

Family and Family Law in Asia and the Middle East

The workshop on 'Family and Family Law in Asia and the Middle East', convened by ISIM and the Working Group Modernity and Islam (30 June – 1 July 2000) at the Institute for Islamic Studies, Free University of Berlin, aimed at creating a network of scholars and scholar-activists currently based in the West, who employ a social science methodology and perspective in the study of family law, its history, its regional developments and its interpretation by courts.



PHOTO: LAILA AL-ZWAINI
Annelies Moors and Lynn Welshman participate in the workshop.

The two-day workshop was divided into a series of roundtable discussions, each session assigned to participants, who used their own research questions and findings as well as pre-circulated reading material to enable a comparative and interdisciplinary debate.

The first theme was devoted to 'Western Historiography of Family Law in the Middle East'. Bettina Dennerlein expounded three major paradigms that stand out in Western literature on family law in the Middle East, and contrasted them with discourses about family law in the region itself. The three paradigms reflect the development of the complex relationship between the state and the family, varying from a patriarchal-national-

ist, to a contractual-individualized approach. These developments are visible, for instance, in the shifting definitions of marriage and the effects on the position of women and their active participation as social actors.

The second theme concentrated on the 'Marriage Contract and its Registration'. Léon Buskens approached the topic from three different perspectives: *fiqh*, state legislation and practice, with the example of Morocco. The radical shift from oral to written marriage contracts, and the legislative measures towards homogenization and central registration of the contracts, as illustrated by the most recent version of the *Mudawwana*, are clear manifestations of the increasing control that the state exerts over the family. However, people still find space for their own perception of the rules and practices regarding marriage.

Annelies Moors discussed the increased practice of registering token dowers in the marriage contract among urban and rural Palestinian women, whose motives and effects vary according to time, setting, level of education, profession, and so on. The practice is further closely inter-linked with socio-economic developments and the changing view on what a 'good' marriage involves, with an increasing emphasis on the conjugal aspect of the marital relationship. Another important feature of the token dower is its symbolic meaning regarding a woman's autonomy, which can be seen as an important sign of modernity.

The third session covered the issue of marital offences and violence in the family. Tazeen Murshid argued that acts of domestic violence against women in South Asia are usually linked to the male perception of

'possessing' the female body, and embedded in conceptions about honour and property relations. Occurrences of violence can, moreover, gain ground because they are often sustained by public institutions such as the law, the courts, and the police. The discussion evolved around questions such as: what constitutes illegal or illegitimate forms of violence in the family? How can legislation ensure the protection of women? What is the link between private and public violence? Do court verdicts reflect the offence or put the women on trial?

The fourth theme was related to illegitimacy, the topic of research and professional concern of Jamil Bargash. The Sunni *fiqh* literature shows a large degree of elasticity in arguing around the possible status of an illegitimate birth. Although the erasure of natal descent and the fiction of parenthood is not allowed, in practice this was solved by employing *hiyal* (legal devices), such as the *kafala* (lit.: gift of care), through which a child could attain an accepted social status. The codification of Maliki law and the compulsory registration of marriages and births have, however, created gaps between law and social practice. For instance, through the fixation of a specific period for pregnancy, no room is left for the fiction of the 'sleeping child', thus generating an unprecedented social stigma for both the 'illegitimate' child and its mother.

The final theme on divorce, legal activism and reform was jointly presented by Lynn Welchmann, Abdellahi An-Naim, and Ziba Mir-Hosseini, scholars who combine their academic approach from an 'insiders' perspective with effectively partaking in legal reform programmes, especially in Palestine, Iran, and Egypt.

By the example of practices of *talaq* (divorce) in Palestine, Welchman illustrated that codified law and the institutionalization of courts can also positively affect women's position, e.g. by making certain apprehensible (*makruh*) moral duties legally enforceable on men, or conversely by applying administrative measures to discourage men from divorce.

Mir-Hosseini explained how the various re-codifications of civil and family law in the 20th century have constantly challenged Iranian judges to reconcile in their decisions between *fiqh*, popular *shari'a*, and the codes, and how women equally make use of *shari'a* in their strategies before the court. Her co-directed film 'Divorce Iranian Style', a vivid illustration of her argument, was shown to a larger audience at the conclusion of the workshop.

Illustrated by a field study about the initiation, trajectory, and debates around the latest Egyptian Family Code, carried out for his 'Islamic Family Law Project', An-Naim also confirmed that no sustainable social change can take place without addressing the issue of *shari'a*. How then to harmonize *shari'a* with the official codes, on the one hand, and social reality on the other? What does this imply for the nature of Islamic family law (Can it still be called *shari'a*? Who determines it?), and for the conception of the state (Does it act autonomously or as an agent of other social forces?)

These questions will be further explored in the second Islamic Family Law workshop which will take place in March 2001 in Florence, Italy. ◆