



ISLAM and the Question of

Justice is central to the philosophy of law in Islam. That justice includes gender equality is a modern idea that became generally accepted and translated into law only in the course of the twentieth century.

The Qur'an took Muslims from the injustices of their time to the justice of their time. It endorsed women's full humanity and gave them important rights within the patriarchal culture of seventh century (CE) Arabia.

But at that time, notions of justice did not include the idea of equality between men and women, nor did it exist in Muslim social, economic, and historical thought. Accordingly, gender equality featured neither in the interpretations of Islam's sacred texts by classical Muslim jurists, working within their own contexts for hundreds of years after the revelation, nor in the legal rulings derived from these interpretations. Yet it is the human-made rulings from that period that continue to be the source of contemporary Muslim family laws and gender norms.

GENDER

EQUALITY

Many factors have made these classical juristic rulings unsustainable. Among them egalitarian interpretations of the Qur'an that have led many contemporary Muslims to question the justice of classical *fiqh* rulings. In addition, the 20th century rise of Muslim nation-states and their constitutional obligations to uphold equal citizenship rights have changed local and national legal landscapes. On the global

level, gender equality and justice have been linked within international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'), which was drafted in the 1970s with active participation from Muslim-majority countries, and has been ratified by all but three of the 57 member states of the Organisation of Islamic Cooperation ('OIC'). In addition, women and men's lived realities have changed, with women unequivocally active in public life and making substantial paid and unpaid contributions to the well-being of their families.

While classical notions of justice in Muslim and other religious traditions did not include gender equality, changes at the local, national, and global levels and understandings of Islam's sacred texts based on ethics and values in the Qur'an and *hadith* allow for gender equality in laws, policies, and practices today.

GENDER and JUSTICE in Muslim Contexts

In contemporary Muslim contexts, there are two broad competing approaches to gender justice.



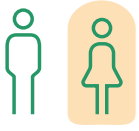
The first approach builds on classical jurisprudence (*fiqh*), the science of understanding and deducing rulings from Islam's sacred texts, which was established in the early centuries of Islam. Advocates of the **'protectionist' approach** acknowledge women and men's equality in their

relationships and their obligations, as believers, towards their Creator in this life and the next one. But to advocates of this approach, women and men's ontological and spiritual equality does not mean they are also equal in social and legal domains. Instead, based on gendered ideas about the 'nature' of women and men, this approach says there are defined roles for men and for women. Just as classical Muslim jurists argued centuries ago, the protectionist approach sees men as strong and rational and women as weak, emotional, and in need of protection. These assumed 'innate differences' suggest that men should provide for and protect, and women should obey. Under this approach, giving men and women equal rights is denying their differences, which is against the supposed laws of nature and the requirements of justice.

Advocates of the second perspective take an **'egalitarian' approach** to gender justice. While admitting biological differences between men and women, they argue for an understanding of justice that honours women's full humanity and that respects core values in the Qur'an and examples from the Prophet's (pbuh) treatment of women. They take a nuanced view of the concepts of 'equality'

and 'difference'. For them, equality and difference do not contradict each other; equality is possible even when people are different. Their main argument is that we need equality as a principle of justice in society, in law, and for regulating human relations, including gender relations, precisely because all humans are different in their capacities, access to resources, etc.

There are two main approaches to gender equality in contemporary Muslim thought:



The **'protectionist' approach** aims to **'protect' women from harm or wrongdoing. In doing so, it treats women as perpetual minors, undermining their human dignity and preventing them from fulfilling their potential in both spiritual and social spheres.**



The **'egalitarian' approach** challenges classical understandings of gender and argues for equality for women on all fronts, demanding that law and practice reflect the egalitarian principles and values of Islam.

GENDER EQUALITY and JUSTICE: Key Terms

In present-day global and national discourses on gender equality, there are several terms that are the focus of debates and sometimes misunderstandings.

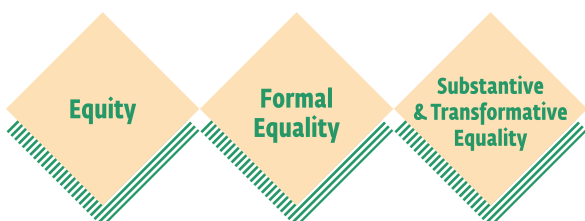
Equity is a framework that, like the **protectionist approach** in Muslim legal tradition, promotes complementary gender roles and rights in society and in the home. The stated goal of the equity framework is to take into account the differences between men and women. However, in practice it perpetuates hierarchical relations between men and women and denies women equal rights and opportunities to fulfil their aspirations.

Formal Equality treats all people identically under the law, regardless of their backgrounds, situations, or personal characteristics. Despite its importance, formal equality does not necessarily enable women to enjoy their rights on the same basis as men, because the starting point and the playing field are not the same for men and women. Not only do women not have the same access as men to socio-economic resources and political opportunities, but women are not a homogeneous group; individual women do not experience legal inequality and discrimination in the same ways as other women. Class, age, ethnicity, race, among other things, are all important factors in how women have been disadvantaged.

Substantive Equality, by contrast, takes into account the above factors and further discrimination that arises when such differences are ignored. Substantive equality, which is reflected in the CEDAW Convention, addresses the shortcomings of gender-neutral laws and calls for laws and policies that promote equality between men and women in opportunities, processes, and outcomes. This approach can be further developed into one that seeks **Transformative Equality**, meaning long-term transformation of institutions, systems, and power relations. This would ensure, for example, that women have meaningful decision-making power; are full participants in family, society and state; and are able to enjoy dignity, security, and respect.

The terms 'equality' and 'equity' have been debated in the international human rights arena since the Beijing Conference in 1995. A coalition of conservative Catholic and Muslim-majority states and NGOs argued for the use of the term 'equity', claiming that it grants each person rights according to his or her needs. An opposition coalition of states and NGOs argued for the use of the term 'equality' as denoting equal rights for men and women in terms of opportunities and outcomes, in law and in practice. But 'equity' is now used in many global and national discourses as a synonym for complementary rights that thus discriminate based on sex.

Interestingly, in the global debate the terms were not explicitly linked to the concept of 'equity' that is used in some Western legal traditions to ensure justice for individual litigants when existing legal remedies are inadequate.



Multiple terms are used in global, national, and local discussions of gender equality and justice:



Equity provides for complementary but unequal gender roles and rights. While it claims to take into account differences, in practice it promotes discrimination by using assumptions based on sex and gender as the basis for laws, policies, and programmes.



Formal equality is the basis for constitutional provisions and laws that treat women and men the same regardless of their backgrounds. However, it fails to recognize existing and historical structural inequalities and how they intersect with other forms of discrimination, which can place certain women at a disadvantage in certain contexts.



Substantive equality and transformative equality advocate for gender-sensitive laws, policies, and programmes that correct women’s social and historical disadvantages, with the goal of long-term transformation of institutions, systems, and power relations. These approaches acknowledge differences, combat discrimination, and guarantee equality of all citizens.



An Example: SPOUSAL ROLES



Elham and Hussein have been married for eight years and have three children. They live in a medium-sized flat in a small city, with both of their aging parents living nearby. Hussein was trained as a teacher and Elham was trained as an engineer. He was offered a teaching job at a small school 30 minutes outside the city at a moderate wage; she was offered a job at a very high wage in a local engineering firm that would involve long hours and a great deal of travel.

What would Hussein and Elham’s roles in their household look like under the different approaches to equality?

PROTECTIONIST APPROACH / EQUITY



While Elham’s job opportunity is a good one, she should not be working late at night or traveling alone. She must therefore reject these assignments within the job or seek another job where she will be safe from the potential of harassment and will have more time to meet her caregiving duties, which she is more naturally suited for.

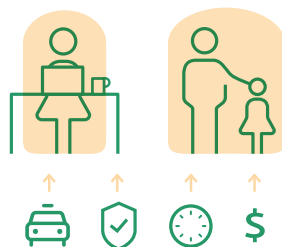
It is fine for Hussein to commute to his job outside the city. If his wage is not sufficient to provide for the family’s needs, he must work more hours or find a better paid job since he is the natural provider and protector of his family.

FORMAL EQUALITY



Both Elham and Hussein must contribute equally to the household expenses and share the caregiving responsibilities and all of the household tasks and chores. If one of them is not contributing equally to these household duties because of long working hours, he or she must pay the other or hire workers to take care of those tasks.

SUBSTANTIVE AND TRANSFORMATIVE EQUALITY



Elham and Hussein discuss their job opportunities and what they feel best suited to do in their household. They decide to invest in Elham’s opportunity to earn a higher wage and advance quickly in her career. The couple decide that Hussein, who became a teacher because he loves children, will be the primary caregiver for their children. He also finds a part-time tutoring position in the city to supplement their income.

Meanwhile, the engineering firm adopts policies relating to transportation, safety, travel hours, accommodation standards, and expectations of staff to protect all workers – female and male – from harassment within the office and when they are travelling for work. The country has put in place a nationwide child care system and has recently passed a law providing subsidies for home-based care for elderly people, which the couple use to help with caregiving for their children and parents.

THE WAY FORWARD

For Musawah, the question of gender equality in Islam requires understanding certain core ideas:

- ◆ First, concepts such as 'gender', 'equality', and 'justice' are always **socially constructed**. They have no absolute or unchanging meanings. Rather, they are constantly evolving in interaction with socio-economic, political, and ideological forces and with regard to people's experiences and expectations. This is also true for interpretations and understandings of Islam's sacred texts and the legal rulings that are derived from them.
- ◆ Second, Muslim juristic tradition does not hold a single nor an immutable conception of gender and the rights of men and women. Instead, **Muslim legal tradition supports a variety of ideas** based on different theological, juristic, philosophical, and social assumptions about the nature of relations between men and women.

- ◆ In part, this reflects a tension between **ethical egalitarianism** that is an essential part of Islam's divine message and the patriarchal context in which this message unfolded.

◆ —◆
"O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do."
Surah an-Nisa' 4:135

◆ —◆
The notions of gender and rights found in classical *fiqh* (Islamic jurisprudence) were constructed in a specific time and context. They no longer respond to contemporary lived realities and conceptions of justice. It is therefore essential to reclaim the core egalitarian ethical principles of the Qur'an and to rethink them for our contexts.

◆ —◆
The Qur'an affirms men's and women's human dignity equally (*Surah al-Isra* 17:70: 'We have certainly honoured the children of Adam'). Yet it does not deny differences between men and women (*Surah al-Hujurat* 49:13: 'We created you from male and female'). The text's central ethical messages point to the necessity of a contextual and multidimensional approach towards equality and justice.

Musawah advocates substantive and transformative approaches to equality, as inspired both by Qur'anic values and universal human rights norms. The Qur'an set in motion a process to transform human relations, including gender relations, in the direction of justice. Musawah invokes the Qur'anic values of justice, fairness, and equity ('*adl, qist, insaf*), women and men's equal dignity (*karamah*), and doing that which is commonly known to be right (*ma'ruf*). In our time and context, these values embody the notion of substantive and transformative equality. They promote justice for men and women and equality in opportunities, outcomes, and power relations.

How can we work together to build egalitarian Muslim societies?



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