followed in all the cases presented above. However, to generalize this experience and replicate it in wider contexts it is important to know why women's movements and reformers embarked on these particular steps. What are the ingredients of a successful strategy for gender norms change as well as recommendations for moving forward from here?

First, a multi-layered institutional approach that is cognizant of power is required. In contexts where a humanly constructed patriarchal religious discourse is used in multiple institutions of authority – such as religion, law, family and the state – to shape and govern gender norms, efforts for change will have to adequately engage with these very institutions. In many parts of the Muslim world, social norms are part of a fierce competition over concrete interests, with strong actors vying against one another for dominance and control over resources and power. They use religion as well as social and legal norms governing women's bodies and lives to maximize their interests institutionally. Therefore, it is not up to mere individuals and their individual behaviour

to make these kinds of big social norm changes; rather, systematic, structural and institutional efforts need to be made. As we have seen in the Egyptian case study, it takes years of persistent concerted action, organization and mobilization by movements, coalitions and communities of people both working with these institutions and putting unrelenting pressure on them to finally reap the rewards.

Second, serious critical and constructive engagement with religious discourse is necessary in certain contexts such as the MENA region and others where religion has power in the public sphere, affecting gender norms and relations. Often in these contexts, the state purposefully selects a patriarchal, discriminatory religious discourse to be reflected in laws and norms that significantly affect the daily lives of women. Yet, there is a gender-sensitive religious discourse out there that argues for gender equality and justice. Often it comes from outside entrenched religious authorities and groups that collude with dominant power structures to serve mutual interests at the expense of gender equality. But with serious feminist engagement by feminist groups and their allies in institutions of power, as in the Egyptian case, this alternative discourse could and did provide part of the solution to the problem of change.²¹⁵ States selectively resorted to it to make changes when it was convenient for state interests and their allies in dominant groups. It is therefore not a matter of theology anymore, but rather one of politics and power that eventually affects whether it is a patriarchal or egalitarian religious discourse that is favoured by those in power to affect social norms and laws influencing gender relations.

However, even though engagement with religion is fundamental when it is so deeply institutionalized in gender laws and norms, on its own it cannot bring

214. Ibid. In this context, see the work of adrienne maree brown on 'emergent strategies' where those working towards social justice goals can benefit by learning how to adapt their strategies to meet continuously changing circumstances. The focus here is on developing the agility to always observe, learn and meet changing conditions and opportunities, making use of them to realize the final intent of the change-makers endeavours (brown 2017).

215. See also the experience of bringing about the complete overhaul of the Moroccan Mudawana (Muslim family law) in 2004 as a result of this work (Naciri 2007; Salime 2009).

about the change needed because it is not the only dominating factor in that equation.²¹⁶ In the examples above, religion was engaged with as part of a holistic framework of action towards change that also included working side by side with human rights standards and constitutional guarantees of equality along with the lived realities of women, men and families. Just as religion alone is not enough, reforming one law or the other alone is not sufficient to change long-entrenched discriminatory norms. A holistic approach that addresses the legal framework as a whole, with its different laws and practices and interconnections between them, is more likely to affect discriminatory gender norms. The examples shared show that engagement with this overall framework worked towards building political will by making it more costly for power holders in a given context to ignore calls for gender-sensitive change and more beneficial to support it.

Third, the way change is to take place is of paramount importance. So, when designing and adopting interventions that aim to achieve change in unjust social norms, some key questions need to be asked first. For example, are these interventions empowering those negatively affected by the social norm, giving them voice and agency and creating expanding leadership among them, or are the interventions stripping them of all these and/or putting them at risk? Are these interventions adequately challenging current power structures that have produced and endorsed prevailing discriminatory social norms? Do they contribute to democratizing knowledge production processes that were formerly monopolized by these dominant powers? As in the example of Musawah shared here, do they democratize the production of religious knowledge that challenges discriminatory norms? Do they support the co-production of alternative knowledge instead of merely sharing it with affected communities,

treating them only as recipients. Finally, are the interventions supportive of community action and mobilization for change or do they stop at the point of producing and sharing a new narrative and only 'raising awareness' of it?

After checking the 'way' change is made to come about, the question of tracking change and verifying it is important. As discussed above, changes in the public gender discourse produced by those in power and their relevant institutions on the intersection between religion, law and gender norms, as well as changes in laws and policies to bring about more gender-sensitive outcomes for women, are both significant indicators of norm change. However, the final litmus test to judge all these efforts is ultimately to go back again to check the lived reality of women and men. Has it really transformed this? Are the experiences and lives of women on the ground changing? Are they able to exercise their new-found rights under these laws and norms, and have their lives changed to the better or not?²¹⁷ Needless to say, to reach that point necessitates a certain humility to accept that this sort of change takes time, lots of it. In the Egyptian case study, the work took about 15 years of preparations and work for the reform of the law to take place, and another 10 years on top of that to create real change in women's lives – and this is still unfolding. It also required a certain care and commitment to continue the work despite challenges and uncertainty. Quick fixes might help relieve people momentarily, but they do not create the kind of desired systematic change that can meaningfully transform lives and change nations' destinies in the long run.

Fourth, we should learn from existing efforts within communities that have strived for change already. Just as the 'lived reality' of women, men and families clearly shows us why change is necessary,

216. That is why the view that finds engaging with religion is futile, taking it as the source of all gender evils in the Muslim world, is quite simplistic as it disregards the much wider socio-economic and political terrain governing gender relations today.

217. See section 2.3.

it also provides us with direction towards possible solutions and pathways of change. Across the ages, Muslim women and men have devised solutions towards more just and egalitarian gender norms. When deciphering a way forward and designing any future interventions, those seeking social norm change would do well to learn from what has already been done by those most affected by these harmful norms and laws. That happens when we involve them in the inception phases of any intervention designed to change social norms and before any action is taken. It also happens when we do our due diligence in studying the contexts and communities we work in, regarding them as locations and people with assets and solutions to be discovered and further built upon in any future intervention.

That is why, finally, it is difficult to understate the role that women's movements play in this long-term, institutional and political work that is rooted in lived reality. It only makes sense that those with the deepest interest for change will have to be involved in the process if any real progress is to happen. Therefore, given the proven track record of success so far, accelerating the work of and increasing the support for civil society organizations and women's movements is a worthwhile investment. We know the way forward from here, so what is stopping us?

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UN WOMEN EXISTS TO ADVANCE WOMEN'S RIGHTS, GENDER EQUALITY AND THE EMPOWERMENT OF ALL WOMEN AND GIRLS.

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This discussion paper offers a rigorous analysis of how discriminatory gender norms are produced, sustained and contested across the Middle East and North Africa region. Bridging socio-legal studies, feminist theory and the study of religion, the paper advances a multi-layered framework for understanding how gender norms are embedded in and operate at the intersection of religion, law, state power and lived realities.

The paper demonstrates that when it comes to faith-influenced settings, social norms cannot be analysed in isolation from the religious discourses and legal structures through which they are institutionalized. By distinguishing between divine sharia and human jurisprudence, it highlights how patriarchal interpretations gain authority and how reformist readings grounded in Islamic ethics can open new horizons for justice.

Drawing on the work of Musawah – a global movement for equality in the Muslim family – and the experience of local activists working on khul' divorce law reform in Egypt, the paper provides practice-oriented insights into how activists, scholars and coalitions have successfully engaged with religious knowledge production, legal reform processes and courts as spaces of negotiation. It offers concrete, context-sensitive lessons for transforming discriminatory norms and advancing gender equality where religion shapes social and legal norms.



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