



**POLICY PAPER FOR PRACTITIONERS:**

**MATRIMONIAL PROPERTY RIGHTS IN  
MUSLIM FAMILY LAWS AND  
INTERNATIONAL HUMAN RIGHTS  
FRAMEWORKS**



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## A. Introduction

We live in an era in which women's rights have been asserted and recognized as part of international human rights standards. Constitutions and national laws in many Muslim majority and minority countries guarantee equality and non-discrimination to all citizens regardless of gender. Vast socio-economic changes have transformed the daily lives of Muslim women. Muslim women's tangible contributions to their families as providers and protectors are growing and are increasingly being recognized.

However, in many Muslim contexts, like Pakistan, Muslim women remain governed by family laws and practices that discriminate against them in the name of religion and tradition.<sup>1</sup> Most of these Muslim family laws, such as the Muslim Family Laws Ordinance (MFLO)<sup>2</sup> in Pakistan is based on legal concepts, developed by classical jurists (8<sup>th</sup> – 12<sup>th</sup> century) who considered men as protectors and providers of their families, and enjoin on Muslim men rights and privileges that Muslim women do not enjoy. As a result, codified Muslim family laws contain provisions like polygamy, unilateral talaq divorce, unequal access to inheritance, lack of financial rights at the time of divorce, unequal right to child custody and guardianship, among other provisions and practices that discriminate against Muslim women.

One key example of this is the lack of a matrimonial property regime - generally considered as all property acquired by either spouse, or both of them, between the date of marriage and the date of separation - which at the time of divorce, fails to take into consideration women's financial and non-financial contribution during the marriage. Regardless of the physical, emotional and economic labour that women put in to care work, household responsibilities and/or even through financial contributions towards building up the matrimonial home and other assets, many women do not obtain a share of matrimonial assets at the time of divorce if the property or assets is not in their name. This is not only a serious legal discrimination, but also one that goes against Islamic principles and Quranic guidance for marriage and divorce which recognise women's contribution to marriage and family and provide guidance for fair distribution of matrimonial assets between the spouses.

**Using the Framework for Action in reforming Muslim family laws, developed by Musawah, this paper focuses on the issue of matrimonial property rights of Muslim women living under Muslim family laws and international human rights frameworks to advocate for the necessity of an egalitarian matrimonial property regime in the Pakistan.**

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<sup>1</sup> Women Living Under Muslim Laws (WLURL). (2006)., *"Knowing Our Rights: Women, Family Laws and Customs in the Muslim World"*, (Nottingham, UK: The Russell Press, Third Edition, 2006), p. 327. Retrieved from [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

<sup>2</sup> Muslim Family Laws Ordinance of Pakistan. (1961), Retrieved from <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJyX-sg-iiiiiiiiiiiiii>

## B. Framework for Action in advocating for an egalitarian matrimonial property regime

The Framework for Action<sup>3</sup> was developed by a group of Muslim activists and scholars who came together to initiate Musawah – the movement for equality and justice in Muslim family laws. The Framework was conceptualised and written through a series of meetings and discussions with scholars, academics, activists and legal practitioners from approximately 30 countries, and is intended as a guide to reform or enactment of egalitarian Muslim family laws.

As per the Framework for Action, equality and justice in Muslim families are possible by bringing together Islamic teachings, international human rights standards, national constitutional guarantees of equality and non-discrimination, and lived realities of women and men. Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances.<sup>4</sup>



Inspired by the Qur’anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes. In a world where women’s rights are considered part of human rights, where constitutions of Muslim countries recognise equality and non-discrimination and where women’s daily realities make them either sole or joint protectors and providers of their families, the continuing discrimination against women found in many Muslim family laws today is increasingly untenable and indefensible. In the paper on ‘Matrimonial Property Rights in Muslim Family Laws’, the first three pillars of the framework i.e. lived realities, national laws and Islamic jurisprudence pertaining to the issue of matrimonial property rights was discussed. This paper will explore the fourth pillar – international human rights principles, in further detail below.

### Compatibility between international human rights and Islamic principles

Many Muslim Family Laws, such as those in Pakistan are based on archaic legal concepts developed by primarily male classical scholars, which treats men as protectors and providers of their families, also enjoins on Muslim men rights and privileges that Muslim women do not enjoy. The outdated gender norms that these legal concepts espouse does not take into consideration the multiplicities of roles that women and men play in households and families, and is not reflective of the contemporary realities in which these family laws apply.

In many families women and men jointly contribute financially and non-financially to their families, with women often taking on multiple roles of primary caretakers and/or financial contributors to household incomes. In practice, however, many men do not, or are not able to, protect and provide, and many women choose to or are forced to contribute to their family’s income and welfare. Yet male authority over females has remained intact, and a man who does not provide or protect the women in his family still maintains his authority in law and practice. Muslim family laws based on these archaic concepts are unsustainable and

<sup>3</sup> Musawah. (2009). *Framework for Action*. Kuala Lumpur, Malaysia. Retrieved from <https://www.musawah.org/resources/musawah-framework-for-action/>

<sup>4</sup> Musawah (2016). *CEDAW and Muslim family laws: In search of common ground*. Kuala Lumpur, Malaysia. Retrieved from <https://www.musawah.org/resources/cedaw-and-muslim-family-laws-in-search-of-common-ground/>

often unattainable for women and men, especially in the 21st century and results in unhealthy family environments and breakdown of marriages.

There is a growing understanding of the fact that the main sources of *Shari'ah*—the *Qur'an* and *Sunnah*—promote human and marital relations that embody the principles of justice (*'adl*), equality (*musawah*), equity (*insaf*), human dignity (*karamah*), love and compassion (*mawaddah wa rahmah*).<sup>5</sup> For instance, *Surah an-Nisa'* 4:21 depicts marriage as a 'solemn covenant' (*mithaq ghaliz*), with *mithaq* derived from *thiqa* (trust). Marriage is seen as an intimate and serene union in *Surah al-Baqarah* 2:187 ('They are your garments and ye are their garments') and *Surah ar-Rum* 30:21 ('God created for you mates from among yourselves, that you may dwell in tranquillity with them, and God has put love and mercy (*mawaddah wa rahmah*) between your (hearts)').<sup>6</sup>

Therefore, discriminatory family laws and resulting injustices contradict the guiding ethical principles of the Qur'an, as well as contemporary notions of justice and human rights principles. The realities of our lives in the twenty-first century, teachings of the Qur'an and the objectives of the *Shari'ah* are consistent and compatible with universal human rights standards, fundamental rights and constitutional guarantees, which all demand that relations between Muslim women and men in both the private and the public spheres be governed by principles and practices that uphold equality, fairness and justice.<sup>7</sup>

Article 25 of the Constitution of Pakistan provides for equality before the law and prohibits discrimination on the basis of sex. Article 35 of the Constitution obligates the State to protect the marriage, the family, the mother and the child.<sup>8</sup>

However, it is observed that the family laws in Pakistan are excluded from this constitutional guarantee by not protecting the best interest of women and children in marriage and family, by restricting women's access to matrimonial property at the time of divorce. Many women have either contributed towards the marriage and family in financial and non-financial ways such as through unpaid care work, often giving up income generating opportunities. Once divorced, women often lose access to the matrimonial home and without adequate resources are left in vulnerable situations where they are financially dependent on other family members for support. The fear of loss of financial support or separation from children, often deters women from seeking divorce even in abusive and harmful situations.

The Musawah Framework for Action suggests that the issue of equitable matrimonial property regimes can be resolved through rights-based interpretations of Islamic principles, and furthermore via a constitution that recognises international treaties and/or the fundamental right to equality and non-discrimination.

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<sup>5</sup> Musawah. (2020). *Policy Brief 1: Why Muslim Family Law Reform? Why Now?*. Kuala Lumpur, Malaysia. Retrieved from <https://www.musawah.org/toolkit/policy-brief-why-muslim-family-law-reform/>

<sup>6</sup> *ibid*

<sup>7</sup> Musawah. (2011). *Vision for the Family*. Kuala Lumpur, Malaysia. Retrieved from <https://www.musawah.org/resources/musawah-vision-for-the-family/>

<sup>8</sup> Constitution of the Republic of Pakistan (1973). Retrieved from [https://www.constituteproject.org/constitution/Pakistan\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en)

## **C. International human rights frameworks related to matrimonial property rights**

Pakistan is a state party to a number of international conventions and treaties, including on women's rights. According to the United Nations, by becoming parties to international treaties, states assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to fulfil means that states must take positive action to facilitate the enjoyment of basic human rights. From these international obligations to respect, protect and fulfil rights, you can see that states are obliged to actively ensure equality in family laws. Many constitutions in Muslim majority and minority contexts guarantee equality or non-discrimination, including that between women and men.

### **1. 'Family' in international human rights frameworks**

The family is recognized as a fundamental institution in society, and therefore international human rights instruments establish obligations for States to protect and support the creation, maintenance and welfare of families. They include a variety of rights and obligations pertaining to the family (i.e. obligations not to interfere with the family life; obligations to ensure equality rights within the family and obligations to protect and assist the family).<sup>9</sup> These are reflected in multiple international human rights instruments including the following which Pakistan has ratified: Universal Declaration of Human Rights (UDHR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).

### **2. International human rights obligations relating to financial rights at the time of divorce**

As per the Universal Declaration of Human Rights, Article 16(1): 'Men and women ... are entitled to equal rights as to marriage, during marriage and at its dissolution'. Similarly, under the general clauses of equality and non-discrimination in other human rights treaties, States are obliged not only to ensure equality among family members (e.g., in the administration of assets, custody, pensions, guardianships, property and inheritance rights), but also within families.

This means that States must take all necessary legislative, administrative and other measures to ensure that no family may be subject to discrimination on any ground. Any right, benefit, privilege or obligation to one 'family' member (e.g., in social or welfare benefits, inheritance, social security and pensions) must be accorded to all of them. Otherwise, it must be justified on the basis of objective, reasonable and proportional criteria.

Similarly, ensuring equal rights within the family may be essential for ensuring the equal enjoyment of economic, social and cultural rights by all its members as well as for achieving women's economic empowerment. For example, evidence shows that more equitable property distribution within the family can have a range of benefits, such as increasing female labour force participation and boosting education for girls.

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<sup>9</sup>Carmona, M.S. (2017), *Discussion Paper: A Contemporary View of 'Family' in International Human Rights Law and Implications for Sustainable Development Goals (SDGs)*. UN Women, Progress of the World's Women 2018.

### 3. International human rights framework relevant for instituting matrimonial property regime in Pakistan

#### 3.1. Committee on the Elimination of Discrimination against Women (CEDAW)

<p><b>Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)</b></p>	<p>Article 16(1): States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:</p> <p>(c) The same rights and responsibilities during marriage and at its dissolution’;</p> <p>(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.</p>
<p><b>CEDAW General Recommendations 21 and 29</b></p>	<p>States parties are obligated to provide, upon divorce and/or separation, for equality between the parties in the division of all property accumulated during the marriage. States parties should recognize the value of indirect, including non-financial, contributions with regard to the acquisition of property acquired during the marriage.’ (GR 29, para. 46)</p> <p><b>General recommendation<sup>10</sup> on Article 16</b> of the Convention on the Elimination of All Forms of Discrimination against Women: Economic consequences of marriage, family relations and their dissolution Section VII Paras 39-48.</p>

The most recent review of Pakistan was in the 75th session of the CEDAW Committee in February 2020 during which the fifth periodic report of Pakistan was held. In the Concluding Observations<sup>11</sup> following the CEDAW review of Pakistan, the Committee gave the following recommendations with regard to family law and matrimonial property rights in Pakistan:

<p><i>50. The Committee recommends that the State party expedite the adoption of a bill to amend the Christian Marriage Act and the Christian Divorce Act and of the marriage bill for Sikhs. It further recommends that the State party:</i></p> <p><b>(d) Ensure that the family laws of the different religious communities provide for financial protection for women upon divorce in the form of equal levels of marital support and equitable shares in matrimonial property;</b></p> <p><b>e) Amend or repeal all discriminatory provisions in laws that provide for unequal rights of women with respect to marriage, divorce, guardianship, inheritance and property.</b></p>
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As a party to the CEDAW committee, Pakistan is obligated to take concrete steps towards implementing the recommendations of the CEDAW Committee before the next review in approximately four years.

<sup>10</sup> Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee). (2013). ‘General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution)’. CEDAW/C/GC/29. Retrieved from <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

<sup>11</sup> Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee). (2020). ‘Concluding observations on the fifth periodic report of Pakistan’ CEDAW/C/PAK/CO/5. Retrieved from [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPAK%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPAK%2fCO%2f5&Lang=en)

### 3.2. International Convention on Economic, Social and Cultural Rights (ICECR)

Following its state review of Pakistan in July 2018, the UN Committee on Economic, Social and Cultural Rights gave the following Concluding Observations for the country based on the initial report of Pakistan. With relevance to matrimonial property rights for women:

- *The Committee recommends that the State Party adopt a framework legislation relating to marriage, divorce, custody, and inheritance, in line with international norms and standards, with a view to providing effective and equal legal protection for all women, particularly Hindu and Christian women in Pakistan. It also recommends that the State party make every effort to fully enforce the legislative framework once adopted and to raise the awareness of the public, as well as of law enforcement and judicial officials, thereon.*

## D. Positive legislation on matrimonial property in countries that have Muslim family laws

Globally, approximately 45 countries have some form of codified or uncodified Muslim family law or practices followed by the Muslim population. However, no two Muslim family laws are exactly the same. Depending on each country's context, Muslim family laws were influenced heavily by historical events, local customs, and norms, as well as legal and social values introduced in different periods of history, including during the colonial era. In fact, many of the present-day Muslim family laws are colonial legacy laws. Countries have also chosen to codify *fiqh* or interpretations of scholars from different jurisprudential schools, some with opinions vastly different from others from within the same Islamic sect (for example *Hanafi* and *Shafi* jurisprudence from within the Sunni sect).<sup>12</sup>

The diversity of Muslim family laws is evidence of the role that humans have played in developing these laws and how changeable and adaptable these laws can be. More and more countries are recognising financial and non-financial contributions of spouses during the course of a marriage, and are implementing different forms of matrimonial property regimes. These reforms have also been happening in various Muslim majority countries and minority contexts, where governments have introduced progressive legislation on fair and equitable distribution of matrimonial property.

Countries like Malaysia have used a diversity of Islamic jurisprudence and Islamic legal tools and traditions in justifying the recognition of women's contribution of labour and effort in building up matrimonial assets. Other countries like Singapore and Turkey have implemented matrimonial regimes in keeping with fundamental guarantees of equality in the Constitution, and international human rights principles and obligations. Brunei, Malaysia, Singapore explicitly recognise the contribution of unpaid care work of women in supporting their spouses to accumulate and/or maintain matrimonial property and assets. The provisions from the Muslim family laws of these countries are practiced by the Muslim populations and have not been found to be 'anti-Islamic'.

**Below are some examples of countries with Muslim family laws which have positive legislation<sup>13</sup> and/or procedures and policies with regard to distribution of matrimonial assets:**

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<sup>12</sup> Musawah. (2020). *Policy Brief 1: Why Muslim Family Law Reform? Why Now?*. Kuala Lumpur, Malaysia. Retrieved from <https://www.musawah.org/toolkit/policy-brief-why-muslim-family-law-reform/>

<sup>13</sup> Musawah. n.d. 'Muslim Family Law Overview Tables'. Retrieved from <https://www.musawah.org/mapping-muslim-family-laws/>

Country	Provision(s) in the family law	Criteria for determining division of matrimonial property
Brunei	<p>Sections 59 of Islamic Family Law Act of Brunei<sup>14</sup> mandates the court, after granting a divorce, to order any assets acquired by the parties during the marriage (<i>harta sepencarian</i>) either through their joint efforts or by the sole efforts of one party to the marriage to be divided between them or any such assets to be sold and the proceeds of any such sale to be divided between the parties.</p>	<p>Where the assets were acquired by the joint efforts of the parties, the court must have regard to:</p> <ul style="list-style-type: none"> <li>(i) the extent of the contributions made by each party by way of money, property or labour to-wards acquiring the assets;</li> <li>(ii) any debts owed by either party that were contracted for their joint benefit; and</li> <li>(iii) the needs of any minor children of the marriage. Subject to these considerations, the Court will order equal division;</li> </ul> <p>Where the assets were acquired by the sole efforts of one party to the marriage, the court must have regard to:</p> <ul style="list-style-type: none"> <li>(i) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or family; and</li> <li>(ii) the needs of any minor children of the marriage.</li> </ul> <p>Subject to these two considerations, the court may divide the assets or the proceeds of sale in such proportions that the Court thinks reasonable, but the party by whose efforts the assets were acquired will receive a greater proportion of the assets.</p>
Malaysia	<p>Section 122(5) of Islamic Family Law (Federal Territories) Act (IFLA)<sup>15</sup> defines assets acquired during a marriage to include assets owned before the marriage by one party that have been substantially improved during the marriage by the other party or by their joint efforts.</p>	<p>Where the assets were acquired by the joint efforts of the parties, in accordance with Section 122(2), the court must have regard to:</p> <ul style="list-style-type: none"> <li>(i) the extent of the contributions made by each party by way of money, property or labour towards acquiring the assets;</li> <li>(ii) any debts owed by either party that were contracted for their joint benefit; and (iii) the needs of any minor children of the marriage. Subject to these considerations, the Court should be inclined to order equal division of the assets.</li> </ul>

<sup>14</sup> Islamic Family Law Act of Brunei (2000). Retrieved from [http://www.agc.gov.bn/agc%20images/laws/act\\_pdf/cap217.pdf](http://www.agc.gov.bn/agc%20images/laws/act_pdf/cap217.pdf)

<sup>15</sup> The Islamic Family Law (Federal Territories) Act (IFLA) of Malaysia. Retrieved from [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/858a0729306dc24748257651000e16c5/1d314361e2750042482569810025f0fc?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/858a0729306dc24748257651000e16c5/1d314361e2750042482569810025f0fc?OpenDocument)

	<p>Section 122 of IFLA mandates the <i>Shari'ah</i> Court, after granting a divorce, to order any assets acquired by the parties during the marriage (<i>harta sepencarian</i>) either through their joint efforts or by the sole efforts of one party to the marriage to be divided between them or any such assets to be sold and the proceeds of any such sale to be divided between the parties.</p>	<p>Where the assets were acquired by the sole efforts of one party to the marriage, in accordance with Section 122(4), the court must have regard to:</p> <ul style="list-style-type: none"> <li>(i) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or caring for the family;</li> <li>(ii) the needs of any minor children of the marriage.</li> </ul> <p>Subject to these two considerations, the court may divide the assets or the proceeds of sale in such proportions that the Court deems reasonable, but in any case the party by whose efforts the assets were acquired must receive a greater proportion of the assets.</p> <p>Where matrimonial proceeding, including any proceeding relating to division of matrimonial assets, is pending, Section 107A of IFLA mandates the court to make an order prohibiting the wife or husband, as the case may be, from disposing any assets acquired by them jointly or solely, during their marriage if the court is satisfied it is necessary to do so.</p>
<p><b>Singapore</b></p>	<p>Section 52 of Administration of Muslim Law Act (AMLA) of Singapore<sup>16</sup> mandates the <i>Shari'ah</i> court to order any matrimonial assets to be divided between the parties or any such asset to be sold and the proceeds of any such sale to be divided between the parties.</p> <p>Section 52(14) defines matrimonial assets widely to include:</p> <ul style="list-style-type: none"> <li>(i) any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage; and</li> <li>(ii) any other asset of any nature acquired during the marriage by</li> </ul>	<p>When making such an order, the court is obliged to consider what is “just and equitable” and take into account all considerations including:</p> <ul style="list-style-type: none"> <li>(i) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the property;</li> <li>(ii) any debt owing by either party for their joint benefit or for the benefit of any child of the marriage;</li> <li>(iii) the needs of the children, if any, of the marriage;</li> <li>(iv) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;</li> <li>(v) any agreement between the parties with respect to the ownership and division of the property made in contemplation of divorce;</li> <li>(vi) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;</li> <li>(vii) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business;</li> <li>(viii) the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;</li> </ul>

<sup>16</sup> The Administration of Muslim Law Act (AMLA) of Singapore (1966). Retrieved from <https://sso.agc.gov.sg/Act/AMLA1966>

	<p>one party or both parties to the marriage, but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.</p>	<ul style="list-style-type: none"> <li>(ix) the financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable;</li> <li>(x) the standard of living enjoyed by the family before the breakdown of the marriage;</li> <li>(xi) the age of each party and the duration of the marriage;</li> <li>(xii) any physical or mental disability of either of the parties; and</li> <li>(xiii) the value to either of the parties of any benefit (such as a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.</li> </ul> <p>The division of property between the parties upon divorce is:</p> <ul style="list-style-type: none"> <li>▪ Not confined to the matrimonial home but also other assets such as: (i) business assets, including commercial properties used for business or investments; (ii) savings and other investments, including cash in bank, share portfolio, savings with the Central Provident Fund (CPF) and pensions; (iii) employment benefits such as pension, gratuity, stock options, insurance policies; (iv) vehicles; and (v) jewellery other than what may be of insignificant value or possessing only sentimental value; and</li> <li>▪ Not necessarily equal as there are cases where the wife had received more than 50% share of the matrimonial assets and there are also cases where the wife had received less than 50% share.</li> </ul>
<p><b>Indonesia</b></p>	<p>According to Article 37 of the Marriage Law of Indonesia,<sup>17</sup> the joint property of spouses will be settled following a divorce, in accordance with the respective laws of the country. Article 51(3) of the Human Rights Law of Indonesia declares that a wife and her former husband have equal rights with regard to all matters concerning joint assets while not undermining children's rights, in accordance with prevailing law.</p>	<p>Article 35 of the Marriage Law provides for a matrimonial assets regime whereby:</p> <ul style="list-style-type: none"> <li>(i) property acquired during the marriage shall become joint property; and</li> <li>(ii) property brought into the marriage by the husband and the wife respectively and property acquired by either of them as a gift or inheritance shall remain under their respective control, unless otherwise decided between the parties.</li> </ul>

<sup>17</sup> The Marriage Law of Indonesia (1976). Retrieved from [http://www.commonlii.org/my/legis/consol\\_act/lrada1976272/](http://www.commonlii.org/my/legis/consol_act/lrada1976272/)

<p><b>Turkey</b></p>	<p>Article 202 of the Civil Code of Turkey<sup>18</sup> states that the default arrangement is that all assets acquired during the marriage are considered to be jointly acquired, unless the spouses agreed to another arrangement within the boundaries of the law.</p>	<p>In Turkey, the share of matrimonial assets available to the parties is dependent on the asset regime that the couple is attached to at the time of the divorce i.e. the legal matrimonial property regime, the regime of separation of property, the regime of separation of property with distribution and the regime of community of property.</p> <p>Under the default matrimonial property regime, the marital assets are divided equally between the women and men during and after the dissolution of the marriage. Although the woman's role as wife and mother is not explicitly stated as contributing to acquisition of assets, the unpaid work of the wife is implicitly recognised.</p>
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<sup>18</sup> The Civil Code of Turkey (1926). Retrived from [https://www.tusev.org.tr/usfiles/files/Turkish\\_Civil\\_Code.pdf](https://www.tusev.org.tr/usfiles/files/Turkish_Civil_Code.pdf)

## E. Conclusion

**Marriage as a partnership of equals, with mutual respect, affection, communication and decision making authority between the partners. This equality must also extend to equal rights and responsibilities with respect to property, including acquisition, ownership, enjoyment, management, administration, disposition and inheritance, bearing in mind the need to ensure the financial security of all members of the family. Muslim family laws based on Islamic principles of equality and justice are fully compatible with contemporary notions of equality and justice promoted by international human rights frameworks.**

Property rights for women is the key to gender equality within family and society. These rights ensure that women can live and are given full autonomy, agency and dignity in marriage and family and within the state. They also contribute to economic development for communities and countries. When women have access to assets (especially those they are already the primary caretakers of and/or have contributed towards acquiring and building), the positive impacts are far reaching. It allows women improved access to income and livelihood opportunities, and allows them to invest in their families with positive outcomes for themselves and their children.<sup>19</sup>

Our family law regimes must evolve to reflect the Islamic values of equality and justice, reinforce universal human rights standards and address the lived realities of families in the 21<sup>st</sup> century. Inequality in family relations and human relations must be replaced with mutual respect, affection and partnership. Both Islamic principles and human rights call for this, as the Musawah Framework notes: Islam mandates justice (*'adl*), equality (*musawah*), human dignity (*karamah*), and love and compassion (*mawaddah wa rahmah*) in relations among humans and in the family. These principles are also recognised as universal values and enshrined as rights in many national constitutions and international instruments.

**As demonstrated by examples in this paper, Muslim family laws can and have evolved to include fair and just provisions, procedures and policies on matrimonial property. Pakistan too has a duty and obligation under its international commitments, constitutional guarantees of equality and as a country which recognises *Shari'ah* as a source of law, to ensure that the right of women to matrimonial property is guaranteed in legislation and practice.**

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<sup>19</sup> UN Women. (2018). *Facts and Figures: Economic Empowerment*. Retrieved from <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>

## **Prepared by Musawah in 2021**

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