Up until the early 1970s the academic study of Islamic family law was largely the privileged terrain of those involved in Oriental studies. In their work, they mainly focused on the legal reforms as signaling the eclipse of this type of family law. Considering family relations as the outcome of the promulgation of certain legal reforms as signaling the eclipse of this type of family law. They tended to define the classical Islamic family as monolithic, static and rigidly patriarchal, and saw the promulgation of the twentieth-century legal reforms as signaling the eclipse of this type of family law.

The last twenty years, such an approach to women and Islamic law has become subject to serious criticism, and the grounds of debate have fundamentally changed. Women’s and anthropologists involved in research on Islamic family law, new perspectives have been brought to the fore, and family law assumptions have come in for scrutiny. Rather than assuming that law texts determine social relations, scholars have further underlined the notion of a negotiated, pluralistic, and patriarchal Islamic family. Authors have pointed to the ways in which women and men, both in their private and public spheres, can change the meaning of legal provisions. Women have been defined as knowledgeable actors who make strategic use of the means and resources at their disposal, however limited these may be. Difficulties amongst women fore-ground what they are able to say in a homogenized category, and the complex relations between gender and other axes of distinction, such as class, are elaborated on. Recent work, thereby a discourse on such topics as the construction of a gender in various genres of Muslim legal discourse, the ways in which women’s voices are represented in court cases and other court documents, and how oral narratives draw attention to the ways in which women from different backgrounds deal with the courts, devise strategies and express their points of view about marriage, divorce, and inheritance. What insights have such shifts in perspective brought about?

Women’s Agency and Family Law

To start with, whereas many Orientalists and Muslim scholars underline the similarities within the different Islamic legal systems, and among different Muslim societies in terms of law, the rules and practice, women have been recognized as knowledgeable actors who make strategic use of the means and resources available, however limited at times these may be. With differences among women fore-grounding what they are able to say in a homogenized category, and the complex relations between gender and other axes of distinction, such as class, are elaborated on. Recent work, thereby a discourse on such topics as the construction of a gender in various genres of Muslim legal discourse, the ways in which women’s voices are represented in court cases and other court documents, and how oral narratives draw attention to the ways in which women from different backgrounds deal with the courts, devise strategies and express their points of view about marriage, divorce, and inheritance. What insights have such shifts in perspective brought about?

Recent studies, employing fatwas and court cases in order to discuss how gender is constructed in specific legal discourses and practices, have further underlined the notion of a negotiated, pluralistic, and patriarchal Islamic family. Authors have pointed to the ways in which mufadda and qadis enforced women’s rights and, at times, attempted to mitigate provisions which would affect them negatively. Those working with court documents used for property registrations, sales registrations and so on, have provided ample evidence that women were, indeed, property owners. Summaries of court cases have been used to prove that women did not hesitate to make use of the court system in order to claim their rights. Those working with contractual arrangements made.

Still, the use of such written sources poses problems. The relation between the information that written sources provide, and actual social practice always needs to be questioned. Authors working with women’s narratives (oral history, life stories, interviews, informal talks) have drawn attention to the subjective nature of written sources, to the construction of a gender in various genres of Muslim legal discourse, the ways in which women’s voices are represented in court cases and other court documents, and how oral narratives draw attention to the ways in which women from different backgrounds deal with the courts, devise strategies and express their points of view about marriage, divorce, and inheritance. What insights have such shifts in perspective brought about?

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