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Family Law Reform in Lebanon: A Strategic Role for Transnational Islamic Feminism

Reem Maghribi and Youmna Makhoul

Introduction

Lebanon, like most Arab countries, delegates authority in matters relating to what is referred to as “personal status” to religious courts. Almost all of the over four million Lebanese residing in Lebanon are officially affiliated to one of eighteen religious sects recognized by the state and are thus subject to one of fifteen personal status laws (PSLs, often also referred to as family laws). These laws underpin issues related to marriage and its consequences, such as divorce and custody and, in the case of Muslim communities, inheritance. By defining the roles, responsibilities, and rights of men and women entering into marriage, PSLs and the religious courts that adjudicate on all matters related to them have the power to greatly influence the gender dynamics of a country. Lebanon’s patriarchal and discriminatory laws, both civil and personal status, have been described as contributing to violence against women and positioning them as second-class citizens.

While inequality between men and women is present in PSLs across the Arab world, the religious diversity of Lebanon’s population and its many PSLs differentiate it from other countries. In Lebanon, inequality is not only present between men and women, but also between women of different religious sects. This has complicated the feminist agenda and led to a lack of synchrony and strategy, with different groups calling for very different approaches to pushing for gender equality. Attempts at reforming family law in Lebanon—and there have been many over the past several decades—have faced several obstacles. These challenges specifically include monolithic patriarchal interpretations of religious texts. A number of scholars and activists have in recent decades made significant attempts to produce interpretations of Islam’s holy book, the Qur’an, that complement gender equality and dispel the notion that feminist principles and Islam are

incompatible. This hermeneutic approach has given rise to the phrase “Islamic feminism,” which is used hereafter to refer to the application of Qur’anic interpretation to support calls for gender equality.

This policy brief forms part of a project that seeks to understand whether transnational Islamic feminism may have a positive role on reform processes of Islamic family laws in select Arab countries; this study focuses on Lebanon. Though some reform initiatives in Lebanon have challenged patriarchal interpretations, the contribution of Islamic feminism remains limited. In fact, reformists have not made use of the Qur’an or hermeneutics in their work in Lebanon except when it comes to the issue of custody (*hadana*). In assessing what impact Islamic feminism has or could have on family law reform, this brief includes a review of various approaches implemented by different women’s groups in Lebanon to determine the extent to which those strategies relied on Islamic feminism. It further considers the obstacles that currently hinder family law reform and explores how a specifically transnational approach to Islamic feminism may play a positive role.

This policy paper concludes with recommendations addressed to different groups of stakeholders regarding how they might engage with transnational Islamic feminism strategically to advance family law reform specifically, and gender equality more broadly. In so doing, this brief considers the historical use of both Islamic feminism and transnational collaborations by advocates of gender equality and family law reform in Lebanon, and more pertinently considers the potential for a transnational Islamic feminist approach in countering the arguments invoked in opposition of such reform.

Lebanese Context

Lebanon is characterized by its legislative and judicial pluralism pertaining to family law. This pluralism derives from Article 9 of the Constitution (Decree number 60 L.R. dated 13 March 1936): “There shall be absolute freedom of conscience. The state in rendering homage to the Most High shall respect all religions and creeds and guarantees, under its protection, the free exercise

of all religious rites provided that public order is not disturbed. It also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, is respected.”

In this regard, the pluralistic system of family law is viewed as an extension of religious freedom and is therefore connected to the preservation of collective identities (Gannagé, 2013). Though legal scholars argue that the promulgation of a unified civil family law (applicable to all citizens) would guarantee religious freedom (Najm, 2004; Gannagé, 2003), it is also argued that the abolition of the religious communities’ jurisdiction over family matters contradicts the Constitution and that only an optional, not a unified, civil family law may be promulgated by the legislator to that effect (Gannagé, 2003). While fifteen different religious family codes govern the lives of those who marry (and divorce) in Lebanon, legislation does in fact exist that would allow for the development of a sixteenth code for those who choose to remove their sect from their official identification records. Such a code has, however, not yet been written, despite various campaigns pushing for an optional civil code.

The religious and pluralistic legislative and judicial system adopted in Lebanon has developed within this context. Two main approaches to calls for reform have been observed: a secular approach that demands civil law as a way to protect women’s rights, and a religious approach that seeks reform within existing religious laws. Historically, Islamic feminism has not played a central role in either approach. Arguments put forward by both secular and religious initiatives have hardly, if at all, considered alternative interpretations of the Qur’an. Those who, in 2006, chose to start a campaign for reform within the Sunni PSL strategically chose custody as their focal point specifically because there are no clear references to the issue within the Qur’an. They believed that this strategy would avoid the need for argument over interpretation and be more likely to lead to change, which indeed it did some years later.

Transnational Islamic Feminism and the Lebanese Reform Process

Islamic feminist groups such as “Musawah—for Equality in the Muslim Family” have engaged with some Lebanese organizations through knowledge workshops, but there is little evidence that this knowledge has “trickled down” to activist groups and reformist lobbying efforts in Lebanon. This may be attributed in part to the fact that Musawah is a young organization, founded in 2009, and has yet to gain the necessary credibility among Lebanese organizations and activists who for decades have been pushing for reform within their unique political, social, and religious context. Moreover, Musawah has thus far focused on the production and dissemination of knowledge resources; though it has engaged in public discourse and capacity building of local actors, its engagement in network and strategy development has thus far been limited. Its latest Theory of Change (2019–2024) does, however, include “building a collective force for change” among its four core initiatives, highlighting an intent to “organise and mobilise efforts of individuals and organisations at the national, regional and global levels towards collective action for change” (Musawah, 2020). As such its impact on network and strategy building may develop in the coming years.

Various Lebanese organizations have for many years actively engaged in the movement of discourse and ideas between reformist groups in different Arab countries, suggesting a willingness among Lebanese actors to engage in a transnational approach, and to be influenced by the strategies and successes of different reformists pursuing the same agenda. This was highlighted in the summer of 2017 when, in the space of two months and following coordination between reform groups in different countries, laws that protected rapists from prosecution should they marry their victims were repealed in Tunisia, Jordan, and Lebanon. Transnational successes such as this suggest that Musawah, which “brings together over 250 activists, scholars and policy-makers from 47 countries” and aims to mobilise collective action for change, may be well received by activists in Lebanon that believe in the potential of Islamic feminism to bring about the reform they seek.

Though not yet strategically utilized in Lebanon, Islamic feminism may prove effective in addressing some of the objections posed by religious authorities that hinder family law reform,

such as those that call for a respect of religious identities and values, and claims to protect “the family unit”. This conclusion is based on an assessment of the Lebanese power structure and attitudes of some reformists, and not on observations of the use of gender–equal interpretations and approaches to the Islamic concepts of *wilayah* (guardianship) and *qiwamah* (stewardship) by stakeholders in Lebanon, of which there are few. Additionally, a transnational approach may also serve to counter presuppositions and arguments that gender equality is a Western concept incompatible with Middle Eastern cultures by referring to reforms in other more culturally comparable states in the region.

For many years, feminist movements in Lebanon have been predominantly secular, stressing the necessity of secular family laws as the means to achieve gender equality (Ghamroun, 2013). In fact, the secular and feminist movements in Lebanon have been heavily codependent, with both highlighting the incompatibility of sectarianism and gender equality. Indeed, most visible feminist movements have demanded the introduction of a civil family law, be it mandatory or optional.¹

This positioning has implications for legal demands, since the violence against Lebanese women in their families and their environments is perceived as violence by religious law itself. It is therefore the abolition of the legal and judicial autonomy of religious communities in family matters that is required, or, at least, its neutralization through the creation of an optional civil family law that would exist in addition to current PSLs. These feminist demands have, therefore, only been expressed from outside the system, yielding no notable results. More than half a century of mobilizations has failed to undermine the political and social economies sustaining the PSL and its provisions, despite some victories in other areas of civil law such as commercial or criminal law (Ghamroun, 2013, pp. 205–206).

Similarly, secular movements have not yet succeeded in their demands for a civil marriage law. However, they were able to lead fruitful campaigns pertaining to the adoption of a domestic violence law—which passed in May 2014 following a mass rally led by the staunchly secular

organization KAFA (Enough) Violence and Exploitation—and the amendments of certain provisions of the criminal code.²

This strategy of demanding the development and adoption of civil laws that pertain to issues normally under the purview of family laws is continually opposed and interfered with by religious authorities, even in civil and political arenas where they have no official status. The ability of religious authorities to cut provisions from the domestic violence law that were deemed incompatible with religious family laws—including the criminalization of marital rape and coercion to marriage—has thus far neutralized further attempts toward the adoption of a civil marriage law (Najm, 2012). Further, legislators often refer to religious authorities that tend to interfere in the legislative process even though such practice is denounced by legal scholars as contrary to the constitution (Najm, 2012; Salem, 2003). This was the case when the domestic violence law was submitted to parliament, and it is currently the case in the multiple draft laws that are being discussed pertaining to the adoption of a bill to end child marriage (Allaw, 2018).

Initiatives led by secular movements do not rely on Islamic feminist strategies to reinterpret current Islamic jurisprudence. Instead, they foreground the belief that gender equality can only be achieved through secular laws. Nevertheless, in 2015, faced with fierce opposition from Lebanon’s Sunni authority, Dar al Fatwa, to the adoption of a domestic violence law, the National Coalition for the Protection of Women from Family Violence issued a press release in which they referred to a hadith by the Prophet Mohammad—“Only a man of noble character will honor women, and only a man of base intentions will dishonor them”—in a bid to emphasize compatibility, indeed complementarity, between Islam and the fight against gender-based violence (KAFA, 2011).

That was not the first time Islam and religious authority had been utilized to strengthen calls for gender justice. Earlier, in 2013, the nongovernment organization ABAAD—Resource Center for Gender Equality initiated group discussions attended by religious leaders and representatives that resulted in the development of “a manual detailing different approaches civil society

organizations working on women's issues can use to engage religious leaders in combating gender-based violence and ending violence against women" (ABAAD, 2014).

Two years earlier, in 2011, the Sunni family law was amended following a five-year campaign by a feminist group that identify themselves as The Family Rights Network, led by activist lawyer Iqbal Doughan. The group was able to gain the support of religious authorities and as a result, under Sunni family law, mothers now have custody (*hadana*) of their children until the age of 12, up from the age of seven for boys and nine for girls. Interpretation of religious texts was not, however, part of the strategy as there is no mention of custody in the Qur'an. It is in fact for this reason that the group chose to focus their efforts on *hadana*, knowing that it would be less controversial and challenging than other issues: "Our strategy was to start with what was possible and then get to the more difficult issues, such as inheritance", explained Doughan in an interview (Legal Agenda, 2017).

Calls for reform to family law have also been present within the Druze and Shi'a religious communities, the two other Islamic sects that each have their own PSL in Lebanon. Mobilizations by activists in the Druze community calling for family law reforms were enhanced in 2007 when a coalition of over 50 associations collaborated to demand an amendment to their PSL. At the end of 2009, the Mazhabi Council for the Druze community, which includes women members, established a committee tasked with preparing a draft law. In August 2017, the parliament adopted Law No. 58, amending the Druze personal code of 1948. The amendments included raising the legal *hadana* age to 14 for girls and 12 for boys. It also allowed daughters to inherit the entire estate from a deceased father, notwithstanding the absence of male children. May Hilal, the secretary of the Coalition of Women's Associations in the Mountain, the group that instigated renewed demands for reform in 2007, highlighted collaboration with and the engagement of religious authorities as important components of their strategy, noting that the support of some can cause others to retreat from objecting to reform (Barges, 2017). This suggests that PSL reformers in Lebanon may well embrace and benefit from a movement that is (i) transnational,

and therefore based on cooperation and collective action and (ii) Islamic feminist, and therefore based on discussion instigated by hermeneutics.

As for the Shi'a community, though no amendments have been made to the current religious legal framework, a national campaign to raise the age of the *hadana*—named “Protecting Lebanese Women”—emerged in 2013, which led to at least one judgement by a religious court granting a mother custody of her children despite them being above the legal age. Within the context of the campaign, some members invoked the teachings of the prominent Shi'a cleric Sayyed Mohammad Hussein Fadlallah, who died in 2010 but remains influential, that challenged the monopoly of religious interpretation (Hamdan, 2017). However, in a statement issued in 2016, the Higher Shi'a council disregarded any alternative interpretations than that outlined in the Sistani fatwa adopted by the Shi'a family courts in Lebanon, according to which mothers should have custody of boys until they reach the age of two and of girls until they reach the age of seven (Al-Marsad, 2016). This was later challenged by MP Inaya Ezzedine who, in 2019, called for the reform of PSL, referencing a Qur'anic verse and stressing the fact that *ijtihad* (meaning diligence and referring to persistent effort towards betterment) is still open and allows for interpretations in favor of raising the *hadana* age and improving equality and justice.

Though Islam and the authorities who claim guardianship over the religion and its teachings may have been utilized in some campaigns and calls for reform, the actual interpretation of Islamic texts—the foundation for Islamic feminism—has not. Though the various campaigns appear to share with Islamic feminism a desire to engage, if not appropriate, religious discourses, arguments based on Qur'anic interpretations and the need to follow a “gender-just hermeneutic Qur'anic exegesis” are still restricted and have only addressed the absence of scripture (in the case of *hadana*) and not the interpretation of it (Schröter, 2017).

The evident willingness to engage in reform from within, to solicit the support of religious authorities, and to reference the Qur'an suggests that future campaigns may embrace a strategy

based on interpretation. As Lebanese legal sociologist Samer Ghamroun (2013) explains regarding the campaign led by the Family Rights Network:

The reasoning in the face of Sunni religious authorities takes place entirely within the normative and discursive Sunni religious framework, to the surprise of religious leaders who have been, until then, exposed to rather secular criticism. The reasoning is not new, but its specificity lies first in its surprisingly effective translation within the legal balance of power in the face of religious leaders. It extends above all outside the traditional patterns of Islamic feminism, for which religion is not what the exclusive interpretation of men has done to it. Instead of a reflection on what a religion freed from its sexist readings would really be, this is a pragmatic attempt to carefully dismantle the discourse of sanctity erected as a bulwark against the will of women to reform. (p. 210)

This cautious dismantling of the ownership of monopoly over interpretation of sacred texts, practiced by both Sunni and Shi'a activists in the aforementioned campaigns, lays strong foundations for the strategic introduction of new Qur'anic interpretations that support the feminist agenda. In a space dominated by secular feminism seen to espouse western values, such interpretations would offer an alternate campaign course: one led by practices and principles born from within Islamic communities.

Cultural Relativism and Transnational Movements

Champions of gender justice in Lebanon often face a recurrent argument that pivots around religious communities' claims for exclusive jurisdiction over matters related to family law, the protection of religious identities, and the necessity to fight against the intrusion of Western values.

Dar El Fatwa, the Sunni court, has repeatedly stated that calls for an optional civil marriage law represent an insidious attempt to impose Western values that would lead to the destruction of the family. In 2013, Mufti Qabbani issued a fatwa according to which:

Any Muslim with legal or executive authority in Lebanon who supports the legalization of civil marriage is an apostate and outside the religion of Islam considering that there are predators lurking among us, trying to sow the bacteria of civil marriage in Lebanon, but they should know that the religious scholars will not hesitate to do their duty. (Naharnet Newsdesk, 2013)

The same year, the Higher Shi'a Council also refused "the concept of civil marriage from a religious, national, legal, and ethical perspective" (Naharnet Newsdesk, 2013).

Even the civil law against domestic violence was presented as a negative Western influence, with Dar El Fatwa suggesting that it was "presented not to improve women's status, but rather to break up the family similar to Western ways which are foreign to our society and values" (Khraiche, 2011, para. 2). This rhetoric has hindered advancement regarding the adoption of a civil marriage code and hampered the domestic violence law, which passed without including the criminalization of marital rape and coercion in marriage. Indeed, instead of criminalizing marital rape, the law only punishes physical harm induced in order to obtain one's "marital rights".

Arguments suggesting that beliefs, values, and practices should be understood within cultural contexts—known as cultural relativism—efficiently block reform of national laws and influence Lebanon's international commitments. Lebanon has, based on cultural relativism, issued reservations to Article 9, Paragraph 2 (regarding granting equal rights to women with respect to the nationality of their children) and Article 16, Paragraph 1 (regarding taking all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), arguing that these articles are contrary to Lebanese ideological beliefs and social values.

In the various periodic reports required under CEDAW, Lebanon has always stated that these reservations were due to the pluralistic religious nature of Lebanese family law, supporting the idea that these laws are incompatible with gender equality. Islamic feminism—in so much as it provides for alternative readings of religious texts without promoting a disassociation of religion from governance—may be key to addressing this hurdle. Transnational Islamic feminism as a movement therefore not only provides strong arguments, through Qur’anic interpretation, that counter those presented by men who have been given religious authority by almost exclusively male politicians, it also enables activists, through its inherent collaborative regional approach, to invoke reforms undertaken in neighboring or nearby states that are culturally and religiously similar.

Indeed, in the course of the campaign led by the The Family Rights Network, the group advocated for raising the age of custody by invoking reform in other Arab countries that had been inspired by shari’a law. Among them was the campaign “Protecting Lebanese Women,” which referred to amendments in Iranian law (PLW Campaign, 2019). Women activists in Beirut are in this way multiplying references to foreign legal practices and interpretations without risking abandoning the Sunni Muslim space in favor of secular strategies. The interpretation of shari’a law by Moroccan or Tunisian legislators and family law reforms that have been adopted in recent years as a result are thus invoked: if shari’a law is interpreted in a certain way in Tunisia or Egypt regarding the custody of the child, why would it not be interpreted in the same way in Lebanon? (Ghamroun, 2013, p. 211)

Conclusion

An assessment of the different approaches used by various women’s groups and local and international civil society organizations in Lebanon focused on reforming family laws shows that while some approaches may be inspired by Islamic feminism in so much as they challenge the validity of monolithic patriarchal interpretation of the law, they do not yet present the alternative interpretations that organizations such as Musawah have developed and disseminated that aim

to support the feminist agenda. To date, Qur'anic exegesis, in the style of Islamic feminism, has only addressed the issue of the *hadana*, ironically because there is no scriptural text pertaining to it. Making use of Islamic feminist thought and references may, however, prove to be even more fruitful since a feminist Islamic approach may allow reformers to push for further amendments such as equality within inheritance law and criminalizing child marriage by encouraging debate within the existing sociopolitical system instead of threatening it in the way secular approaches have done. This will likely enable activists to gain the support of more people within the system, such as religious leaders and judges, people who have the power to push for and bring about reform.

A study of the current achievements in Lebanon reveals that any family law reform, whether through secular or religious channels, necessitates addressing different target stakeholders due to the interactions that exist between state and religious institutions. Similarly, religious initiatives led by women's groups have also relied on the support of state actors and institutions, specifically legislators within parliament and political leaders taking part in the discussions related to reform of religious legislations, further highlighting the importance of addressing multiple stakeholders. Given the role of the courts in the interpretation of the laws, it is essential to also involve academics, judges, and lawyers in reform efforts. In fact, when applying the domestic violence law, some judges adopted an extensive academic and legal interpretation of the concept of violence offering remedies to the shortcomings of the promulgated text (Saghieh, 2014).

Even when promulgating civil laws, legislators often refer to religious authorities that tend to interfere in the legislative process even though such practice is denounced by legal scholars as contrary to the constitution (Najm, 2012; Salem, 2003). This was the case when the domestic violence law was submitted to parliament, and it is currently the case in the multiple draft laws that are being discussed pertaining to the adoption of a bill to end child marriage (Allaw, 2018).

Recommendations

To legislators and politicians:

- Recognize the multiplicity of interpretations within religious family laws and challenge the monolithic stand taken by religious authorities. When civil laws pertaining to gender equality within the family are promulgated, objections from religious authorities may be addressed by invoking alternative interpretations.
- Moreover, the existing constitutional legal framework does not grant religious authorities exclusive jurisdiction regarding family matters. As such, legislators and politicians may push for family law reform and overcome obstacles related to religious values by referring to the existence of multiple, possibly incompatible, religious interpretations, among which are Islamic feminist approaches towards gender equality. Parliamentary committees in charge of studying family law reforms may therefore take into consideration discussions with religious authorities, including Islamic feminists, but are not constitutionally bound by them, particularly if they do not present a single unified interpretation.

To religious authorities:

- The idea that religion and gender equality are inherently incompatible may be addressed by recognizing the legitimacy of Islamic feminism that challenges patriarchal interpretations which translate into the existing religious family laws. Religious authorities in favor of family law reform can engage with and find support among Islamic feminist thought and leaders. The presence of women representatives within religious bodies would aid the process of reform further still.

To academics, judges, and lawyers:

- Judges and lawyers practicing within religious courts must often deal with interpretation of texts—both legal and religious. They may integrate a wider repertoire that includes Islamic feminist scholars and activists in cases brought up in front of religious courts. While lawyers and judges may utilize studies and Qur’anic interpretations that have been published by feminist academics, it would be beneficial if further studies were produced by lawyers and academics in Lebanon that focused on Lebanon and Lebanese laws and communities in particular.

To local and international CSO’s:

- Building coalitions of civil and religious women’s groups is necessary for improving gender equality. Adopting an exclusively secular or religious approach to women’s rights may result in the exclusion of women who do not share the same secular or religious values.
- Local strategies may benefit from transnational feminist Islamic networks and organizations in order to translate gender–just Qur’anic interpretations into the religious and secular family related laws. As such, Islamic feminism can be seen as a bridge between those who work within a secular framework and those who hold dear their religious values.

¹For a description of these initiatives, see Stephan (2014).

²Law No. 162 dated 17 August 2011 that repealed Article 562 of the Criminal Code, and Law No. 53 dated 15 September 2017 that repealed Article 522 of the Criminal Code.

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