



**BARAZA!**

A Sisters In Islam Bulletin

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## Muslim Women Speak



*SIS staff, members and supporters with Dame Anita Roddick (seated in the middle) at a fundraising tea talk organised by The Body Shop West Malaysia in November last year.*

**W**elcome to the first issue of *BARAZA!*, Sisters in Islam's biannual issues bulletin. This bulletin brings together articles on contemporary matters affecting Muslims today, with a focus of women's rights in Islam and an update of SIS activities.

**Why BARAZA!?** According to Hans Wehr's *Dictionary of Modern Written Arabic*, *baraza* means "to step out, to come out, to stand out, to be prominent, to expose, to show, to excel, to surpass, to compete, to publish, to present." In the early centuries of Islam, a *baraza* woman is a woman who does not hide her face and does not lower her head; a woman of sound judgment, known for her 'aql (reasoning). A *baraza* woman is one who is seen by people and who receives visitors at home.

For us in Sisters in Islam, the quintessential *baraza* woman is Sukayna bint Hussein, the great-granddaughter of Prophet Muhammad (pbuh) and granddaughter of the Prophet's beloved daughter Fatimah and fourth Caliph of Islam Ali Abu Talib. Biographies of early women in Islam celebrated Sukayna's independence, intelligence, beauty and wit. She debated with powerful men about political and social issues of the day, and spurned their offers of marriage. She pursued her literary interests, and hosted poets and literary figures in her home. She was married several times and was famed for her marriage contracts, which stated among other things that she would not obey her husband, she had total control of her life and that her husband shall not commit polygamy. If her husband were to renege on any of the conditions, she stipulated that he would be compelled to divorce her at her wish.

Sukayna is a figure forgotten in the Muslim tradition. The Muslim woman today is seen by the world as oppressed, discriminated against, backward and destined to suffer in silence. In the name of her religion and shariah law, she is viewed as inferior to men. And God forbid if she is strong, independent, outspoken and stands up for her rights, for this would condemn her as Westernised and unIslamic.

In the course of our work, Sisters in Islam has found that the realities of women's lives today conflict with society's image of what the ideal Muslim women should be. In the 21st century, women's groups in the Muslim world are at the forefront of challenges to traditional religious authorities and Islamist political movements; their use of Islam to justify women's subordination; and most perniciously, using the fear of God to silence dissenting voices.

In this inaugural issue of *BARAZA!*, SIS has chosen to focus on the reformation of Islamic Family Law to reflect the justice of Islam. If justice is the indisputable objective of shariah, shouldn't this principle be reflected in laws that regulate the relationship between, and the rights of, a husband and a wife?

The classical juristic framework of marriage in Islam was influenced by the logic of a contract of sale. In exchange for a dowry, a woman comes under her husband's authority. At the core of this marriage contract is the wife's submission (*tamkin*), defined as unhampered sexual availability, which is regarded as a man's right and a woman's duty, in exchange for maintenance (*nafaqa*), defined as shelter, food and clothing, which is a woman's right and a man's duty.

Given the realities and complexities of our lives today, such a conception of marriage is no longer sustainable. The 20th century saw the slow reform of personal status laws in many parts of the Muslim world to deal with the complaints of injustice and suffering of women. Common approaches have focused on adding conditions to the marriage contract to protect women's rights, and to reform substantive provisions in areas such as polygamy and divorce to minimise the discrimination and hardships women face.

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IN A MODERN WORLD DOMINATED BY AN ETHICAL PARADIGM OF JUSTICE, EQUALITY, FREEDOM AND DIGNITY, THE QUR'AN PROVIDES A WEALTH OF GUIDING PRINCIPLES TO DEVELOP A NEW JURISPRUDENCE ON MARRIAGE BASED ON THE PRINCIPLES OF EQUALITY AND JUSTICE. MOROCCO RECENTLY REFORMED ITS FAMILY LAW TO ACHIEVE THIS.

But this approach to law reform has not been satisfactory. It remains a patchwork or band-aid approach to redress a flawed contract based on an assumption that has little bearing on today's realities. In this age of globalisation and wide access to education, the traditional male provider and subservient female homemaker are no longer models of Muslim marriage. The dynamics of marital relations in the modern world have changed as more women outperform men academically, as more women work and become financially independent and contribute to the family expenses.

Given these changing realities, the legal logic that produced the law governing the personal status of Muslims will need to change. This is not to say that the traditional Islamic family law and its assumptions are wrong. The classical jurists were guided by the circumstances of their times. In a different time and a different reality governing the lives of men and women today, the legal framework for marital relations must necessarily change.

In a modern world dominated by an ethical paradigm of justice, equality, freedom and dignity, the Qur'an provides a wealth of guiding principles to develop a new jurisprudence on marriage based on the principles of equality and justice. Morocco recently reformed its family law to achieve this.

So have Tunisia and Turkey. Indonesia has just drafted a new model law – a new Islamic Family Law grounded on the several Qur'anic verses of equality before the eyes of God; a relationship of mutual protection between men and women (at-Taubah 9:71), of men and women being each other's garment (al-Baqarah 2:187) – providing a strong Islamic framework for this reform effort.

This imperative, in no way heretical, will allow Muslims to lead their lives according to the teachings of their faith, within the context of their changing realities.

Zainah Anwar  
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*BARAZA!* is a resource primarily for activists; policy makers; academics and students of law, Islamic and gender studies; and SIS funders and supporters.

It provides:

- \* a focus on contemporary matters affecting Muslims today, especially women's rights in Islam.
- \* resources for reference
- \* an update on SIS activities.

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# Reforming Family Law in the Muslim World

In early April, a Universiti of Malaya professor commented that a Muslim father can force his daughter to marry a person of the family's choice against her will, and that this marriage would be legal and binding in Islam. Similarly, the Kelantan Islamic Family Law Enactment (IFL) 1983 states that under certain conditions a virgin whose *wali* is *mujbir* (her father or paternal grandfather) may be married without her consent.

That same week, however, Saudi Arabia's top religious authorities banned the practice of forcing women to marry against their will (*ijbar*), stating that the practice contravenes the objectives of shariah. The clerics said that whoever forces a woman to marry against her will is disobeying God and His Prophet, and that coercing women into marriage is "a major injustice" and "unIslamic." Laws in Algeria, Iraq, Syria, Jordan, Morocco, the Philippines and most Malaysian states also prohibit *ijbar*.

If the laws of so many countries ban forced marriages, why have the UM professor and the Kelantan IFL Enactment allowed the practice to continue?

Such is the debate around the Muslim world, where, after centuries in which the *fiqh* (Islamic jurisprudence) articulated in the major Sunni schools of law was considered the only definitive legal doctrine, recent law reform efforts are attempting to re-embrace the spirit and teachings of the Qur'an and the Sunnah.

## History and development of Islamic Law

The development of Islamic law can be divided into several periods. Initially, shariah law revealed to the Prophet reformed the cultural practices of pre-Islamic Arabia relating to women and the family (*see Table 1*). In the Caliphate period, the ummah conformed to the Qur'an and the Sunnah, the practices of the Prophet, and added two new sources of law – *ijma'* (consensus) and *qiyas* (analogical reasoning).

Over the next 400 years, the Hadith were compiled and a science of Traditions was developed. Schools of law arose that codified *fiqh*, the jurists' independent interpretations (*ijtihad*) of the Qur'an and Sunnah. After this period, the door of *ijtihad* was considered closed, such that future jurists could not independently interpret shariah, but rather followed the doctrine of *taqlid*, or adherence to the *fiqh* codified by one of the schools of law. For this reason, the interpretations of four major schools of law – Hanafi, Maliki, Syafi'i, and Hanbali – form the basis of most of the laws in the Sunni world today.

After independence from European colonialism, countries revived *ijtihad* as they codified and reformed their laws, though mostly through the *talfiq* (patchwork) or *takhyir* (selection) methods of replacing individual provisions with less discriminatory ones from other schools of law. In recent decades, scholars have advocated creating entirely new sets of laws based on an egalitarian approach, even if it requires shifting from interpretations of the major schools of law. This

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**Table 1: History and Development of Islamic Law**

Prophetic Period (612 - 632 CE)	Rightly-guided, non-hereditary / Orthodox Caliphs (632 - 661)	Umayyad (661 - 750)	Earlier Abbasid (750 - 1055)	Later Abbasid (1055 - 1258)	13th - 18th centuries	19th - 20th centuries	20th century - today
Shariah revealed to the Prophet reformed the cultural practices of pre-Islamic Arabia relating to women and the family.	Adherence to the Qur'an and the Sunnah. Two additional sources of law - consensus of the community ( <i>ijma'</i> ) and analogical reasoning ( <i>qiyas</i> ) - used for resolving matters not specifically addressed in the Qur'an and Sunnah.	Sectarians narrated Traditions that were not accepted generally in order to further their particular viewpoints. <i>Muhaddithin</i> began to collect and organise <i>hadith</i> in order to separate authentic from false Traditions.	Development of science of Traditions and systematic compilation of the <i>Hadith</i> . Rise of major schools of law that codified <i>fiqh</i> as fixed, permanent standards that have been followed to this day. Conceptions of women's roles from the culture of pre-Islamic Arabia and other patriarchal civilisations, not the Qur'an, concretised in the <i>fiqh</i> . Period in which door of <i>ijtihad</i> was closed.	Adherence to the schools of law ( <i>taqlid</i> ) rather than independent interpretations of the Qur'an and Sunnah ( <i>ijtihad</i> ). Jurists polished principles and produced commentaries, glossaries and compendiums.	Continuing prevalence of <i>taqlid</i> , sporadic legal activities, collection of fatwa.	Decline of the use of <i>fiqh</i> under European colonialism, followed by the codification of Islamic family law. Codification included law reform, mostly based on the process of <i>talfiq</i> (patchwork) or <i>takhyir</i> (selection), where individual provisions are combined with, or replaced by, less discriminatory provisions from minority opinions or different schools of law.	Continued revitalisation of Islamic law reform, with renewed debate between <i>taqlid</i> and <i>ijtihad</i> . Scholars begin to advocate replacing entire sets of laws based on an egalitarian approach, even if it requires shifting from interpretations of the four major schools of law.

Sources: Muhammad Khalid Masud, "Introduction", *International Conference on Islamic Laws and Women in the Modern World*, Islamabad (22 - 23 December 1996), pp. 24 - 25; Nik Noriani Nik Badli Shah, *Marriage and Divorce: Law Reform within Islamic Framework*, Kuala Lumpur: International Law Book Services (2000), pp. 2 - 4.

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is based on the premise that scholars were responsible for strengthening and promoting Qur'anic teachings (the shariah), not to merely uphold the teachings of early jurists (*fiqh*).

THE HISTORY OF ISLAMIC LAW TEACHES THAT THERE IS A DIFFERENCE BETWEEN SHARIAH (THE INFALLIBLE AND UNCHANGEABLE LAW REVEALED TO THE PROPHET) AND FIQH (INTERPRETATIONS OF THE SYARIAH DERIVED BY MAN THROUGH THE PROCESS OF RELIGIOUS AND LEGAL SCIENCE). FIQH, THE ISLAMIC LAW APPLIED IN MUSLIM NATIONS, HAS CONSTANTLY EVOLVED OVER THE CENTURIES AND HAS NEVER BEEN FIXED.

The history of Islamic law teaches that there is a difference between shariah (the infallible and unchangeable law revealed to the Prophet) and *fiqh* (interpretations of the shariah derived by man through the process of religious and legal science). *Fiqh*, the Islamic law applied in Muslim nations, has constantly evolved over the centuries and has never been fixed.

While shariah law is sacred and immutable, *fiqh* is human science. The fact that each Muslim nation has a different law demonstrates that these laws cannot be the revealed shariah, but rather are *fiqh* as interpreted and codified by humans. As such, the laws can be reformed to better reflect the Qur'an and better serve Muslim communities today.

### Islamic Family Law reform around the world

Because Qur'anic provisions on marriage and divorce are often broad proclamations, they provide a wide scope for interpretation. Classical jurists were restrictive in their interpretations of women's rights within the family due to the socio-cultural milieu of their times. Because the subordination of women was a universal feature in various societies, among both Muslims and people of other faiths, jurists of those times embedded such patriarchal and cultural assumptions into the standard marriage contract (see Table 2).

Scholars of recent times, however, argue that this man-made *fiqh* contains flaws, especially since it reflects the social context and norms of the past, and that people today should take current experiences and circumstances into account when endeavouring to implement the objectives of shariah (*maqasid al-shariah*). Thus, women and men should have equal rights and responsibilities.

Since the mid-20th century, the trend in law reform has been to uphold the spirit of equality and justice in the Qur'an rather than to conform blindly to interpretations of the past.

Examples include:

#### • Reform of entire law based on framework of equality

In October 2004, a Task Force set up by **Indonesia's** Ministry of Religious Affairs produced an alternative draft to the country's *Kompilasi Hukum Islam* (Compilation of Islamic Law) that embraces gender equality.

In February 2004, **Morocco** announced a major reform of its family law (*Mudawwana*) which, "consistent with the spirit of our tolerant religion... is meant to reconcile lifting the iniquity imposed on women, protecting children's rights and safeguarding men's dignity." The new law upholds the principle of equality between men and women; allows polygamy only under stringent legal conditions and judicial supervision, making the practice nearly impossible; provides for divorce by mutual consent and divorce because of irreconcilable differences; demonstrates concern for fairness and justice in the law; and provides additional rights and safeguards for children.

In 2001, **Turkey** promulgated a new Civil Code that defines the family as a union based on equal partnership, with spouses jointly running the matrimonial union with equal decision-making powers. A 2001 constitutional amendment redefines the family as an entity "based on equality between spouses." The new government, under the leadership of the Islamist Justice and Development Party, has accepted these reforms, and in 2004 it reformed the Penal Code to strengthen gender equality and protection of women's rights, particularly sexual and bodily rights.

#### • Divorce

In January 2000, **Egypt** enacted a law that allows women to obtain a divorce (*khul'*) on the grounds of incompatibility. Instead of the wife having to wait for judges to decide her application based on conclusive proof and independent corroboration of her husband's ill-treatment or physical abuse, the divorce is granted upon the wife's return of her *mahr* (dower).

The **Tunisian** Personal Status Code 1956 abolished all forms of divorce outside the court based on Qur'anic passages (al-Baqarah, 2:229 and an-Nisa', 4:35).

The Supreme Court of **Pakistan** in 1967 used the same passages to expand women's rights of divorce, ruling that a court could enforce *khul'* against a husband's will whenever a judge determined that a harmonious marriage was not possible.

#### • Polygamy

A number of countries limited polygamy based on the interpretation of an-Nisa', 4:3 and 4:129, that the fear of injustice between co-wives is inevitably present in almost all cases of polygamy, thus polygamy should be banned or heavily restricted to a limited number of exceptional circumstances.

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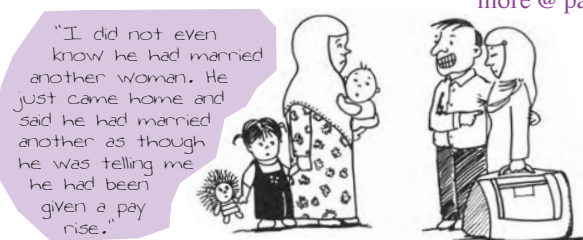


Table 2: Islamic Law Reforms and Pre-Islamic Arabian Customs

Pre-Islamic Arabian Customs	Islamic Reforms
A girl baby was considered an 'ar (shame). She was buried alive by certain Arab tribes.	Islam condemned and forbade this practice.
Women were given no share in inheritance.	The Qu'ran introduced the shares of female relatives in inheritance.
A girl's guardian had the authority to marry her without her consent.	Islam made it compulsory to seek girl's consent, a marriage forced by the guardian without her consent was not allowed.
<i>Mahr</i> (dower) is paid to bride's father or male guardian.	<i>Mahr</i> paid to bride herself
<i>Walima</i> (wedding dinner)	Approved
Categories forbidden to marry eg mother, daughter, sister, niece, aunt.	Generally approved, except that one was forbidden to marry father's widow but allowed to marry father's ex-wife if one is an adopted son
<i>Shighar</i> form of marriage (giving away a woman in marriage in exchange for another woman as <i>mahr</i> )	Forbidden
<i>Za'ina</i> form of marriage (to make a man's wife captive after killing him)	Forbidden
<i>Maqt</i> form of marriage (marrying a widow without her consent, especially according to the custom by which the eldest son had the right to marry the widow of the father, other than his natural mother)	Forbidden
Taking two sisters in marriage at the same time (sisters as co-wives in polygamous marriage)	Forbidden
<i>Al-Istibda'</i> (custom of sending one's wife to a person of noble family for a noble seed)	Forbidden
<i>Nikah al-Zina</i> , <i>Baghaya</i> were the harlots who had flags on their houses to invite males (form of marriage considered customary)	Forbidden
<i>Al-Mut'a</i> (temporary marriage, with no right of inheritance given to the wife)	Only recognised by the <i>Fiqh Ja'fariyya</i>
<i>Nikah al-Khaadn</i> (secret marriage without formalities)	Forbidden
<i>Nikah al-Badl</i> (wife-swapping)	Forbidden
<i>Ta'addud azwaj</i> polyandry (several husbands)	Forbidden
<i>Ta'addud azwaj</i> polygamy (several wives, no limit on numbers)	Limited to four wives with the condition of justice among them, otherwise only one
<i>Talaq</i> (dissolution of marriage by husband); unlimited right of return, right of husband not to allow wife to marry others even after <i>iddah</i> (waiting period for divorce wife)	<i>Talaq</i> limited to two revocable pronouncements with prescribed procedures; payment of <i>mut'ah</i> compensation to wife, freedom of wife to marry anyone after the <i>iddah</i>
<i>Khul'</i> (dissolution of marriage at wife's instance by returning <i>mahr</i> to husband)	Allowed
<i>Ila'</i> (form of divorce by vowing to have no relations with the wife for up to two years)	Period was limited to four months
<i>Zihar</i> (form of divorce by declaring wife to be comparable with husband's mother or forbidden relative)	Not allowed as a form of divorce, expiation attached
Women not recognised as witnesses	Allowed as witnesses; in commercial transactions two required

Muslim countries such as Iran, Syria, Jordan, Morocco & Egypt have adopted the ruling that a husband who has agreed in his marriage contract not to take another wife during the marriage, is bound by that stipulation.



Source: Muhammad Khalid Masud, "Introduction", *International Conference on Islamic Laws and Women in the Modern World*, Islamabad, 22 - 23 December 1996, pp.20 -21.

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The **Tunisian** Personal Status Code 1956 states, "polygamy is prohibited".

The **Jordanian** Law allows a wife to state in the marriage contract that the husband cannot take another wife and that the wife is entitled to divorce if he does.

Many countries, including Malaysia, require the court's approval of polygamous marriages based on restrictions that may be strictly enforced.

#### • *Conditions in Marriage Contracts (ta'liq)*

Countries in the **Middle East** (including **Iraq, Jordan, Syria** and **Saudi Arabia**), the **Indo-Pakistan** subcontinent and **Southeast Asia** allow the parties to agree upon conditions in marriage contracts such that breach of a condition can be grounds for a ta'liq divorce. Examples include: a husband shall not take another wife during the marriage; a husband shall provide maintenance; a husband shall not ill-treat or assault his wife. *Ta'liq* has been used throughout the centuries, the most famous being that of Sukayna bint Hussein, the great-granddaughter of Prophet Muhammad (pbuh), but the inclusion of additional conditions that protect women's rights have not been promoted in Southeast Asia.

#### • *Financial provisions*

1992 amendments to the **Iranian** Divorce Law allow "domestic wages" (calculated by placing monetary value on housework) for the work a wife has done during the marriage if the divorce is not initiated by her or caused by any fault of hers.

**Malaysia** provides for the division of matrimonial assets (*harta sepencarian*). The wife, whose housework might be said to have indirectly contributed to the husband's acquisition of property, is entitled to claim one-third of the property acquired during the marriage. She is entitled to claim half if it is shown that she contributed directly towards its acquisition. The claim can be made upon divorce or before the husband contracts a polygamous marriage.

### Why reform Islamic Family Laws in Malaysia?

Islamic family laws in Malaysia should be reformed because they discriminate against women (*see Table 3*). While the message of the Qur'an is that men and women are equal, the message of the laws is that men have more rights than women. Amendments to various states' Islamic Family Laws since the 1990s have actually been regressive in terms of women's rights, harming women more than helping them, which also points to the need for reform.

Discrimination and inequality can be found in provisions on:

- *Age of marriage*: Women may be married at younger ages than men; there is no minimum age for marriage in Perak.
- *Ijbar (forced marriage)*: In Kelantan and Kedah, if a woman is an unmarried virgin, her *wali mujbir* (father or paternal grandfather) can marry her to a man of equal status against her will.
- *Registration of marriages*: A marriage may be registered even if it contravenes the law.
- *Witnesses*: Only males may act as witnesses to a marriage.
- *Polygamy*: A man may marry up to four women, with few restrictions in some states.

- *Nusyuz*: A wife but not a husband can be punished for *nusyuz* even though the Qur'an also uses *nusyuz* to describe conduct by the husband; laws in some states do not define what constitutes *nusyuz*.

- *Divorce*: Husbands can divorce through a unilateral *talaq* outside of court; wives may only get a divorce with the husband's consent or through lengthy arbitration and/or court proceedings.

- *Mut'ah (monetary gift from husband to wife, paid on divorce through talaq or where the fault lies with him)*: Awards are usually insubstantial, even when husbands have financial resources; amounts are decided at the discretion of individual courts.

- *Guardianship*: Guardianship is always male, never female or shared by both parents.

National and international laws also necessitate reform. The Federal Constitution forbids discrimination on the basis of gender. International law, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which Malaysia has ratified, demands that nations act to eliminate discrimination against women and establish equality between men and women.

### Continuity of reform

Whenever reforms of Islamic laws are proposed, the proposals are met with opposition and fear that Islam itself is to be reformed. While it is understandable that many think of "Islamic law" as sacred and immutable, deeper reflection into the history and development of the law reveals that reforming present-day Islamic laws will not threaten Islam because these laws are man-made *fiqh*, not divinely revealed shariah. The basic principles of shariah are absolute, but the non-basic principles of *fiqh*, which are non-divine interpretations of the shariah, are not absolute. Because of this, *fiqh* can be and has, over the years, been changed to conform better to the teachings in the Qur'an and the Sunnah and better reflect current Muslim societies.

This is not extraordinary among the *ummah*: the trend in Muslim countries around the world is law reform. Religious and legal authorities in other Muslim nations are recognising the problematic aspects of their current family laws and reforming them to be more egalitarian and just. It is only right that Malaysia begins to do the same.

WHILE THE MESSAGE OF THE QUR'AN IS THAT MEN AND WOMEN ARE EQUAL, THE MESSAGE OF THE LAWS IS THAT MEN HAVE MORE RIGHTS THAN WOMEN. AMENDMENTS TO VARIOUS STATES' ISLAMIC FAMILY LAWS SINCE THE 1990s HAVE ACTUALLY BEEN REGRESSIVE IN TERMS OF WOMEN'S RIGHTS, HARMING WOMEN MORE THAN HELPING THEM, WHICH ALSO POINTS TO THE NEED FOR REFORM.

Table 3: Best Practices on Family Law Issues

Family Law Issue	Current Practice in Malaysia	Best Practices in the Muslim World
Age of marriage	The minimum age of marriage is 16 for females and 18 for males. The Shariah court judge can use discretion to give written permission for the marriage of minors.	<i>Morocco</i> : Under the Personal Status Code (2004 revision), the legal age of marriage is 18 for boys and girls.
Consent for marriage	Consent of both parties is mandatory except in the states of Kelantan and Kedah, where if the woman is an unmarried virgin, her <i>wali mujbir</i> (father or paternal grandfather) can marry her to a man of equal status as she is, without her consent.	<i>Tanzania</i> : No marriage shall be contracted except with the consent, freely and voluntarily given, by each party. <i>Tunisia</i> : There is no marriage without the consent of the spouses. Consent should be manifested in an indisputable manner by saying "yes" before the officiating officer.
Wali for marriage	Consent of <i>wali</i> is necessary for the bride although she may apply for a judge to consent as <i>wali hakim</i> if her <i>wali nasab</i> (father or male relative) unreasonably refuses consent.	<i>Tunisia</i> : Both husband and wife have the right to contract their marriage themselves or appoint proxies. <i>Sri Lanka, Bangladesh and Pakistan</i> (under Hanafi jurisprudence): A wali is not required for Hanafi women who have attained puberty. <i>Cameroon, Fiji, Gambia, Turkey, Uzbekistan and Kyrgyz Republic</i> : No wali is required.
Witnesses for marriage	The Kelantan Enactment requires male witnesses. The practice in other states also calls for male witnesses, even though it is not explicit in the law.	<i>Senegal</i> : Two adult witnesses required, one for each spouse. The sex of witnesses is not specified.
Polygamy	Contracting polygamous marriages requires permission from the Shariah Court. Conditions vary slightly among the 13 states. Penalties exist for failure to follow procedures.	<i>Tunisia</i> : Any man who contracts a polygamous marriage can be jailed for a year or fined 240,000 Tunisian francs, or both. A wife who knowingly enters a polygamous marriage is also liable to the same punishments. The marriage can be nullified by either spouse, guardians, mothers, or the legal department.
Nusyuz	<i>Nusyuz</i> is defined as disobedience of wife. Any woman who wilfully disobeys any order from her husband that is lawful under <i>hukum syara'</i> commits an offence and shall be punished with a fine. Wife is not entitled to maintenance if she is disobedient.	<i>Turkey</i> : The family is based on equality between spouses and both have joint decision-making powers regarding the family. <i>Indonesia</i> : The rights and responsibilities of the wife are equivalent to the husband's in the life of the household and in social intercourse in society. <i>Tunisia</i> : The spouses are to treat each other with kindness, make their conjugal life pleasant, and refrain from causing each other harm.
Divorce	Husbands' pronouncement of divorce outside court – even through SMS – is recognised, subject to his paying a fine. A wife who initiates divorce often faces numerous delays and will be ordered to undergo reconciliation and mediation proceedings with no time limit imposed.	<i>Indonesia</i> : A husband married under Muslim law must provide the religious court with a written notification of his intention to divorce. The six grounds for divorce are available to both husbands and wives, before reconciliation meetings are called separately, failing which the court calls the parties to witness the divorce. Revocable divorce is not recognised. <i>Tunisia</i> : Divorce shall only take place in court. There is equal grounds for divorce for husband and wife, including "at the will of the husband or at the request of the wife".
Mut'ah (compensatory payment by the husband to the wife, paid on divorce through <i>talaq</i> or where the 'fault' lies with the husband)	A woman divorced without just cause may apply <i>mut'ah</i> but the amount of <i>mut'ah</i> is left to the discretion of individual courts.	<i>Tunisia</i> : If a woman is 'wrongfully' divorced, she may be awarded the <i>mut'ah</i> in the form of a lump sum, a property transfer or monthly instalments. The amount paid to a woman may be determined by the standard of living the wife was accustomed to. <i>Turkey</i> : The party least at fault and who has suffered injury to their actual or potential interests due to the divorce can claim reasonable compensation, paid monthly or in lump sum.
Custody and Guardianship	The best interest of the child is the paramount consideration but for young children, it is presumed that their best interest will be served by being in the custody of the mother, if she had not remarried. Guardianship is always vested in the father.	<i>Cameroon &amp; Central Asia Republics</i> : Custody and guardianship can be given to either parent, with the best interest of the child as the paramount consideration. <i>Tunisia</i> : Both parents have equal rights in custody and guardianship during marriage and the court decides custody in the best interest of the child in the event of divorce. If custody goes to the mother, she exercises the authority of guardianship in relation to the child's travel, education and financial affairs.

Source: *Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World*. London: Women Living Under Muslim Laws (2003).

**MOROCCO**

- The Code of Personal Status (*al-Mudawwana*) was issued following independence in 1956. The small Jewish minority is governed by separate personal status laws.
- Major improvements to the *Mudawwana* were made in 1993 following campaigns by activists.
- In February 2004, a major reform took place to make it consistent with the spirit of Islam as a tolerant religion.
- The new law upholds the principle of equality between men and women. It allows polygamy only under stringent legal conditions and judicial supervision, provides for divorce by mutual consent and divorce because of irreconcilable differences, demonstrates concern for fairness and justice in the law, and provides additional rights and safeguards for children.
- Women can apply for *ta'liq* divorce if the husband breaches the additional *ta'liq* which states that he shall not commit polygamy.

**SENEGAL**

- The *Code de la Famille* applies to all communities. Largely based on the Napoleonic Code, it is also influenced by Wolof customary laws and recognises aspects of Muslim law such as dower and the husband's duty of maintenance.
- The formal judicial system is entirely secular.
- Marriages have to be registered under the Code to be recognised. There must be consent of both spouses and two adult witnesses (sex not specified), one for each spouse.
- Divorce can be by mutual consent and agreement must cover custody of children and the division of marital property.
- There are nine grounds for divorce equally available to men and women and a 10th ground available to women only (non maintenance by the husband)

**NIGERIA**

- The legal system is based on English common law, Islamic law, and customary law. Federal legislature has exclusive powers over certain matters while others – including personal status laws – may be legislated at the state level.
- Citizens may opt to be married under and governed by the provisions of civil laws, with cases under this law heard in separate civil courts.
- Some opt to be governed by unwritten customary laws for family matters and land issues. However, access to non-Muslim customary laws may be difficult in predominantly Muslim areas.
- Muslim courts in the Northern states adjudicate over personal status matters on the basis of uncoded Muslim laws, largely influenced by the Maliki school.
- Since 2000, some Northern states have extended the jurisdiction of Muslim laws to criminal offences – *hudud* in particular.

**TUNISIA**

- The Tunisian Civil Code, largely inspired by French law, applies to all citizens. Personal status matters are governed by separate laws for each community, including the Jewish minority.
- The 1956 Personal Status Code (*the Majalla*), which applies to Muslims, outlaws polygamy, gives women the right to initiate divorce and prohibits unilateral repudiation by the husband.
- Spouses are to treat each other with kindness, make their conjugal life pleasant, and refrain from causing each other harm.
- Both parents have equal rights in custody and guardianship during marriage.

**TURKEY**

- The Turkish Civil Code, based on the Swiss Civil Code and inspired by the Napoleonic Code, governs family matters and applies to all citizens, regardless of religious or ethnic identity.
- Amendments to the Civil Code, pushed by a coalition of women's groups, were enforced in 2001, substantially changing many patriarchal provisions.
- It defines the family as a union based on equal partnership, with spouses jointly running the matrimonial union with equal decision-making powers.
- A constitutional amendment in 2001 redefines the family as an entity "based on equality between spouses".

**EGYPT**

- The legal system is based on Islamic law and civil law. Egypt has some of the longest-standing personal laws – based on Muslim law – which were codified in the 1920s. There is a separate personal status law for the Coptic Christian minority.
- Judges trained in shariah preside over family law cases within the National Courts, with separate family chambers for Copts.
- Largely based on the Hanafi school, the personal status laws have been amended repeatedly, most recently in 2000.
- Under this new law, women can apply for *khul'* divorce on the grounds of incompatibility, granted upon her returning the dower. Guardianship is governed by the Civil Code.
- Based on Hanbali school, breach of additional *ta'liq* which states that the husband shall not commit polygamy can be grounds for a *ta'liq* divorce.

**SAUDI ARABIA**

- The main sources of Saudi law are Hanbali *fiqh* as set out in a number of specified classical scholarly treatises and other Hanbali sources, other schools of law, state regulations, royal decrees, custom and practice. There is also a Shi'i minority adhering to the Ja'afari school.
- Saudi women have the right of access to a shariah court in matters concerning her own property. Saudi women inherit exactly according to Quranic rules, but only a few women actually manage their own property.
- Women can apply for *ta'liq* divorce if the husband breaches the additional *ta'liq* which states that he shall not commit polygamy while married to her.
- More recently, top religious authorities banned the practice of forcing women to marry against their will (*ijbar*), stating that coercing women into marriage is "a major injustice" and "unIslamic."

## SYRIA

- The Ottoman Law of Family Rights governed matters of personal status from independence in 1946. In 1953, the Syrian Law of Personal Status was produced, based on principles derived from a variety of sources, including a code drafted by the Qadi of Damascus, Ottoman Law, and various Egyptian laws.
- In 1975, the Syrian Law of Personal Status was amended in matters relating to polygamy, dower, maintenance, custody of children and guardianship.
- Marriages must be registered. Marriages contracted out of court are not certified. Permission for polygamy is usually refused unless the man can demonstrate financial capacity and lawful cause.
- Women can apply for *ta'liq* divorce if the husband breaches the additional *ta'liq* which states that he shall not commit polygamy.

## IRAN

- The Civil Code deals with family matters as well as general procedural law. Although Jaa'fari is the official school, laws may be interpreted according to other Muslim schools in some conditions. Personal status matters are governed by separate laws for Christians, Jews and Zoroastrians.
- The family law underwent major amendments via the Family Protection Law 1967 (amended in 1975), which abolished extra-judicial divorce, made judicial permission a requirement for polygamy, and established special Family Courts.
- Many provisions were repealed after the 1979 revolution. The sources of law now include Islamic law, constitutional law, legislation, customs and principles of the Islamic revolution.
- The government has made a model marriage contract available that gives the divorced wife a right to half the property acquired during the marriage, provided she did not initiate the divorce and is not at fault. It also includes a power of attorney from the husband to the wife (*talaq tafwid*), permitting her to divorce herself on 12 different grounds.
- In 1992, the divorce law was amended to allow for "domestic wages" (calculated by placing monetary value on housework) for the work a wife does during the marriage if she does not initiate or cause the divorce.
- In 1997, a law was passed requiring courts to calculate the *mahr* payments husbands must pay divorced wives according to an index updated for inflation.

## PAKISTAN

- The legal system is based on English common law with provisions to accommodate 'Islamic state' status, most notably in the area of personal status, also to some extent in criminal law and commercial law.
- Each religious community has a separate personal law, although all cases are heard by Family Courts established in 1964: judges do not have to be Muslim.
- The Muslim Family Laws Ordinance 1961 gives substantial protection to women's rights within the family.
- Divorce by mutual agreement is recognised and delegated right of divorce (*talaq tafwid*) to the wife is an optional clause in the standard marriage contract.
- The Family Court has the power to grant a *khul'* divorce and the husband's consent is not relevant.



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## INDIA

- The legal system is heavily influenced by English Common Law. The Muslim Personal Law (Shariat) Application Act 1937 merely directs that family law matters for Muslims shall be governed by Muslim personal laws.
- Muslim personal laws (much sourced from Hanafi *fiqh*) are applied by general Family Courts established under the 1984 Family Courts Act.
- The Family Courts have increasingly rejected negative customary interpretations of Muslim laws, such as triple *talaq*, on the basis of fundamental rights or reinterpretations of Muslim laws.
- Reform of Muslim personal status laws has become the focus of identity politics since the 1980s.

## INDONESIA

- The legal system combines Roman-Dutch law, Muslim laws and customary laws. Following independence in 1945, the Muslim Marriage and Divorce Registration law of 1946 was enacted.
- In the 1980s, the state issued *Kompilasi Hukum Islam* (Compilation of Islamic Law) to clarify the application of Muslim laws, which is dominated by Shafi'i interpretations.
- The rights and responsibilities of the wife are equivalent to the husband's in the life of the household and in social intercourse in society.
- A husband married under Muslim law must provide the religious court with a written notification of his intention to divorce. The six grounds for divorce are available to both husbands and wives.
- In October 2004, a Task Force set up by Indonesia's Ministry of Religious Affairs produced an alternative draft to the country's *Kompilasi Hukum Islam* that embraces gender equality.

## MALAYSIA

- The legal system is based on English common law, with both Islamic law and *Adat* also being significant sources of law, especially in matters of personal status.
- From 1948 onwards, each state in the federation was granted jurisdiction over the application and legislation of shariah. Most states enacted new laws relating to personal law in the 1980s, modelled after amendments made in federal law.
- There are 14 separate jurisdictions on Islamic family law, leading to many variations in areas including the bride's consent to marriage, divorce and polygamy.
- The law provides for the division of matrimonial assets (*harta sepencarian*). The wife, whose housework might be said to have indirectly contributed to the husband's acquisition of property, can claim one-third of the property acquired during the marriage upon divorce or before the husband contracts a polygamous marriage.
- Amendments to various states' Islamic Family Laws since the 1990s have actually been regressive in terms of women's rights, pointing towards the need for reform.

# The Construction of Gender in Islamic Legal Theory<sup>1</sup>

The major schools of law codified *fiqh*, or interpretations of the divine *shariah* law, in the 8th to 11th centuries CE, between 120 and 400 years after the death of the Prophet (pbuh). The rules on the formation and termination of the marriage contract that were devised by the classical jurists during this period largely govern marriage and divorce law today, 1,000 years later.

The conceptions of gender that were codified by the major schools of law, however, were neither unified nor coherent, but competing and contradictory. The various schools of law each had different substantive rules governing marriage and divorce, with no single 'authentic' or unanimous idea of the rights and obligations of spouses within marriage. Over the past 1,000 years, these substantive rules have altered, though the inequality between spouses has remained constant. This helps to demonstrate that while *shariah* is universal, unitary, and unchanging, *fiqh* is local, multiple and subject to change.

While the substantive rules were different between the schools, the concept of marriage was similar. Jurists regarded marriage as a transaction that gave husbands ownership or control over their wives, and especially over their sexual organs (*farj*). Thus, marriage was conceived in terms of commerce and ownership, with jurists even making frequent analogies between marriage and the institution of slavery, husbands and masters, wives and slaves. In exchange for the dower, the husband gained a type of ownership – in the form of sexual access – over his wife. The wife had to be sexually available to him at all times, such that he had total control over even her movement to and from the house. In return, he was required to provide maintenance and support, to the extent that Maliki, Hanafi and Shafi'i even stated that she had no duty to cook or perform housework for herself or her husband.

The most prominent Maliki jurist of the time, Shaykh Khalil, wrote: "Dower is analogous to sale price ... When a woman marries, she sells a part of her person. In the market one buys merchandise, in marriage the husband buys the genital *arvum mulieris* (pasture of the woman)." The most prominent Shi'a jurist, Muhaqqiq al-Hilli, wrote that marriage "is a contract whose object is that of dominion over the vagina, without the right of its possession." Al-Shafi'i said in *Al-Umm*: "It is among her rights due from him that he support her, and among his rights to derive pleasure from her [*istimata'a minha*]."

In these classical *fiqh* rules, gender inequality was taken for granted as a principle. Women were depicted as sexual beings, not social beings. The distinctions between concubine, slave and wife became distorted.

This conceptualisation can be partly explained by the socio-



Source: Swara Rahima

historical context of the day. This period was an era of hierarchy, social stratification and the widespread practice of slavery, where elite men had easy access to women for use as slaves or sexual partners. In addition, practices from pre-Islamic Arabia and local customs from each distinct socio-geographic area in which the jurists lived were embedded into *fiqh*.

Interestingly, this concept of marriage changed in the last century, with Victorian concepts of the man as breadwinner and the woman as housewife replacing the ideas of maintenance in exchange for sexual access. A 1972 'manual' on marriage in Islam cites the man's responsibilities as protection, happiness and maintenance of his wife; and the woman's responsibilities as cooking, cleaning, laundry and other household management tasks. This is a far cry from the three major schools' stance that women were not responsible for any housework. It demonstrates, however, that conceptions of gender roles and the system of male marital privilege that were created by the classical jurists and reshaped in the last century did not simply emerge from the Qur'an, but were the results of numerous acts of interpretation by particular men living and thinking at a specific time.

CONCEPTIONS OF GENDER ROLES AND THE SYSTEM OF MALE MARITAL PRIVILEGE THAT WERE CREATED BY THE CLASSICAL JURISTS AND RESHAPED IN THE LAST CENTURY DID NOT SIMPLY EMERGE FROM THE QUR'AN, BUT WERE THE RESULTS OF NUMEROUS ACTS OF INTERPRETATION BY PARTICULAR MEN LIVING AND THINKING AT A SPECIFIC TIME.

In fact, these conceptualisations of marriage and the social roles of women contravene the notions of justice and fairness toward women that are articulated in the Qur'an and practised by the Prophet, as well as ideas of social roles we understand today. Gender rights as constructed in historical *fiqh* are unable to attain the objectives of justice, equality and fairness in today's societies. And yet justice is central to the objectives of the *shariah* (*maqasid al-shariah*). While the gender discriminatory rules may have been acceptable in the context of the hierarchical societies within which they were formulated, they are unacceptable from a modern perspective. Muslims today need to formulate a new jurisprudence based on conceptions of marriage that are promoted by the Qur'an<sup>2</sup> and relevant to the changing roles and responsibilities of men and women in today's society.

<sup>1</sup> Derived from Kecia Ali, "Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Law", in Omid Safi, ed., *Progressive Muslims*, Oxford: Oneworld Publications, 2003; Ziba Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought: Strategies for Reform", in Hjh. Nik Noriani Nik Badli Shah, ed., *Islamic Family Law and Justice for Muslim Women*, Kuala Lumpur: Sisters in Islam, 2003.

<sup>2</sup> Such as "the Believers, men and women, are protectors one of another," (at-Tawbah 9:71) and spouses are garments for one another (al-Baqarah 2:187).

SISTERS IN ISLAM (SIS) BELIEVES IN AN ISLAM THAT UPHOLDS THE PRINCIPLES OF EQUALITY, JUSTICE, FREEDOM AND DIGNITY. IN ORDER TO PROMOTE AND DEVELOP A FRAMEWORK FOR WOMEN'S RIGHTS IN ISLAM AND INTERPRETATIONS OF THE QU'RAN THAT SUPPORT THE EQUAL TREATMENT OF WOMEN, SIS EMBARKS ON ACTIVITIES IN PUBLIC EDUCATION, LEGAL ADVOCACY AND SERVICES, RESEARCH AND ADVOCACY FOR POLICY AND LAW REFORM.



Above: Study session with poet, writer and translator Eddin Khoo (second from left).

Left: The Sun report on Yasmin Alibhai-Brown's study session at SIS.

## Public Education

A core programme area for SIS is public education. Activities include:

### • Study Session

Every month, SIS organises a study session on contemporary issues affecting Muslims, led by Malaysian and international scholars, activists and public figures. Here is a list of SIS study sessions conducted in the first half of 2005:

**Jan 2:** Prof Clive Kessler on 'Religion, Traditional Interpretation and Critical Hermeneutics'. Prof Kessler is Emeritus Professor, School of Sociology & Anthropology, University of New South Wales, Australia.

**Feb 23:** Dr Farish Noor on his latest book *Islam Embedded: The Historical Development of PAS (1951-2003)*. A political scientist and human rights activist, Dr Farish is currently an academic researcher at the Centre for Modern Orient Studies, Berlin.

**Mar 30:** Yasmin Alibhai-Brown on 'Religion, Culture and Women's Identity'. The prominent British journalist, author and broadcaster shared her insights on the challenges of being Muslim and the issues confronting Muslims and Muslim women today.

**Apr 9:** Prof Muhammad Khalid Masud on 'The Current Discourse on Hudud'. Prof Khalid, chair of the Pakistan Council of Islamic Ideology, is one of Pakistan's most universally-acclaimed Islamic scholars.

**June 21:** Eddin Khoo on 'To' Kenali and the Culture of Religion'. The poet, writer and translator is founder and director of Pusaka, Centre for the Study and Documentation of Traditional Performance.



Learning about Islamic Legal Theory from Prof. Khalid Masud.

### • Short Course

In April, Prof Muhammad Khalid Masud conducted a three-day course on Islamic Legal Theory for 27 participants comprising government officials, law lecturers, women activists, SIS members and staff. The lectures covered key areas of the construction of shariah in the formative period of Islam, gender construction in shariah and the social construction of shariah. Participants also learned about the principles of *fiqh* and examined their application in Malaysia through discussions on *Hudud*, Islamic Family Law, Morality and Human Rights. The final session was a vibrant discussion among the participants and Prof Khalid on the place of shariah in the modern world.



SIS legal officer giving a client advice from a gender perspective.

## Legal Services & Advocacy

The success of our weekly legal literacy column in *Utusan Malaysia* spurred SIS to open a Legal Clinic in 2003 in cooperation with the Kuala Lumpur Bar Committee. The SIS Legal Clinic has served more than 1,600 clients through face-to-face appointments, telephone and e-mail on Islamic Family Law matters. From January to June this year, we have served over 270 clients with the help of six chambering students, courtesy of the KL and Selangor Legal Aid Centre. Our legal advice column appears in the *Keluarga* (Family) section in *Utusan Malaysia* every Friday. The questions and answers are reproduced on our website [www.sistersinislam.org.my](http://www.sistersinislam.org.my), and used by clients as a source of information and legal education.

The Joint Action Group Against Violence Against Women (JAG), of which SIS is a member, has presented two memoranda to the Parliamentary Select Committee for Amendments to the Penal Code and the Criminal Procedure Code. JAG presented the proposed amendments, including those on rape provisions (definition and scope, marital rape, burden of proof, aggravated rape, penalty), Evidence Act (corroboration, past sexual history) and domestic violence. JAG argued that since the Domestic Violence Act (DVA) is to be read with the Penal Code and the Criminal Procedure Code, it thus necessitates amendments to the DVA. The proposed amendments were part of the memoranda submitted by JAG to the Prime Minister on law reform matters last year.



Above: Lively Q & A session after a panel discussion on 'Enforcing Public Morality' on April 27.

Left: The Sun cover report on the campaign against moral policing.

## Campaigns

### Moral Policing

If we had to choose one issue that dominated the media in the first half of this year, it would have to be Moral Policing. The topic attracted much debate following the raid and subsequent detention and humiliation of some 100 Muslim youths at Zouk nightclub in Kuala Lumpur by the Federal Territory Religious Department (JAWI) enforcement officers in late January. SIS' responses to the media – including a letter to the editor on the issue – appeared in a few newspapers. *The Malay Mail* provided good coverage on the issue while *the Sun* took a brave stand asking for issues pertaining to morality to be dealt with by individuals and their families. To encourage informed coverage on the issue, SIS hosted a media briefing on the Shariah Criminal Offences Act (SCOA) on Feb 2.

On Mar 22, a group of NGOs and individuals held a press conference and issued a joint statement endorsed by 53 organisations, 3 political parties/wings, a business entity, 22 elected representatives and more than 250 individuals. The Joint Statement called for the repeal of provisions in religious and municipal laws that deny citizens their fundamental rights, and the appointment of a committee to monitor the process of repealing these laws, including representation from a broad spectrum of groups. It also urged more groups to be included in dialogues on the issue.

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The press conference started a wave of national and international media coverage of the campaign.

After the press conference, the groups and individuals set up a coalition – Malaysians Against Moral Policing – represented by a Working Committee.

Since then, the coalition has handed over the joint statement to the Human Rights Caucus in Parliament (Mar 24) – an event which received wide media coverage – and briefed the Backbenchers Club on the issue at Parliament House (Mar 28).

Those opposed to the joint statement went public with their views. Some groups even held public rallies during which supporters of the joint statement were painted as promoting permissiveness, hedonism and 'Liberal Islam'. Most of the criticisms were levelled at SIS, which was seen as the organisation leading the initiative. PAS Youth (Selangor and Federal Territory) even urged the Government to ban SIS.

Despite the negative publicity, SIS was seen as an important voice in discussions about the issue.

SIS was represented at these events:

*Mar 8* – Panel discussion on the Zouk raid organised by the National Council of Women's Organisations (NCWO).

*Mar 28* – Meeting between Puteri UMNO and JAWI.

*April 27* – Panel discussion on 'Enforcing Public Morality' organised by Liberal Forum Malaysia.

*May 15* – Panel discussion on 'Liberal Islam' organised by PAS in Johor Baru.

*May 17* – Seminar on the 'Enforcement of Laws Pertaining to Morality: Challenges and Solutions', organised by the International Islamic University.

*May 21* – 'Wacana Islam Liberal' forum, co-organised by the Dewan Bahasa & Pustaka and Majalah *i, Nur* and *Dewan Agama & Falsafah*.

*July 30* – National Law Symposium on 'The Enforcement of Morality through the Law: Constitutional Framework', organised by the International Islamic University Law Students Society.

There have been some important outcomes to the growing discussion on the issue in the public realm:

- review of the SCOA. The Cabinet has ordered the Attorney-General's Chambers to conduct the review. SIS has submitted relevant documents to the review committee.
- ongoing public discussion on moral policing. There is increasing debate on the jurisdiction of Federal and state authorities to punish offences against the precepts of Islam. The issue will be discussed at the Bar Council's 13th Malaysian Law Conference.

## RESEARCH

Since its formation in 1988, SIS has embarked on various research activities, the outcome of which provides the content for our advocacy and public education work. The areas of research are the rights of Muslim women and diverse concerns relevant to the contemporary ummah.

SIS research activities this year are:

### • *Impact of Polygamy on the Family Institution*

In 2004, SIS kicked off its pilot survey on the Impact of Polygamy on the Family Institution in the Klang Valley. The survey looked at the financial, social and emotional impact of polygamy on the family. SIS staff, members, academics and women activists formed the Polygamy research team, which carried out interviews with husbands, first wives, subsequent wives and children from the marriages. The team is now preparing the questionnaire for the next stage of the project – the national survey.

### • *Model Islamic Family Law*

SIS is in the process of drafting a Model Islamic Family Law (IFL) for Malaysia based on the framework of equality and justice. The IFL team, made up of SIS staff, academics and activists, is collecting arguments for reform at four levels – Islamic framework; constitutional and national laws; international human rights principles; and the lived realities of Muslim women. To find out more about the areas of concern covered by the IFL research, read this inaugural issue of *BARAZA!* from cover to cover...



Source: *Modul Analisis Gender*, Jakarta: Fatayat Nahdlatul Ulama.

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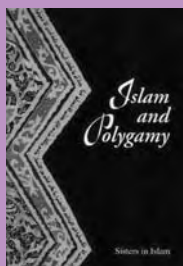
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## About us

Sisters In Islam (SIS) is an independent non-governmental organisation which believes in an Islam that upholds the principles of equality, justice, freedom and dignity. SIS comprises a group of Muslim women and men, including staff and volunteers, who work on the rights of women within the Islamic framework and who advance the development of a progressive Islam in Malaysia.

## Calling all friends

Throughout the years, many have voiced their support for SIS and to them, we have good news. SIS is setting up Friends of Sisters in Islam, a special membership category open to people from all walks of life who echo the voice of Sisters in Islam – loudly or silently, women or men, Muslim or those of other faiths.

You can be a Friend of Sisters in Islam by contributing RM50 or more. As a Friend of Sisters in Islam, you will receive:  
 \* BARAZA! (SIS biannual bulletin) \* SIS publications and/or merchandise \* use of SIS resource centre \* tax-deductible receipt.

Above all, you will have the satisfaction of knowing that you are part of a growing group of people who support the important role SIS plays in ensuring that Malaysians can continue to celebrate our heritage of moderation, openness and diversity that has been the hallmark of our multi-ethnic and multi-religious country.

# YES

count me in as a Friend of Sisters in Islam

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Postcode \_\_\_\_\_

State \_\_\_\_\_ Country \_\_\_\_\_

Male / Female \_\_\_\_\_ Date of Birth \_\_\_\_\_

E-mail \_\_\_\_\_

Contact Number \_\_\_\_\_

Areas of Interest \_\_\_\_\_

# Glossary

## fiqh

jurisprudence; generally used to refer to Muslim laws as developed by jurists

## hadith

written traditions of the Prophet Muhammad (pbuh)

## harta sepencarian

jointly acquired matrimonial assets

## ijbar

the power to compel an unmarried virgin to marry someone of equal status, as recognised by certain schools; the power usually resides in the father or paternal grandfather

## ijma'

consensus of scholars on an issue

## ijtihad

independent reasoning to arrive at a legal principle

## khul'

form of divorce available to a Muslim woman, generally by compensating the husband

## mahr

dower; goods and/or cash to be given by the groom to the bride as a requisite of a valid Muslim marriage. It may be given at the time of the marriage ceremony, or promised at a later date or to be paid upon divorce or the death of the husband, or divided into prompt and deferred portions.

## maqasid al-shariah

five basic values or objects that the *shariah* is supposed to protect: religion, life, intellect, lineage, and property

## muhaddithun

scholars of the science of Hadith

## mut'ah

compensatory payment by the husband to the wife, paid on divorce through *talaq* or where the 'fault' lies with the husband

## qiyas

analogical reasoning

## shariah

the path by which human beings search God's Will. Commonly misinterpreted as "Islamic law", *shariah* is not restricted to positive law *per se* but includes moral and ethical values, and the jurisprudential process itself.

## sunnah

the example of the Prophet embodied in his statements, actions, and those matters that he silently approved or disapproved as reported in *hadith* literature

## ta'liq

stipulations in a marriage agreement to which the groom has agreed; delegated divorce to wife for breach of conditions by husband

## talaq

husband's oral repudiation of marriage

## taqlid

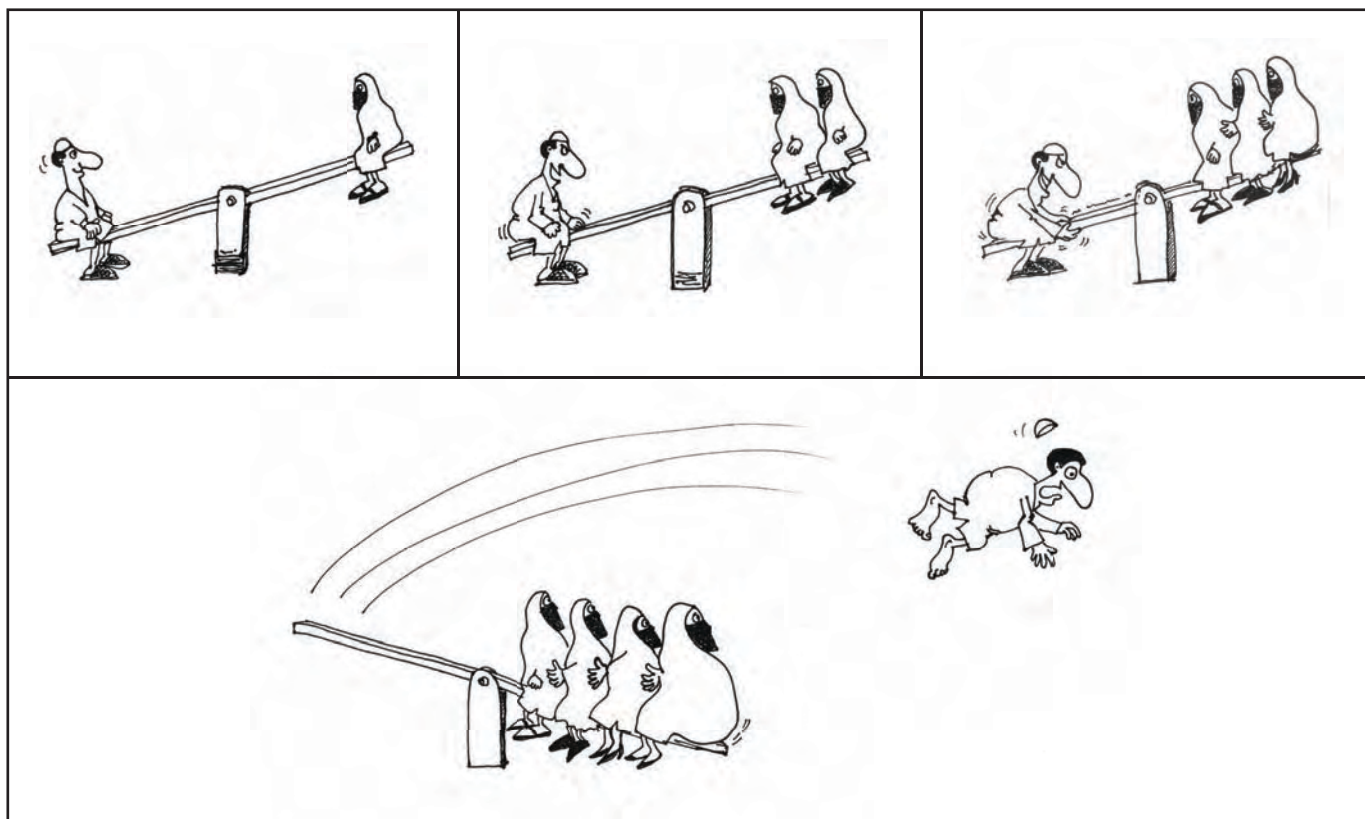
adherence to the schools of law

## ummah

community

## wali

guardian (for marriage); recognised by some schools as the father or paternal grandfather who has authority to contract the marriage on behalf of the bride



Source: WLUML Dossier 21