



Women and the Law in Islamic Societies: Legal Responses to Domestic Violence in Saudi Arabia and Morocco

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INTRODUCTION

A common misconception pervades in the West that women are all mistreated in Arab societies due to the application of Islamic law (*shari`a*). Scanning media articles, we see references to stoning as punishment for adultery in Iran and requiring of the burka for women under the Taliban.¹ In Morocco, however, women are not obligated to wear the veil and stoning is not an acceptable punishment for any crime. All of these countries have Muslim governments, and all claim to base their legal systems on *shari`a* principles. What then accounts for the differences in their treatment of women under the law?

In this Article, I will examine the legal treatment of domestic violence in Saudi Arabia and Morocco in order to hypothesize about the roots of differential approaches to gender issues under the law in Muslim societies. I will examine how each country's response to domestic violence is shaped by the fundamental national values expressed in its constitution, as well as its approach to *shari`a* implementation. I will argue

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that these fundamental values and approaches to *shari`a* implementation ultimately determine the country's openness to change.

Part I outlines the scope of domestic violence laws addressed in this Article and introduces the case study countries. Part II examines the macro legal structures that influence each country's response to domestic violence: constitutions and Islamic law (*shari`a*). Part III discusses the micro-level institutions operating in each country: statutes and other laws, social practices, and social programs. Finally, Part IV concludes this Article by connecting each country's fundamental values and approach to *shari`a* implementation to the way it addresses domestic violence.

PART I: AN INTRODUCTION TO THE TOPIC AND COUNTRIES

Before discussing responses to domestic violence in Morocco and Saudi Arabia, it is first necessary to define the problem. Amnesty International defines domestic violence thus:

A pattern of behavior used to establish power and control over another person through fear and intimidation, often including the threat or use of violence, when one person believes they are entitled to control another.²

The focus of this Article is on the physical aspect of domestic violence. The reason for this is to limit scope; economic, sexual, and psychological abuse are often targeted by separate laws. Also, I

address only abuse by men toward women—by far the most prevalent form of domestic violence.³ Finally, because Moroccan and Saudi law address intimate partner abuse only in the context of the marital relationship, my analysis will similarly focus only on spousal abuse. Thus, this Article analyzes only those laws protecting a woman from physical abuse by her spouse.

I have chosen to focus on Saudi Arabia and Morocco because the two countries represent interesting extremes, both in terms of the national values expressed in their constitutions, and in terms of conservatism and progressivism in the application of a *shari`a*-based legal system. Saudi Arabia, located in the cradle of Islam, claims to adhere to the strictest interpretation of *shari`a*, while Morocco employs the more flexible approach of basing legislation on the *shari`a*'s philosophical foundations. These different values and approaches shape each country's responses to domestic violence in very different ways.

PART II: OVERARCHING LEGAL STRUCTURES IN MOROCCO AND SAUDI ARABIA

Countries design their overarching legal structures in ways that reflect their fundamental values. These overarching legal structures in turn shape a country's codified law and legal practices. In Morocco and Saudi Arabia, legal treatment of domestic violence is shaped by the two most important components of each country's overarching legal structure: the constitutions and the approach to *shari`a* implementation.

The Constitution of Morocco

Morocco is governed by its 1996 Constitution, passed by referendum under the previous king. Morocco's Constitution contains thirteen chapters delineating individual rights, the organization and powers of the government, and procedures for constitutional revision. French colonial influence is immediately evident in both the inclusion of certain principles of human rights and in certain aspects of the parliamentary model. However, the legal and governmental frameworks established by the Constitution are clearly tailored to the local environment. For example, Article 1 declares the country to be a "democratic, social and constitutional

Monarchy,"⁴ and not a parliamentary democracy like France. Article 6 promulgates Islam as the official state religion, in contrast to France's secular state.⁵

In addition to establishing the state religion, Chapter 1 outlines many rights and freedoms that are not indigenous to Morocco, such as the rights to form political parties and trade unions (Article 3); equality (Article 5); due process (Article 10); secrecy in personal correspondence (Article 11); striking (Article 14); and private property (Article 15).⁶ Article 9 guarantees freedom of movement, of opinion and of public gathering, and of association.⁷

Chapter 1 also places limits on royal power. Article 4 declares the supremacy of the law; at least in theory, no one, including the King, is above the law. Article 49 sets a limit of 30 days on any declaration of martial law by the King; extensions require Parliamentary approval.⁸ In addition, Article 82 makes the judiciary independent from the legislative and executive branches.⁹ These limitations on the powers of the King contrast starkly with the pre-independence period of absolute monarchy.

What does Morocco's constitution reveal about the country's values and priorities? The constitution establishes individual rights, limitations on the power of the monarchy, and the state religion. The contents of the first chapter must express the values that the Moroccan people hold most dear. As will be examined in Part IV, the fundamental values, expressed in the Moroccan constitution, shape the country's response to domestic violence. Moreover, the values expressed in the Moroccan Constitution

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could not be more different than those evident in the Saudi 'Basic Law.'

Saudi Arabia's 'Basic System of Rules'

The nation of Saudi Arabia was officially founded in 1932. It embraced *shari'a* as its constitution and promulgated laws by royal decree. In the decades that followed, "fragmented constitutional principles"¹⁰ derived from Islamic, traditional, and international theories governed the country. Various reform movements arose periodically to establish a formal constitution. Orthodox Islamists opposed these movements, claiming that the Qu'ran and traditions of the Prophet provided ample regulations for public and private life. Conservative members of the royal family also opposed enacting a constitution because they viewed it as a political institution that could curb the family's power.¹¹ Those in favor of constitutional reform were highly educated Saudis and, ironically, conservative Islamists who wished the *shari'a's* place in the legal system to be formally established in a governing document.¹²

In 1992, after much public debate, King Fahd enacted legal reforms, including the 'Basic System of Rules,' or 'Basic Law.'¹³

Although the Basic Law functions as a constitution, King Fahd named it otherwise based on the belief that only the Qu'ran holds a place high enough to be considered Saudi Arabia's constitution. The Basic Law contains the same elements generally found in a constitution, such as enumerations of rights and obligations, and delineation of government structure.

The Basic Law is organized into seven parts. The first establishes the State as a kingdom and Islam as the official religion, and sets out state holidays and the state flag. Part II declares the monarchy as the system of rule and requires that all citizens obey the King. Part III, 'Components of Saudi Society,' contains articles solidifying national identity and enjoining citizens to obey

God. Citizens are required to: "love and take pride in the fatherland and its glorious history" (Article 9); strengthen "national unity" (Article 12); and "contribute to building . . . society to loving and being proud of the history of their homeland." Part III also bases Saudi society on Islamic values such as giving alms, maintaining solidarity, and not discriminating.

Part V, 'Rights and Obligations,' demonstrates the government's commitment to caring for its citizens. Although Part V mentions individual rights "according to norms of the Islamic *shari'a*"¹⁴ (Article 26), the Basic System places more emphasis on the government's obligations toward citizens. Rights, in this sense, are guarantees that citizens can access certain government services: social services (Article 27); employment for able-bodied people (Article 28); education (Article 30); and healthcare (Article 31). Part IV also includes the right to due process (Article 36). Thus, the Saudi Basic System of Rules embodies a patriarchal concept of individual rights: rights are promises from the benevolent kingdom toward people who obey both God and the King.

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Both constitutions open by recognizing Islam as the state religion and the King as the monarch. The Moroccan constitution, however, emphasizes individual rights, while the Saudi Basic Law places greater weight on national unity. Moroccan rights focus on the right of citizens to do something (for example, freedom of the press) as opposed to the right to receive something (for example, the right to employment for able-bodied people). The Moroccan constitution also provides extensive detail about how the government is structured and about each branch's roles and responsibilities. The Saudi Basic System of Rules, on the other hand, provides a more general sketch of government organization in Part VI, and notes

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that details will be provided in laws (royal decrees).

The Saudi Basic Law elaborates one aspect of government in fine detail: the powers of the King. The Saudi King is the Prime Minister *ex-officio* and holds both executive and legislative powers.¹⁵ He approves the appointment of the Crown Prince and dismisses him at will; as head of the Council of Ministers (the legislative body), the King appoints and relieves individual deputies and ministers, even dissolving the Council if he wishes.¹⁶ The King may also dissolve the Consultative Council (similar to a Cabinet). He is Commander in Chief of the armed forces and has charge over the implementation of judicial rulings.¹⁷ By granting the King such broad powers, the Saudi Basic Law expresses its deep trust in him to guide the Saudi people in myriad aspects of their lives.

Shari'a Implementation in Morocco and Saudi Arabia

Legal norms in both Saudi Arabia and Morocco, are also strongly influenced by Muslim beliefs as written in the *shari'a*, or 'way.' The two sources of *shari'a* are the Qu`ran (considered the word of God as revealed to the Prophet Muhammed) and the *sunna* (the reported words and behavior of the Prophet).¹⁸ *Shari'a* refers to verses throughout the Qu`ran (the primary source) and the *sunna* (the secondary source) that provide concrete rules or recommendations. Some of these rules appear to contradict each other, and, as in the case of domestic violence, sometimes the interpretation of a single word could be the subject of fierce dispute.

In the period following the Prophet's death, Islamic scholars developed a legal science called *fiqh* as a methodology to interpret the *shari'a*.¹⁹ Four schools of thought eventually emerged, each named after the scholar-founder: Maliki, Hanafi, Shafi'i, and Hanbali. Saudi Arabia adheres to the Wahhabi branch of Islam, and thus belongs to the Hanbali school, which is distinguished by its textual interpretation of *shari'a*.²⁰ Morocco has traditionally belonged to the Maliki school, which also relies on textual sources of legal norms.²¹ Morocco has also been influenced by the Hanafi school.²² Generally speaking, the Maliki and

Hanafi schools allow use of analogy and consideration of the public good in legal decisions. As a result, they enable more interpretation as opposed to relying solely on the written word.

A central challenge facing Muslim societies today is how to implement the *shari'a* in a modern nation-state. In general, implementing the *shari'a* means "establishing a legal system in which God's law sets the ground rules, authorizing and validating everyday laws passed by an elected legislature."²³ In other words, the *shari'a* is expected to function somewhat like a modern constitution.²⁴ In more liberal Muslim societies, as in Morocco, government officials draft legislation based on the *shari'a's* philosophical guidelines. In addition, Morocco is able to borrow from the civil law tradition—adopted from the French—to fill in lacunae left by the *shari'a*. More conservative societies, such as Saudi Arabia, face the greater challenge of thoroughly implementing *shari'a* principles when so many gaps abound. In addition, Saudi Arabia was never directly colonized, so foreign influence has not had the same impact as in Morocco. Saudi Arabia therefore applies Hanbali *fiqh* to personal status cases²⁵ and otherwise relies on royal decrees as the sources of law. These different approaches to *shari'a* implementation have direct bearing on each country's response to domestic violence.

PART III: LAWS AND PRACTICES REGARDING DOMESTIC VIOLENCE

A challenge facing any study of personal status laws in Saudi Arabia is that these are not codified. Although Saudi Arabia has extensively codified commercial and investigatory laws, family law is governed directly by *shari'a*, which turns on individual judges' interpretation. In Morocco, domestic violence is addressed in the penal code and the family code (*Moudawana*).

Domestic Violence Laws and Practices in Morocco

In 1962, Article 404 of the Moroccan penal code stated, "[A]nyone striking his mother, father, or relatives is punished."²⁶ In order to clarify that this protection extends to marital partners, the code was amended in 2003 to read: "anyone striking his father, his mother, *spouse*, or any other

relatives is punished” (emphasis added).²⁷ Punishment varies according to the “gravity of the violence.”²⁸

King Muhammed VI, who ascended to the throne in 1999, took domestic violence protections a step further, as part of sweeping reforms to the *Moudawana* enacted in 2006. The updated code permits a wife to initiate divorce proceedings—previously the exclusive right of the husband—when “the husband does not fulfill any of the conditions stipulated in the marriage contract, or for harm caused to the wife such as lack of financial support, abandonment, violence, and other harm.” Specifically, Chapter Two, Article 98 provides that, “[t]he wife may petition for divorce on one of the following grounds: 1) Non respect by the husband of one of the conditions in the marriage contract; 2) Harm; 3) Non maintenance; 4) Absence; 5) Latent defect;²⁹ 6) Abstinence and abandonment.”³⁰ Thus, the *Moudawana* reinforces the penal code by permitting wives to divorce abusive husbands.

Despite these legal protections, it does not appear that Moroccan women who suffer domestic abuse frequently divorce their husbands; nor do they often press charges. Two factors complicate women’s ability to access the law in Morocco: police officers reportedly do not take allegations seriously,³¹ and social pressures favor both the preservation of the family unit and the obedience of women.³² These factors merit further explanation.

Hard data on police response to domestic violence in Morocco is difficult to find. Police stations in Morocco are required to compile monthly statistics on domestic violence complaints,³³ but these numbers do not seem to be published. Women’s associations and counseling centers (*Centres d’écoute*) share recorded complaints with the public, but these centers have come into existence only in very recent years.³⁴ Thus, only speculation is possible about the number of incidents reported to the police, the

extent to which police investigate, and the number of incidents that never leave the home. However, suggestions that police treat domestic abuse lightly come from many sources, including in the Moroccan media,³⁵ human rights reports by the U.S. State Department,³⁶ and reports from international NGOs.³⁷

The Moroccan concept of shame or dishonor (*hshuma*) compounds social pressures on women. Moroccan families value privacy in personal affairs; airing one’s dirty laundry is considered disgraceful. A woman pressing charges against her husband thus confronts two social norms at once: family privacy and male authority. Doing so is generally considered unacceptable in Morocco.

Equally compelling is the stigma attached to breaking up marriage and family.³⁸ This stigma may stem from respect for the sanctity of marriage (as opposed to the well-being of those in it), or from the perception that what happens between a husband and wife is their business only.³⁹ The end result, though, is the same: numerous social pressures work to undermine legal protections against

domestic violence.

The Moroccan government has become aware of these challenges and has made some attempts to address them. In its report to the United Nations detailing steps it has taken to abide by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Moroccan government mentions the following:⁴⁰

- Appointment of a “gender focal point” within the Criminal Investigation Directorate, which houses a special Domestic Violence Unit;
- Establishment of an exception to medical confidentiality in cases of violence between spouses and violence against women or children under 18 years of age;
- Subjection of crimes of domestic violence to stronger sentences than other assault charges, with even higher penalties for repeat offenses;

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- Adoption of an equality-based curriculum with the goal of eliminating violence against women, including incorporation of principles of equality and non-violence in school textbooks;
- Elaboration of a national strategy to eliminate violence against women, developed by the Ministry for the Status of Women, in partnership with the United Nations Population Fund, United Nations Development Program,⁴¹ and United Nations Development Fund for Women.

Domestic Violence Laws and Practices in Saudi Arabia

Following the practice of the Hanbali school of Islamic law, Saudi Arabia relies solely on *shari`a* text to address domestic violence. Chapter four, verse 34 of the Qu`ran actually appears at first reading to *condone* domestic violence:

Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you, do not seek a way against them.⁴²

Read literally, this text appears to subjugate women to men's will and to authorize the use of violence against women. However, there is a surprising amount of interpretation involved in such a conclusion. To begin with, the word 'beat' (*daraba* in Arabic) can mean either 'to beat' or 'to leave.'⁴³ *Daraba* appears in the Qu`ran 16 times; in nine of those instances it clearly refers to departing or separating.⁴⁴ Why, then, is *daraba* in this instance so frequently translated as 'beat'? One explanation is that this interpretation arose in the historical context of ancient Arabia, and was solidified by centuries of male domination of society and tradition.⁴⁵ A related explanation is that during the time of the Prophet's revelation, his initial followers carried forth traditions from pre-Islamic times, such as physical abuse against

their wives, and fit the Prophet's teachings to match their culture.⁴⁶

Regardless of the word's intended meaning, several

Qu`ranic verses compel believers to contain anger, resist violence, respect one another as equals, and treat spouses with love and tenderness.⁴⁷

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The Prophet Muhammed, whom Muslims emulate because of his just and pious behavior, never hit any of his wives, and even scolded followers who did. Some scholars interpret verse 4:34 as a three-step anger management system designed to teach tribal Arab males to quell their anger, solving problems with their wives first through dialogue, then separation. Hitting is a last resort with many stipulations, the most noteworthy of which being to not cause harm.⁴⁸ Moreover, Sheik Ali Gomaa, Egypt's grand mufti, explains that "[i]n our modern context, hitting one's wife is totally inappropriate as society deems it hateful and it will only serve to sow more discord."⁴⁹ Given Islam's emphasis on harmony, it is indeed questionable that verse 4:34 sanctions physical abuse.

On the other hand, a number of Qu`ranic verses also contain text that appears to harshly discriminate against women. These apparent contradictions have led to multiple analyses and debates about the status of women in Islam.⁵⁰ Thus, when any scholar claims to prescribe behavior based on *shari`a*, he or she does so based on interpretation.

In the Saudi judicial system, *shari`a* courts govern personal status cases. Judges, trained only in *shari`a*, generally decide cases according to their interpretations of Hanbali *fiqh* without consideration for precedent;⁵¹ as a result, judicial decisions are plagued by an unpredictability that frustrates even reform-resistant Saudis.⁵² In other words, a victim of domestic violence cannot rely on knowledge of previous cases to decide how to

proceed. She may not even be sure which *shari`a* provisions will be applied in her case.

Several rules of evidence from the *shari`a* also impede women from pressing domestic violence charges. First, according to the *shari`a*, a woman's testimony carries only half the weight of a man's. Thus it may be in her best interest, if she is able, to find a man to press charges and speak on her behalf.⁵³ Second, the *shari`a* requires women to have male 'guardians' to act as chaperones and approve (or deny) decisions such as whether to seek medical care.⁵⁴ This chaperone is usually a father or husband, but can also be another male relative. This rule often impedes the collection of evidence, and the outcome of police reports and criminal trials can rest on a woman's access to a sympathetic male relative.

Despite these obstacles, Saudi Arabia has demonstrated a commitment to addressing women's and related justice issues in three ways. First, in 2004, the Kingdom established the first non-governmental human rights commission, the National Human Rights Association (NHRA).⁵⁵ The NHRA includes a panel that addresses women's rights. The association has begun accepting complaints from citizens, launched awareness campaigns, and compiled reports and recommendations for the government. However, it is not yet clear how the government responds to its efforts.

Second, in October 2007, Saudi Arabia announced sweeping reforms to its legal system.⁵⁶ Funded by USD 2 billion from the state, the new system will have three levels of courts (instead of the current two), a new Supreme Court, and specialized courts (criminal, family, commercial, etc). The latter reform is expected to help judges become specialists in one category of legal issues. In principle, the specialized family courts will enable judges to better understand the dynamics of domestic relations and women's concerns. The reforms, however, do not include new training for judges; they are still, essentially, clerics.

Third, Saudi Arabia, like Morocco, is a signatory to CEDAW. It too prepared a report in 2006 to demonstrate to the United Nations the steps it has taken to meet the convention's standards,⁵⁷ including steps to address violence against women. The report notes *shari`a's*

"rejection and prohibition of violence against women within the family" (albeit without citing a source) and charges the Ministry of Social Affairs—not the criminal justice system—with receiving and investigating complaints of "mental or physical abuse to women or children."⁵⁸ Social workers and psychologists are dispatched to "deal with cases of domestic violence."⁵⁹ Royal Order no. A/14 of April 2005 supports these efforts by offering family counseling and "advice on how to improve domestic life in order to preserve the substance and stability of the family."⁶⁰

CONCLUSION

Contrasting national values and approaches to *shari`a* implementation produce different responses to domestic violence in Morocco and Saudi Arabia. Morocco's campaign against domestic violence is explicitly based on its approach to *shari`a*. The Preamble to the 2004 *Moudawana* states that "doing justice to women, protecting children's rights and preserving men's dignity . . . adheres to Islam's tolerant ends and objectives, notably justice, equality, solidarity, *ijtihad* (juridical reasoning) and receptiveness to the spirit of our modern era and the requirements of progress and development."⁶¹ This passage attests to the Moroccan acceptance of legal reasoning, and to the Code's basis in the philosophical foundations of Islam. *Ijtihad* is mentioned a second time in the Preamble when it notes that the King "insisted upon [Council members'] fidelity to the provisions of Sharia (religious law) and Islamic principles of tolerance, and encouraged the use of *ijtihad* (juridical reasoning) to deduce laws and precepts."⁶² The Preamble text also confirms that reforms were developed "in accordance with certain provisions of the Malekite School."⁶³

In contrast, Saudi Arabia has not codified its family law and relies on cleric-judges to decide domestic violence cases. Neither the police nor social workers have a mandate to prevent a husband from assaulting his wife. Saudi Arabia points to Hanbali *fiqh* as the explanation: this school of legal science does not employ *ijtihad* to update the law. The state relies on Qu'ranic verse 4:34 for guidance. However, the state chooses to

implement the strictest of many interpretations. This government policy has raised significant barriers to women seeking protection from violence at home.

National values, as expressed in a country's constitution, also have a significant impact on its response to domestic violence. The Moroccan constitution expresses an appreciation for democracy by establishing universal suffrage and a balance of power between the Parliament and the King's executive branch. In addition, the Moroccan constitution guarantees individual rights such as freedom of speech. As a result, Morocco has a relatively open political environment where public discourse on controversial topics is vibrant and dynamic. This greater political openness is evident in its response to domestic violence. For example, when King Muhammad VI initially proposed the updated *Moudawana*, proponents on both sides of the debate took to the streets in protest and published opinion articles in the media.⁶⁴ The government did not clamp down on the debate or insist that only the King's opinion was legitimate. To the contrary, dissenting opinions were permitted.

On the other hand, the Saudi Arabian Basic Law prioritizes tradition and social stability. To this end, it confers sweeping powers on the King over each branch of government. The order that the King establishes, based on Islam, is seen as paramount to community well being. The Basic Law prohibits the exercise of freedoms with the potential to upset the order, such as the freedoms of association and of the media.⁶⁵ As the Basic Law explains in Article 5,⁶⁶ history and religion legitimate the established order, and the established order is necessary to maintaining a happy and pious society.

Saudi Arabia's emphasis on tradition and social stability are evident in its response to domestic violence. The country does not explicitly criminalize domestic violence; encouraging women to leave abusive husbands would challenge traditional power structures. In addition, many concrete details are noticeably missing from its 2006 report to the UN. The report does not mention legal consequences for batterers, shelters for women fleeing violence, or requirements for police action. Such tools likely do not exist, because they are perceived as having the potential to disrupt the social order by breaking up the home. What matters most is the preservation of the family unit. This is how the Kingdom seeks to best serve the needs of women and all citizens.

As this study has attempted to demonstrate, in the cases of Morocco and Saudi Arabia, national values and approaches to *shari'a* interpretation ultimately determine each nation's openness to social change. Morocco's relative openness to societal change is ultimately reflected in the high priority it places on combating domestic violence. Despite the resulting confrontation with cultural and religious norms, the Kingdom is comfortable challenging what it views as a societal poison. Saudi Arabia is also taking progressive measures, but at a much slower pace. How Saudi Arabia progresses in this domain going forward will likely depend on how much it embraces change in all aspects of Saudi life.

The views and opinions expressed in articles are strictly the author's own, and do not necessarily represent those of al Nakhlah, its Advisory and Editorial Boards, or the Program for Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.

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