

The Broken Judicial Systems of the Muslim Lands Fails Women and Families

The Muslim Ummah is one, but on the practical level we have been divided into over 50 nation states. Each state has its own constitution and its implementation of pure Islamic law differs from hardly anything to very little. Most Muslim states are paying lip service to the importance of Islamic law, while implementing laws from the minds of men. The machinery of the current states works within the divisions of legislature, executive and judiciary. The laws created, implemented and protected by these three institutions are the basis of the lives of the citizens who live within the state. The role of the members of the institutions is to create, implement and protect laws whose purpose is to solve the problems which humans face on a daily basis. Unfortunately, the institutions themselves can become part of the problem, and this is the reality we are seeing in the Muslim world today.

Women in particular are facing a situation where their lives are full of problems which are not being solved. On a daily basis, many Muslim women face problems of forced marriages. Once married, they can face problems related to domestic abuse. And if they require the dissolution of the marriage, this can be an extremely difficult process. Women who manage to divorce or obtain khula often face problems regarding the return of their haqq mahr (right to dowry) and personal property, or problems with child custody and maintenance. Many of these heartbreaking stories are reported on a daily basis in the national newspapers. The cause of these problems is highly disputed. Human rights groups usually blame religious and cultural values. However, once the problems are created, the women who cannot solve them through their families turn to the state judicial system. The judicial systems in Muslim countries, which are dominated by secular law, do not ensure that women's problems are easily solved. The laws and the bureaucracy work so inefficiently that women have very little recourse to justice to solve their problems.

In 2011, the *Express Tribune* issued a report regarding a Pakistani woman, Mai, who was attacked and dishonored after her younger brother was accused of a relationship with a woman from a powerful family in the village. She took the men to court, but only 1 was convicted, while the others were acquitted by the Lower Courts. Mai appealed the decision at the Supreme Court, and it took them 5 years to give her a decision which upheld the lower court's decision.

This example of the courts' inefficiency and the unnecessary prolonging of court cases isn't an isolated incident, nor is it the only problem with the judiciary in the current system. Costs that are beyond the common man is another prohibitive factor. According to the same report, a family who sought justice after their six year-old daughter was dishonored had to spend a total of 150,000 Rupees despite receiving aid from the NGO 'War against Rape'. The child's father's earnings amounted to 3000 Rupees a week.

The justice system in the Muslim World is slow, inefficient and expensive. According to the data collected by the Law and Justice Commission of Pakistan, there were a total of 1,954,868 pending court cases countrywide at the end of 2016. This leads to a delay in court cases and is actually a failure of the state as expeditious justice is both a fundamental right of every citizen under Article 9 and a fundamental responsibility of the state under Article 37(d) of the Constitution. According to a report by the *Express Tribune*, court cases can go on for decades and the cost goes beyond the claims which are made by the plaintiff.

The inefficiency of the court system can also be explained by the sheer number of cases that they have to deal with. At present, *Dawn News* reports that there are over 1.8 million cases pending in Pakistani courts. This is because of the scale of problems that the secular system generates. The society is rife with non-Islamic traditions and beliefs, which create a variety of problems linked to extramarital relations, violence, disputes over monetary expectations in marriage and the husband and wife and other family members not fulfilling their duties to one another. The fact that the courts in our Muslim lands are so overloaded is also a result of the flawed structure of the judicial system in these states which are shaped upon Western models, where there are various layers within the court system – such as appeals courts, the supreme court and so on- which delay the enacting of justice over a case. This results in cases often taking years to resolve. It is also due to the fact that the secular and other non-Islamic regimes in our lands are not concerned with genuinely ensuring justice and solving the problems of the people but rather just securing their seats of power. Hence, they do not invest in sufficient courts, judges and other judicial requirements of the people.

Furthermore, the judicial systems in our Muslim lands no longer function as an arm of the state to protect the unity of marriages and the family structure as it used to under Islamic rule of the past. Courts do not deal effectively with forced marriage cases, situations where the mahr is not given, or other family conflicts. They no longer act as an effective means to arbitrate in marital disputes to keep the marriage together, or domestic violence to protect the woman, or ensure the man provides for the family properly, or to ensure the husband and wife fulfil their duties to one another. Furthermore, divorce cases or cases over the custody of children often take long periods of time to address or resolve. Hence the man, the woman and children are left in limbo, not being able to continue with their lives. Alongside the huge financial burden of this situation, individuals are forced to stay in unhappy and abusive marriages for extensive periods of time. Added to this state of injustice and misery is the fact that power and money often influence the outcome of judicial cases in our lands.

These problems are arguably faced by people across the world in many countries; however, a focus on Muslim countries reveals another aspect of the problem. The source of the laws which form the constitution means that if a country is based on the model of the secular democratic political system, the judicial system will be too. The difference between Pakistan and other states lies in the constitutional law, not the role of the judiciary. Muslim countries, such as Pakistan, claim they adhere to shariah law. However, the reality is that their constitution, and as such their judiciary, is based on secular law. This means the problems women face are not a result of the Islamic law, and nor are the solutions which are offered, or the verdicts given by the judiciary which fail to solve the issues that women and families face. The result of this is that the laws given by our Creator to prevent and solve the problems that families face are not existent in any Muslim country today.

In March 2016, Muhammad Khan Sherani, the chairman of Pakistan's Council of Islamic Ideology, said that women's rights are well-protected under Islamic law (CBSnews) and he is absolutely right. Islamic law does protect women, their rights and their family. The problem is that Islamic law, in its purest form and undiluted by the secular system, is not being implemented in the Muslim world today. Perhaps the clearest proof of this is found in the statement made by Shaikh Saleh Bin Humaid, chairman of the Saudi Supreme Judiciary Council. He said that "We will take the best from judicial systems across the world," while assuring that they would not undermine the fundamentals of Islamic Shariah law. If Islam is being taken as the basis of decisions, and if as Muslims, we trust in Allah and know without a doubt that His Word is the supreme Law, how can we then say that we will take from the 'best' judicial systems? Does Islam not provide the best judicial system? Why should we, as

Muslims, look to other sources for our law when we have a comprehensive set of laws and system by which we can solve our problems and ensure that the rights of everyone, including women and children, are fulfilled?

The statements made by representatives of the governments of the Muslim world show that the problems which arise are due to the fact that the judiciary is not based on Islam and therefore not upholding Islamic laws. The laws are alleged to be based on or influenced by Shariah law but this is far from true. In the Muslim countries, the rulers differentiate between the Islamic laws and the constitution of the country, making a clear separation between the two, which should not exist. This separation between Islam and the legislative system shows that Islam is not the sole reference point in judiciary rulings.

Article 227 of the Pakistani constitution holds that all existing laws "shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah [...] and no law shall be enacted which is repugnant to such injunctions." The constitution is the basis of the judicial system, and this article gives a very clear instruction into the relationship between the process of the current judicial system and the Islam. However, in reality, rather than instructing the judicial system to make sure that they use Quran and Sunnah as the source of law, they have ordered them to interpret the laws using secular beliefs.

This is because the political system, the executive and the legislative and judicial bodies in the Muslim countries, find their origins in the secular systems of colonial rule. In Pakistan, the political and judicial system is based on the Government of India Act, 1935, which was a result of British colonial rule and it was retained as a provisional Constitution for the country after independence. While there have been modifications and adaptations in certain aspects of the constitutions, the basic judicial structure and process are established using the remnants of British rule.

Afghanistan is also shaped by the secular system. Even the Non-Muslim organizations accept this as shown by a USIP (United States Institute for Peace) special report published on March 2015 which says that it is unclear where the 'fault lines' between culture, customary law and religious law lie. This is because the country's legal system draws on a mix of the three when interpreting laws. In the same report, the organization quotes an informal justice leader who states that 99% are based on Afghanistan's customs and values, not Islam.

Despite this, there is a misled belief that the role of the Islamic bodies in these countries ensures that the laws are not repugnant to Islam, but the legal experts who are members of the bodies are also affected by the secular system. According to the Afghanistan's Analyst network, the ulema frequently backs the government to maintain their standing in government. In Pakistan, the council of Islamic ideology has 8 members, only three of whom are actually Ulema, and all members are chosen by the President and his cabinet. This shows a clear influence of the secular legislature and executive on the influence of the Islamic bodies. The secular system has also limited the power of such bodies, such as the Council of Islamic Ideology and the Federal Shariah Courts in Pakistan, and the Ulema council in Afghanistan. They are able to declare laws to be un-Islamic but they are not able to ensure that the laws are actually changed. This applies to all aspects of shariah law including the laws related to women. The council's recommendations are not binding. Their role is purely regulatory and they have no power to ensure that the rights of women, assured by Islam, are given.

The problems associated with this can be seen in the 2016 debate regarding the law against domestic abuse in Pakistan. It was publicized by the media, and the government, as a way of ensuring that the women were protected from violence. The law wasn't passed,

after the Council of Islamic Ideology argued that some of the details outlined in the law were un-Islamic. However, no alternative was presented, as the Council's role revolves around reviewing existing laws and advising the government on changes. As such, women's problems were again left unsolved, with no protection under the judicial system and women were unable to obtain justice against their oppressors.

The current judiciary ensures the rights of certain parties are upheld while other parties are seriously mistreated. According to a survey which the USIP-PTRO conducted and referred to in the USIP special report, some of the greatest clashes between custom and religion are on issues related to cases of marriage, divorce, and woman's right to inherit.

In Afghanistan's society, the judicial system is said to favor men as it allows for the abuse of women. A 2006 study by Global Rights, an international nongovernmental organization, found 85 percent of Afghan women reporting that they had experienced physical, sexual, or psychological violence or forced marriage. In Pakistan, an example is how a woman's right to marry is taken away from her in a ceremony known as 'Haq bakshish', when a woman is married to the Quran. It is not allowed in Islam, and yet the Pakistani government failed to protect the thousands of women that are forced to suffer this fate. What makes this practice even more disgusting is that the practice is used to ensure that the family property doesn't leave the family.

Another common problem faced by women in Pakistan and Afghanistan is regarding the issue of inheritance rights. In a survey conducted by Pakistan today, approximately 60% of the women in Pakistan do not receive their inheritance rights. The other 40% receive them but are not given control or authority over the property. The blame for these problems has been placed squarely on the customary practices in society and the inefficiency of the judicial system. In Afghanistan, women do not even attempt to claim their share of the inheritance to ensure that they are cared for by their families. This is a result of the non-Islamic customs and traditions dominant in the Afghan society, and it is a problem that affects almost 50% of Afghan women.

In conclusion, the judicial systems in the Muslim lands lack the ability to redress grievances in a swift and effective manner, failing to solve the problems faced by women and family units. Hence, they allow problems to fester and worsen, leading to more intractable divisions in marriages and family life. Overloaded, ineffective, expensive and corrupt courts become a prohibitive factor for many women in securing justice. The true solution to the problems women are facing is not patchwork solutions through individual changes in the law, but a complete radical change to society itself. A change that washes away the sewage and allows a fresh start with the implementation of a system that respects and protects women, men, children, marriage and the whole family structure in its ideas, laws, and state institutions. It is ONLY the Islamic system which offers this.

Written for the Central Media Office of Hizb ut Tahrir by

Fatima Musab

Member of the Central Media Office of Hizb ut Tahrir