REPORT ON MUSLIM FAMILY LAW SYMPOSIUM

Navigating Muslim Family Law Amidst Changing Social Realities

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INTRODUCTION

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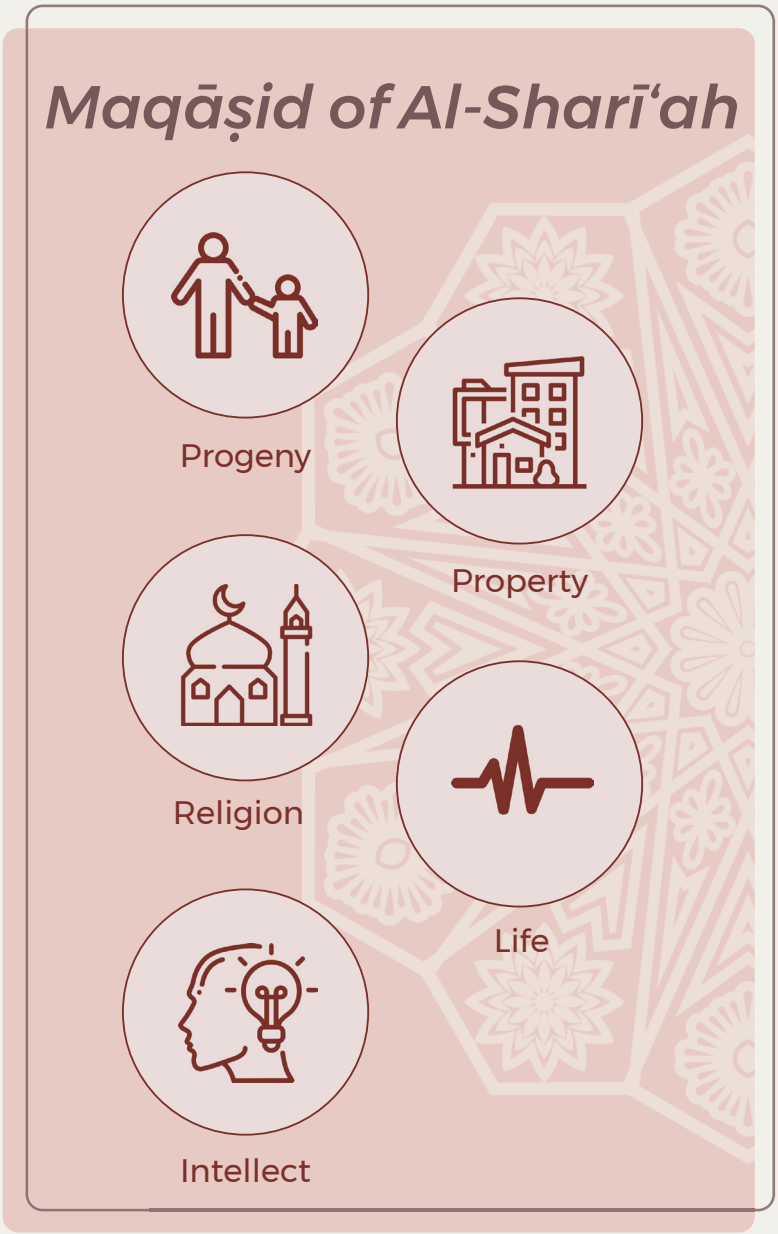
STRENGTHENING MUSLIM FAMILIES IN CONTEMPORARY CONTEXTS

Muslim family law, as interpreted and implemented over the last century, has undergone a significant shift. In general, Muslim law has developed over more than ten centuries of scholarship and legal implementations. The main source of law today (from which family law derives most of its rulings), apart from independent interpretive exercise (*ijtihād*) by contemporary scholars, is the corpus of classical legal manuals written by Muslim jurists.

In general, Muslim law seeks to secure public interest (*maṣlaḥah*), as well as to protect the higher objectives and spirit (*maqāṣid*) of *al-sharī'ah* which consists of key fundamentals, such as religion, life, property, progeny and intellect. Inherent within *al-sharī'ah* is also the important role of morality and noble character (*akhlāq*).



Islam is not only a religion of rights, because rights can only be exercised with a sense of duty and responsibility. Inheritance laws is a good example of this. For example, although a male sibling of the family is entitled to double the shares of a female sibling, he is morally duty-bound to ensure the wellbeing of female members of his family. Within a system of according rights and distributing responsibilities, Islam places importance on equity, fairness and complementarity

"In light of the changes that societies go through, Muslim law too has responded, but not without controversy."

In light of the changes that societies go through, Muslim law too has responded, but not without controversy. While reform and change have always been part of the Islamic tradition and history, reactions to reforms vary significantly between those who resist any form of change because tradition is deemed sacred and divine, and those who believe that Muslim law must respond to changing social realities so that it continues to fulfil God's will. In the modern period, these tensions often play out between various state actors, religious scholars and jurists, NGOs and the wider society. In some Muslim countries, certain aspects of Muslim family law have been reviewed and some practices such as polygamy abolished altogether. In many cases, these reforms are justified on the basis of textual evidence and reinterpretation, supported by social contexts as reasons for review.

Having said that, by and large, Muslim family law in Singapore, as any part of the world, adopts the classical Muslim jurisprudence underpinned by a set worldview of gender roles and relations which formed in late antique societies. In the various aspects of the law, different rights and obligations are ascribed to the different sexes, in line with this worldview and cultural underpinnings. However, in modern post-industrial societies, much of these roles and relations have evolved, with important implications on the interpretations of Muslim family law. Yet, the tension between preserving tradition and reviewing it with the aim of preserving the objectives and spirit of the law remains.

The Islamic Religious Council of Singapore (MUIS) vision for the socioreligious life of its Muslim community is one that is rooted to the spirit of textual sources yet progressive and consciously takes in its contextual nuances. While this progressive spirit of understanding and practicing Islam is more commonly seen in other domains of Islamic faith and practice, the domain of Muslim family law has been more cautious in reflecting this vision. It is thus timely for a critical discussion on the realities affecting us today, and if the implementation on the current Muslim family law is effectively addressing the needs arising from these realities.

"Yet, the tension between preserving tradition and reviewing it with the aim of preserving the objectives and spirit of the law remains."

To this end, MUIS has organized a Symposium on Muslim Family Law 2019 to bring together local and international experts and practitioners in the field to critically examine best practices and models of Muslim family law reforms and implementations in various contexts. It also aimed to provide a platform for an in-depth interdisciplinary discussion on the issue, and to pave the way for follow-up discussions.

The discussions centered around a range of issues including classical Muslim jurisprudence on different aspects of family law, modern and contemporary interpretations and reforms, as well as issues around the legislation and enforcement of Muslim family law in contemporary societies.

To strengthen further the importance of interpreting texts such that it addresses the needs of the society, the symposium also included a workshop on the second day for a smaller group of participants so they can do a deep dive of several selected topics. The workshop focused on different interpretations of Islamic legal traditions pertaining to Muslim Family law. It also featured legal and social work practitioners sharing their perspectives on the implementation of the law on the ground, with a specific focus on the Singapore context.


SYMPOSIUM ON
MUSLIM FAMILY LAW

KEY CONSIDERATIONS in the Implementation of Muslim Family Law

1 INTERPRETING MUSLIM LAW

2 SOCIAL CONTEXTS AS NORMATIVE

The symposium raised several key considerations on how best to approach Muslim family law considering the contemporary realities.

This consists of guidelines in dealing with:

a) texts and tradition as points of reference

b) the importance of social contexts and norms in informing the implementation of the law.

1 INTERPRETING MUSLIM LAW

Based on the discussions from the Symposium, the following key points have been highlighted to serve as guidelines for reviewing:

1.1 Objectives and Spirit of the Law

1.2 Diversity within Muslim Family Law Jurisprudence

1.3 Principles and Application

1.4 Legal Exceptionalism

Religious texts and the tradition of scholarship clearly should remain as our source of reference. However, this does not mean accepting and adopting these references in totality without considerations of relevance and suitability for the context. Such an application of tradition is in fact a violation of its value and integrity and runs counter to its very spirit.

One such example is the interpretation of the hadith stating that a wife who refuses her husband's call to bed will be cursed by angels.[1]

"Some of the interpretations of this hadith have allowed for husbands to force themselves onto their wives, often resulting in physical and emotional pain for the wives."

However, this interpretation contradicts the Islamic ideal and the Quranic view of marital relationships, which is to achieve love, mercy and tranquility[2], and the equal role of becoming protective garments for each other[3]. Therefore, this hadith should be read with this framework in mind, and hence should be understood as addressing the behavior of a wife who rejects her husband's sexual approaches capriciously and oppressively, using sex as a power tool to achieve certain ends, for example.

A review of the implementation of the law should thus not be limited to debates strictly only on the rulings of Muslim family law. Rather, it needs to include a more holistic study of not just the texts and traditions, but also the reasons and occasions of revelations, the social milieu and so on. The process of *ijtihād*[4] is hence a meticulous one which requires a mastery of the different approaches and opinions within the Muslim jurisprudence, the evolution of the juristic thought, and the Arabic language. Although the

Prophet has encouraged Muslims to engage in *ijtihād* because laws change with time and place, one must be prepared and qualified in these requirements to embark on this momentous task. Hence, this also calls for adeptness in fields like legal training, humanities and social sciences in order to help better assess the impact of the law or the ruling in resolving the current needs of the society.

1.1 Objectives and Spirit of the Law

The *maqāṣid al-sharī'ah* has been mainly understood in the tradition as the preservation of order, achievement of benefit and prevention of harm or corruption. Traditionally, it encapsulates the preservation of five basic human needs: life, religion, intellect, posterity and property.

Some of the main theorists of *maqāṣid* include Abū al-Ma'ālī al-Juwaynī (11th century CE *Shāfi'ī* jurist), Abū Ḥāmid al-Ghazālī (12th century CE *Shāfi'ī* jurist), Al-'Izz Ibn 'Abd al-Salām (13th century CE *Shāfi'ī* jurist), Shihāb al-Dīn al-Qarāfī (13th century CE *Mālikī* jurist), Shams al-Dīn Ibn al-Qayyim al-Jawziyyah (14th century CE *Ḥanbalī* jurist) and Abū Isḥāq al-Shāṭibī (14th century CE *Mālikī* jurist).

One contemporary study that has employed a *maqāṣid*-based approach in reviewing reforms in Muslim family law is found in an article by Hashim Kamali[5]. Kamali lamented the fact that the existing rulings pertaining to women and family law "were not sufficiently grounded in the *maqāṣid*-based approach to Islamic law, which, in itself, has been methodologically undertheorized and marginalized in the overall Islamic legal theory"[6]. In his paper, Kamali argued that:

"Quran supports the moral autonomy of individuals; promotes good and forbids evil; and upholds values such as al-'adl (justice, qisṭ (equity), iḥsān (moral excellence), raḥmah (mercy), and wasaṭiyyah (moderation)."

These Quranic ethical norms, according to him, must be reflected in the application of the law.", including "matters pertaining to gender issues including marital and family life"[7]. These values that are inherent in the Quran and hadiths should thus be employed "as legal indicant (*adillah*) describing the normative nature of spousal relationship"[8].

The *maqāṣid* must hence be given priority, even in the implementation of Muslim family law. More specifically, the scholars and participants highlighted that while the Muslim family law must serve to protect the institution of the family, the welfare of each family member is prime. Individuals in a family do not have their individual rights and roles outside of the family negated simply because they have entered into a marriage contract.

Given the importance of *maqāṣid* as a guiding principle, it is pertinent that the understanding of the five fundamentals are revisited in order to reflect the basic needs of today's society more accurately. However, for it to be effective, the Symposium reflected on the need for a contextualised interpretation of the *maqāṣid*. For example, protection of religion must be understood in the context of right to freedom of religious beliefs in secular societies, governed by State law. The protection of life should serve to ensure a minimum standard of quality life, which includes the protection of psychological and emotional well-being – especially when mental health has been proven to be extremely crucial in leading a decent life.

For example:

Couples have access to divorce to allow them to leave the marriage, instead of being forced to remain married.

A wife also has the complete right to her spend mahr (dower) as she wishes and should not be expected to spend it for her family's benefit.

There is also a need for consideration of specific *maqāṣid* for specific areas of Islamic law, in order to strive for maximum purposefulness in the implementation.

1.2 Diversity within Muslim Family Law Jurisprudence

The Symposium noted how diversity within the jurisprudence can often be useful to help solve the needs of the community in the implementation of Muslim family law. The key step is to assess the reason behind the prominence and dominance of a certain view. This is for the fact that a view does not gain prominence simply because it is more correct or because it has the strongest

textual evidence, rather, it is often the case that the prominence is gained due to its compatibility with the context and the norms of the time.

It was thus recommended for scholars in their review of Muslim family law to also consider the less popular views if they can best meet the needs arising from the existing norms, rather than dismissing the credibility of the views because they did not reflect the view of the scholarly majority. This is in line with the opinion of Shaykh ʻAbdullāh bin Bayyah which states that a minority view which was not accepted in the past can potentially be the accepted view of a later period.

"Shaykh ʻAbdullāh Bin Bayyah holds the position that a minority view at one time can potentially be accepted and considered as the preferred view of a later period."

One of the examples highlighted in the Symposium was the interpretation of the term *qiwāmah*. The dominant view interprets the term as men's superiority as a default status owing to men's innate abilities and acquired qualities – they are *qawwāmūn* simply due to their gender.

"However, there are other views that highlighted that qiwāmah is conditional on two premises: (1) Tafḍīl, which may refer to the knowledge or ability of the men that is superior to the women and (2) Infāq, which refers to financial maintenance of women by the men."

For example, scholars like Abu 'Abdullāh al-Qurṭubī (13th century CE *Mālikī* jurist) are of the opinion that once a man becomes unable to manage his wife's sustenance, his status as a *qawwām* gets automatically nullified. Hence, for some scholars, *qiwāmah* is contingent on socio-economic conditions, rather than a quality specific to one gender.

Another oft-cited example during the Symposium was *khul'*. There are four narrations of the hadith concerning the case of Ḥabībah bint Sahl and Thābit bin Qays al-Anṣāri , where the Prophet s.a.w. instructed that she returned the garden to him in order to be divorced from him. None of the narrations mentioned that the Prophet had required the husband's consent, although fiqh as a tradition developed that as a requirement of *khul'*. However, in 2000, Egypt started to implement *khul'* without the consent of the husband but with the condition for the woman to return the marriage gift. Jordan then adopted something similar.

1.3 Principles and Application

It is a problem if the approach to the implementation of Islamic laws focuses solely on the outcomes or the subsidiary jurisprudential issue issues (*furū'*), and not the methodology and framework that constitute the main and core principles (*uṣūl*). The *furū'* is often very much influenced and affected by the location setting, time, situation and social and cultural norms. It is hence expected that we find some of the *furū'* in the classical jurisprudence to be incompatible and contradictory to our current contexts and circumstances. This incompatibility is not due to weaknesses in the *ijtihād* process, rather, they are incompatible because they were never meant to serve as a permanent solution for all contexts and times. They responded to the specific needs of their times and contexts.

It is thus essential to recognize the *'illah* or "operative or effective cause" behind a certain ruling and its objectives, in order to distill the issues from the principles. This is necessary in order to allow us to continuously engage and evaluate critically if the outcomes determined for different contexts and circumstances continue to remain relevant.

For example:

Should girls be allowed to marry the moment they have reached puberty?

While this was probably common during the Prophetic period and even as recent as the 19th century, today's lived realities make it unconducive and even problematic for minor marriages.

Girls now reach puberty at a tender age, even before they are physically, emotionally and mentally ready to start their own families. Additionally, the basic level of education needed to ensure that one can effectively survive in the workforce to provide for the family continues to increase. A minimum age of marriage, although it did not exist in the classical jurisprudence, helps to ensure a minimum standard of maturity level and readiness to make informed decisions about marriage and the responsibilities that come with it.

Likewise, the issue of patrilineal filiation of children born out of wedlock has always remained as a contentious discussion. Why were children born out of wedlock not filiated to their biological fathers, and only their mothers? Some traditional scholars have already tried to expand the boundaries for the permissibility of this filiation for the purpose of the child's interest. Today, the high cost of living and the availability of DNA testing, among other things, are causing a re-examination of the issue.

1.4 Legal Exceptionalism

The Symposium also discussed about the negative repercussions of implementing Muslim family law using the "legal exceptionalism" framework. This happens when we choose to take religious rulings which are based on entirely different needs and societal norms as the religious ideal. Inability to implement these false ideals would then make us feel that we are in a perpetual state of exceptionalism or *ḍarūrah*. Such a mindset is problematic as it puts the Muslim community at odds with our lived realities, and it presents Islam as a religion that can only be practiced fully under limited circumstances. This is contradictory to the Muslim scriptures and traditions that claim relevance for all time and place, because relevance is not possible without a response and solution to issues and challenges of the day.

Living in a contemporary society, we should be guided by *maqāṣid al-sharīʿah* and celebrate tradition by expanding our sources of references, reviewing, refining it and even creating new traditions where necessary.

> "To move toward a more comprehensive legal and philosophical framework that addresses the various substantive issues, not in terms of their mere legality, but in terms of their relevance to the higher objectives that the sharīʿah seeks to fulfill"

In fact, this is evidenced in the development of Muslim jurisprudence. Jurists built on earlier texts by challenging and refuting some of the earlier opinions, and providing new examples and case studies, thereby ensuring a continuous stream of growth and dynamism in the Islamic legal tradition.

2 SOCIAL CONTEXTS AS NORMATIVE

The following guidelines are hence useful to remind jurists on the importance of social contexts and norms in their rethinking of Muslim family law.

In addressing the call for review of Muslim family law, the Symposium has discussed numerous issues pertaining to the role of contexts and social norms and customs in understanding and applying traditional rulings. Discussions on the importance of social context have brought the Symposium to further deliberate on how the norms of society can influence the understanding of textual traditions and how such influence has placed place throughout history.

According to al-Shāṭibī, jurists who do not take into account the habits and customs into consideration of the people will be more likely to issue rulings that would cause hardship. This runs counter to the primary goal of *al-sharī'ah*, which is to remove hardship rather than being a cause of it.

The Symposium emphasized that this critical inquiry is not meant as a criticism against past scholars and jurists, but it is of great importance to highlight that social contexts and norms of their time had inevitably influenced their understanding and interpretations of textual traditions. Although the Quran is a sacred text, interpretations of past jurists and scholars are not sacred. Hence, these interpretations must be reviewed in light of changing realities and circumstances when they are no longer compatible with the aims of justice.

2.1 Impact of Contemporary Social Realities

The Symposium discussed on the importance of understanding the limitations of fiqh vis-à-vis the more encompassing definition of *al-sharī'ah*. Fiqh is a practical science driven by human comprehension and interpretation. Hence, when we limit our enquiries to fiqh books, we are also limiting ourselves to a certain vision of the society – which may not necessarily be appropriate for our time.

The evolution of fiqh is highly dependent on the social realities which may differ from one era to another, in order to achieve the same ultimate objectives of *al-sharī'ah*. In other words, while the objectives of *al-sharī'ah* remain the same, evolving social norms and contexts do inevitably affect the juristic thinking. There were scholars such as Ibn Qayyim who had written about the crucial role of social contexts.

> "Ibn Qayyim said that a Mufti should not issue a fatwa without understanding these two things: a) the need to understand and have a good grasp of reality, and b) the need to understand what is required in light of these circumstances, which means understanding what has been revealed by God and taught by His Messenger concerning this reality."

Having a good grasp of reality and the existing circumstances demands that one should acquire, or at least work with those who are familiar with tools from other disciplines like economics, law, humanities, social sciences. An interdisciplinary approach in issuing religious rulings and fatwa would

thus allow for a more comprehensive and thorough assessment of the reality, and hence facilitating a more holistic guidance and resolution.

Contemporary scholars, like Shaykh ʿAbdullāh Bin Bayyah, also underscored the significance of context. In his 2016 book *Tanbīh al-Marājiʾ ʿAlā Taʿṣīl Fiqh al-Wāqiʿ*, Shaykh Bin Bayyah dedicated almost an entire chapter to discuss context and why it is important to understand it. Context, according to him, is not always very clear. One would need the tools to help discern what it is like – it is ultimately a science on its own. Given the gravity of its relevance, the discussion on context should be at the core of our conversation of Islam and its sciences, and not at the periphery.

Some of the interpretations made by past jurists were very much influenced by assumptions that reflected the patriarchal nature of their society. Another example cited in the Symposium include determining one's age of independence (sinn al-rushd) which is a requirement in financial management. According to *Mālikī* and *Shāfiʿī* fiqh, females

For example:

An interpretation by Fakhr al-Dīn Muhammad ibn ʿUmar ar-Rāzī (13th century CE Shāfiʿī jurist) who said that God had created women for men, just like how God had created animals and vegetables for men's consumption.

It was probably an interpretation that was acceptable for the society he lived in, where women were viewed more as objects and were defined mainly by their biological functions. Such views are obviously not rooted in the Quran, but a result of interpreting the text based on the framework of their societal worldview, without realising the conflict between the two.

On the other hand, we are created in a different time and place and such comparisons and interpretations are no longer acceptable.

are not considered as independent – especially in managing finances – until they get married, while males are considered to be so upon reaching puberty. *Al-Shāfiʿī* discussed this in great length. He stated that one of the many reasons is the fact that it was common to see young boys doing trade in the market from time to time, while girls mainly stayed at home. Other examples include discussions on *farāiḍ* and will-making (*waṣiyyah*) for non-Muslim parents. While we are aware that the majority (*jumhūr*) approach in interpreting the Quranic verses and hadiths pertaining to these issues is to adopt the principles of abrogation (*naskh*), there are scholars like al-Qurṭubī who tried to reconcile the seemingly differing instructions in the Quran, hence suggesting that one can still make a will for parents who are non-Muslims.

There were also discussions on the issue of female circumcision. Traditional scholars differ in their views. For example, while Imam Muhammad ibn Idrīs al-Shāfiʿī (9th century CE *Shāfiʿī* jurist) was of the view that it is *wājib* (compulsory), Imam Mālik bin Anas (8th century CE *Mālikī* jurist) and Imam Aḥmad ibn Ḥanbal (9th century CE *Ḥanbalī* jurist) viewed it as sunnah (recommended), while the scholars of the *Ḥanafī* school were of the opinion that it is merely '*makrumah*', which means that it has no religious virtue although it may be seen as an honor culturally. These conclusions were made from their reading of the same few hadiths. However, the Symposium reminded participants that the hadiths must be understood in the context in which it took place.

"Female circumcision was a widespread practice and significant practice in the Arabian Peninsula before and at the time of the Prophet. According to scholars* it was not a practice initiated by Islam."

*like Ibn Ḥajar al-ʿAsqalānī (15th century CE Shāfiʿī jurist) and the former grand imam of al-Azhar, Shaykh Maḥmūd Shaltūt among many others.

In 2018, Egypt's Dār al-Iftā' has officially declared that female genital mutilation as practised in Africa, Egypt and elsewhere is religiously forbidden (*ḥarām*) and banning it is a religious duty due to its harmful effects. The fatwa was issued as a follow up to the recommendation gathered during the 2006 International Conference convened by Egypt's Dār al-Iftā', where religious scholars, including the former Grand Mufti of Egypt, Dr Ali Gomaa, had concluded that the prophetic hadiths used as justifications for the practice are either weak or invalid. Other contemporary scholars like Azizah al-Hibri, have suggested that even if the hadiths are accepted, it could be argued that the Prophet had attempted to introduce caution and brief guidelines to the practices so as to limit the harmful impact that it may cause the girl. And as in the case of other rulings that profoundly transformed existing traditions, the phasing out of this practice also required the use of the wise Quranic approach for social change, namely that of gradualism and transformation through education.

2.2 Shared Values and Norms as Normative

Al-Shāṭibī is one of the scholars who emphasized the importance of *ʿurf* and *ʿādah*. Both *ʿādah* and *ʿurf* refer to the English equivalent of custom, "but the former stands more for individual custom and the latter for collective custom." The Symposium discussed on a specific example of how shared values and norms have been used in the Quran in various verses pertaining to spousal relationship and verses related to women and family laws. The terms *al-maʿrūf* and *al-khayr* both carry the same meaning, which is goodness. However, in these verses, *al-maʿrūf* was chosen instead of *al-khayr*. Abū al-Fidā' Ismāʿīl ibn 'Umar ibn Kathīr (14th century CE *Shāfiʿī* jurist) in his exegesis explained that this is because the Prophet Muhammad had drawn an important distinction between the two. While *al-khayr* refers to goodness that is in line with following the Quran and the tradition of the Prophet, *al-maʿrūf* is any norm which is perceived as good and acceptable by the public or a community, insofar as it is in line with the principles of *al-khayr* above. In other words, *al-maʿrūf* is broader and more encompassing than *al-khayr*. In fact, the term *al-maʿrūf* is derived from the term *ʿurf*. It is an Islamic jurisprudential legal maxim that the practice of the community that does not contradict the *sharīʿah* can be considered as *ʿurf*, which can also form the basis for establishing a religious ruling on certain issues.

Therefore, given that the term *al-maʿrūf* was chosen in verses pertaining to Muslim family law, it follows that the norms of society including its social, intellectual, financial and legal norms, should strongly inform our conception of such laws. It is not sufficient to limit ourselves to only the reading of primary texts and past scholarly traditions, as the meanings are intertwined with contemporary norms.

This is not to say that whatever is culturally acceptable must be

accepted by Islam. In fact, the example of circumcision is an example of how Islam has introduced limitations to a widespread culture given its potential harm. Limiting polygamy practice to four wives and divorce to only thrice are also examples of how Islam sought to introduce changes in a society, with the aim of improving existing culture.

For example:

In the experience of the Syariah Court in Singapore, several appeal cases that demonstrated how social contexts and norms were taken into consideration when making court judgments.

The presenter from Syariah Court highlighted two cases in 1978 and 1993, dealing with division and disposition of matrimonial assets which reflected different Appeal Board judgments. The Appeal Board hears appeals against decisions of the Syariah Court, and the Kadi or the Naib Kadi of the Registry of Muslim Marriages.

For the 1978 case, the Appeal Board concluded that the division of matrimonial property upon divorce should be decided based on the couple's financial contributions to the property during the period of marriage.

However, in the 1993 case, the Appeal Board took into consideration the non-financial contributions made by the wife, which included the household and care-giving duties that she performed in the course of marriage.

This was then further developed in the 2013 Appeal Board case which ruled that "[i]n respect of these (financial and non-financial) contributions, the Court must consider the contributions made not just by one party but by both... the Court can adopt a broad-brush approach of the issues and make a determination on the basis of what the Court considers as a just and equitable division. What is required is equal consideration to the contributions of both parties and not that of one party alone...".

The ruling of the 1993 case demonstrated how the Appeal Board took into account the social contexts and norms to shape the implementation of Muslim family law in deciding on a more just and equitable division. In this case, it considered the norms of the society in which household and care-giving duties are important contributions to the family's well-being. It also took into consideration the fact that many Muslim women remained as housewives during the course of their marriage and thus not earning an income or having substantial funds in their CPF accounts. To not consider their non-financial contributions in deciding on division of matrimonial asset post-divorce would cause hardship to these women, especially in cases of long marriages or where the women have care and control of the children and would need to find accommodation.

2.3 Public Good

It is agreed in the tradition that what is defined as the common good can form the basis in establishing a ruling. However, social contexts continue to evolve, and what is defined as maṣlaḥah evolves with it. Hence, what should the approach be when the textual evidence conflicts with what is deemed as the *maṣlaḥah*? Imam Najmuddīn al-Ṭūfī (14th century CE Hanbali jurist) boldly stated that if *maṣlaḥah* conflicts with the textual evidence, then *maṣlaḥah* should be given priority as it is the ultimate purpose and objective of the law. According to him, in all legal aspects of *muʿāmalah* (human relationships), a primary source can be overridden if it contradicts the principle of *maṣlaḥah*. This is because the *sharīʿah* itself was laid down to protect 'public interest', and this serves as the ultimate purpose of the Divine Legislation. While this may be controversial, neglecting the impact of *maṣlaḥah* in the implementation of Muslim law because the whole body of law is considered to be fixed and unchanging, has led to various forms of social injustices. The fact remains that many countries have pushed for reforms which conflict with textual sources. These reforms are mainly motivated by tangible problems and real-life challenges of the people of their country.

Among the many examples noted during the Symposium include expansion of judicial ruling over *ʿurfī* marriages in Egypt, setting an absolute minimum age of marriage in Jordan, and removing the requirement for a marriage guardian in Morocco. In Singapore, the family courts and the Syariah Court adopt a child-centric approach in divorce proceedings.

"In other words, what is important is to ensure that the welfare of the children is paramount. even if it means that the court must rule in favour of the non-Muslim parent for the custody of these children."

CONCLUSION

CONCLUSION

The Symposium has sought to lay the initial ideas for a more structured discussion and planning on the implementation of contextualized Muslim family law. Overall, the Symposium calls for further studies on the aspects of the implementation of Muslim family law. The research however should not be limited to only religious discourses and narratives – it must be multidisciplinary. It is important to understand the lived realities, the implications of maintaining status quo and the possible consequences of changes. For example, there is a lack of study on sociological and psychological impact of polygamous marriages, which is a very important aspect in assessing the suitability of such arrangement for all parties involved.

The Symposium also suggested several areas for legal reforms and reviews, including increasing and introducing an absolute minimum age of marriage. Currently, the Administration of Muslim Law Act in Singapore provides for Kadis to approve marriage applications involving girls who have attained puberty under special circumstances. As mentioned earlier, this is not suitable for today's context as girls today attain puberty at a very early stage, even before they are physically, emotionally, financially and mentally ready to start their own families.

There were also recommendations to allow for women to be able to include their own stipulations (*ta'līq*). While the current *ta'līq* helps to secure some important and basic rights of the woman, its stipulations are mainly fixed. By allowing flexibility on the inclusion of the different *ta'līq* conditions, it would allow for women to secure more of their rights

and provide a legal recourse for them in the event that the husband does not honour the contract.

The Symposium agreed on the crucial role that asatizah play, as they act as points of reference for members of the community on issues of family law, and in strengthening the family institution. Some of them are also practitioners in the field, like the Naib Kadis or marriage solemnisers who also provide a one-off face-to-face pre-marital counselling session, and who would serve as advisors for marital advice for the couple within the first two years of their marriage. The other asatizah include those who work as marriage counsellors, and even freelance asatizah who are always invited to give talks on marriage and family life. Engaging their views and exposing them to progressive discussions on the issue will benefit the community in the long run. Beyond the asatizah, the Symposium also emphasized for the need to involve regional and international stakeholders to share and exchange best practices, and to explore what would work for the Singapore context.

The Symposium also stressed on the importance of public education. Dissemination of how to approach marital and familial relations in Islam in a manner that is contextualized and upholds the *maqāṣid* and *maṣlaḥah* of the law should be done via different public platforms. There were also recommendations to review how fiqh *munākaḥāt* is being taught in mosques and madrasahs, as some of the concepts found in the fiqh texts may require further contextualisation, and the Muslim family law as practiced here may have either evolved or departed from those concepts.

Endnote

1 Narrated Abu Hurairah: The Prophet (ﷺ) said, "If a man invites his wife to sleep with him and she refuses to come to him, then the angels send their curses on her till morning." (Sahih Al-Bukhārī 5193).

2 Quran, Surah ar-Rūm 30:21

3 Quran, Surah al-Baqarah 2:187

4 Narrated 'Amr bin al-'Āṣ (RA): He heard Allah's Messenger (ﷺ) say, "When a judge gives a ruling, having tried his best to decide correctly, and is right (in his decision), he will have a double reward; and when he gives a ruling having tried his best to decide correctly, and is wrong (in his decision), he will have a single reward." (Bulūgh al-Maram 1400) Some companions of Mu'ādh ibn Jabal said: When the Messenger of Allah (ﷺ) intended to send Mu'ādh ibn Jabal to the Yemen, he asked: How will you judge when the occasion of deciding a case arises? He replied: I shall judge in accordance with Allah's Book. He asked: (What will you do) if you do not find any guidance in Allah's Book? He replied: (I shall act) in accordance with the Sunnah of the Messenger of Allah (ﷺ). He asked: (What will you do) if you do not find any guidance in the Sunnah of the Messenger of Allah (ﷺ) and in Allah's Book? He replied: I shall do my best to form an opinion and I shall spare no effort. The Messenger of Allah (ﷺ) then patted him on the breast and said: Praise be to Allah Who has helped the messenger of the Messenger of Allah to find something which pleases the Messenger of Allah. (Sunan Abī Dāwūd 3592)

5 Hashim Kamali, "Islamic Family Law Reform: Problems and Prospects," Islam and Civilisational Renewal, 3 (2011), 37–52; cf. Sayed Sikandar Haneef "Treatment of Recalcitrant Wife in Islamic Law: The Need for a Purposive Juridical Construct," Global Jurist, 12 (2012).

6 Adis Duderija, 2014. Maqāṣid al-Sharī'a and Contemporary Reformist Muslim Thought: An Examination. Palgrave Macmillan: New York, pg. 194

7 Ibid, 202

8 Ibid

9 "وبناء عليه فقد وضع المالكية قاعدة جريان العمل وهي قاعدة من خلالها يرجح قول كان في الماضي مرجوحاً ليصبح القول الضعيف راجحاً فيترك مشهور المذهب وراجحه ويعمل بهذا القول لكنهم ضبطوا ذلك بضوابط :كان مخالفاً للمشهور وهذا ظاهر إذا تحقق استمرار تلك المصلحة وذلك السبب و إلا فالواجب الرجوع إلى المشهور هذا هو الظاهر"

(Bin Bayyah, 'Abdullāh. Ma'ayir al-Wasatiyyah fi al-Fatwa. Retrieved from binbayyah.net/Arabic/archives/164.)

10 فيه إحدى عشرة مسألة: الأولى ـ قوله تعالى: { ٱلرِّجَالُ قَوَّامُونَ عَلَى ٱلنِّسَآءِ } ابتداء وخبر، أي يقومون بالنفقة عليهن والذَّب عنهن وأيضاً فإن فيهم الحكام والأمراء ومن يغزو، وليس ذلك في النساء

11 الثالثة ـ فَهِم العلماء من قوله تعالى: { وَبِمَآ أَنْفَقُواْ مِنْ أَمْوَالِهِمْ } أنه متى عجز عن نفقتها لم يكن قوّاماً عليها

12 In Sahih Al-Bukhārī 5273, 5274, 5275 and 5276.

13 Article 20, Law No.1 of 2000, Personal Status Law

14 Article 114(b), Personal Status Law 2010

15 A Shabana. (2007) 'Urf and ʿĀdah within the Framework of al-Shāṭibī's Legal Methodology. UCLA J. Islamic & Near EL 6, 87, p. 88.

16 Dr. Azizah al-Hibri, Ghada Ghazal and Aljawharah Alassaf (2018) Debunking the Myth that Islam Requires Female Circumcision. KARAMAH Research Division, p. 3.

17 https://www.dar-alifta.org/Foreign/ViewArticle.aspx?ID=125&text=circumcision

18 A Shabana. (2007) 'Urf and ʿĀdah within the Framework of Al-Shāṭibī's Legal Methodology. UCLA J. Islamic & Near EL 6, 87, p. 97.

19 Samiul Hasan, *Human Security and Philanthropy: Islamic Perspectives and Muslim Majority Country Practices*, Springer, 2015, pg 56.

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