



# Evaluation of Family Law Reform in Muslim-Majority Countries and Somalia: The Case of Somali Socialist Family Law Reforms towards Women's Rights

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## Abstract

Studying Muslim family law is essential for understanding the legal and cultural frameworks that influence family dynamics in Muslim-majority countries. While there is extensive research on Muslim family law reforms and women's rights, there is a notable scarcity of literature focusing on the rights of minors and guardians, as well as women's maintenance rights, particularly in Somalia. This study examines Somalia's socialist period and compares it with family law reforms in other Muslim-majority countries, such as Pakistan and Turkey, to present the variation of women's rights in various contexts. This study also seeks to examine the dynamics between the socialist government, women's groups, and Somali Islamic scholars in the implementation of family law reforms. The research methodology involves a thorough review of relevant literature and historical records, focusing on legal texts and scholarly discourse to analyze these reforms. The findings reveal that failures in the Family Law underscore the need for reforms that align with cultural and religious values. Somalia's eventual return to Sharia law for family matters underscores the necessity of aligning legal systems with the values of the communities they serve.

**Keywords:** Socialism, Islam, Family Law Reform, Women Right, Somali

**Jel Codes:** J12, K36, K38, P39

## Müslüman Çoğunluklu Ülkelerde ve Somali'de Aile Hukuku Reformlarının Değerlendirilmesi: Kadın Haklarına Yönelik Somali Sosyalist Aile Hukuku Reformları Örneği

### Öz

Müslüman aile hukukunu incelemek, çoğunluğu Müslüman olan ülkelerdeki aile dinamiklerini etkileyen yasal ve kültürel çerçeveleri anlamak için elzemdir. Müslüman aile hukuku reformları ve kadın hakları üzerine kapsamlı araştırmalar mevcut olsa da, özellikle Somali'de küçüklerin ve vasilerin hakları ile kadınların nafaka haklarına odaklanan literatürün azlığı dikkat çekmektedir. Bu çalışma Somali'nin sosyalist dönemini incelemekte ve Pakistan ve Türkiye gibi nüfusunun çoğunluğu Müslüman olan diğer ülkelerdeki aile hukuku reformlarıyla karşılaştırarak kadın haklarının farklı bağlamlardaki değişimini ortaya koymaktadır. Bu çalışma aynı zamanda aile hukuku reformlarının uygulanmasında sosyalist hükümet, kadın grupları ve Somalili İslam alimleri arasındaki dinamikleri incelemeyi de amaçlamaktadır. Araştırma metodolojisi, bu reformları analiz etmek için yasal metinlere ve akademik söyleme odaklanarak ilgili literatürün ve tarihi kayıtların kapsamlı bir incelemesini içermektedir. Bulgular, aile hukukundaki başarısızlıkların kültürel ve dini değerlerle uyumlu reformlara duyulan ihtiyacı altını çizdiğini ortaya koymaktadır. Somali'nin ailevi konularda Şeriat hukukuna geri dönmesi, hukuk sistemlerinin hizmet ettikleri toplumların değerleriyle uyumlu hale getirilmesinin gerekliliğinin altını çizmektedir.

**Anahtar Kelimeler:** Sosyalizm, İslam, Aile Hukuku Reformu, Kadın Hakları, Somali

**Jel Kodları:** J12, K36, K38, P39

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## INTRODUCTION

Islamic law is perceived as a legal framework believed to possess universal truth, capable of adapting to various circumstances transcending both space and time. Its adaptability is evidenced by its ability to address contemporary issues arising from the ever-evolving human civilization. Islam is characterized by its universal nature, unrestricted by boundaries such as language, geographical location, age, or mundane regulations

The foundational principles of Islamic law are regarded as divine revelations that remain unchanging and linked to many aspects of the Muslim community. Among the most influential aspects of Islamic law is family law, which holds paramount significance in Islam since the time of the prophet. Marriage, divorce, maintenance and inheritance are topics addressed with thoroughness and depth in the Quran, surpassing almost any other subject. One of Islam's notable contributions to seventh-century Arabian society was the significant enhancement of women's status while abolishing the discriminatory culture that existed in pre-Islamic times. However, Islamic society has experienced changes in law as many Muslim-majority countries have adopted laws modeled after Western legal systems for crimes and civil transactions.

Despite this trend, family law continues to be governed by Islamic principles, albeit with some modifications in certain countries. This study seeks to determine the categorization of family reform in Muslim majority and compares Somali's family law reform in socialist era to other Muslim majority countries such as Somalia, Pakistan, and Turkey. We evaluate the extent of reforms in Muslim family law in several key substantive areas that have been the primary focus for reformers: (1) the right to maintenance of husband and wife (2) Minor and guardian rights. This article outlines the current state of family law in these specific areas.

In 1975, the Somali Socialist government introduced Somalia's Family Law, which was influenced by socialist ideology, led by the Soviet Union. These legal reforms aimed to modernize the legal system and were met with controversy, especially concerning changes to Sharia law, such as the prohibition of polygamy and the introduction of equal maintenance rights for both spouses. The socialist government, aspiring to establish socialism in Somalia, viewed the modernization of family laws as essential for its agenda. However, these reforms faced opposition from Islamic scholars who saw themselves as protectors of religious principles. They argued that alterations to Islamic Family Law undermined traditional Islamic legal norms. This study also seeks to examine the dynamics

between the socialist government, women's groups, and Somali Islamic scholars regarding the implementation of family law reforms.

The methodology employed in this study involves conducting a literature review and document review, a data collection method focused on studying and analyzing information from books, theories, and documents directly relevant to the study area. This approach allows for a comprehensive examination of existing literature and scholarly discourse on family law reform in Muslim-majority countries and the specific reforms enacted under the Somali Socialist government. By thoroughly reviewing relevant materials, including legal texts, academic articles, governmental documents, and historical records, this study aims to provide a nuanced understanding of legal matters of family law reforms in these contexts. Additionally, comparative analysis employed to identify reforms across Muslim-majority countries and to examine the distinctive features of the reforms initiated by the Somali Socialist government. Through this methodological framework, the study seeks to contribute to the existing body of knowledge on family law reform and its implications for legal systems and societal dynamics in Muslim-majority countries, with a particular focus on the Somali context.

## CATEGORIZATION OF FAMILY LAW REFORM IN MUSLIM MAJORITY COUNTRIES

In many Muslim-majority countries, the government presents family law for Muslims, which is generally perceived by the populace as Islamic law codified into national legislation. Family law is often seen as the only area of Islamic law that has successfully resisted secularization and westernization. Preserving an Islamic framework for family law remains important to religious scholars, lawmakers, and large segments of Muslim societies (Stilt, Waheedi, & Griffin, 2018). However Family law holds a strategic position in the development of legal modernization in the Islamic world. According to Tahir Mahmood, countries can be categorized into three groups based on their family laws. First, there are countries that apply traditional Islamic family law, such as Saudi Arabia, Yemen, Kuwait, Afghanistan, Mali, Mauritania, Nigeria, Senegal, and Somalia. Second, some countries have secular family law, including Turkey, Albania, Tanzania, and the Muslim minorities in the Philippines and Russia. Third, there are countries that implement updated family law, involving substantive renewal and modernization of regulations. This category includes Indonesia, which has undertaken

legal reform or modernization along with Turkey, Lebanon, Egypt, Brunei, and Malaysia (Zayyadi, Ridwan, Arif Hidayat, Ubaidillah, & Masuwd, 2023).

Turkey is one of the countries that implement a secular system, where the legal framework is based on Western legal materials rather than classical Sharia. Tanzania also follows this approach by codifying special civil laws that apply to all citizens. A mixed legal system is commonly used in many Muslim-majority countries, including Egypt, Malaysia, Indonesia, Pakistan, Morocco, Nigeria, and Sudan. Each country has specific factors influencing their family law reforms. In Egypt, for instance, the concept of *Maslahah* (public interest) plays a significant role in the formulation of *washiah wājibah* (obligatory bequest). In summary, these countries have modified the classical Sharia system by incorporating specific provisions that are seen as necessary and significant for implementation (Muzaki, Jahar, & Suma, 2020).

Studies on Muslim law reforms and family law have been conducted by various researchers. Azmi, Ghazali, Prihartini, and Ghazali (2022) analyzed marriage guardianship provisions in Somalia and Indonesia, comparing Somalia Family Law with Indonesian Islamic Law. Muzaki, Jahar, and Suma (2020) researched the reform of the law of inheritance in Turkey and Tunisia. Qurratul and Rahmatan (2022) examined scientific socialism in Somalia's inheritance law. Miftahul Huda and Ahmad Bunyan studied marriage guardianship provisions in Somalia and Indonesia, focusing on family law reform and providing an overview of legal reform patterns in Muslim countries. Fuad Mahsun also researched the law of inheritance in Turkey, emphasizing the impact of secularization on legal reform but not addressing inheritance issues in detail. In contrast, Qurratul and Rahmatan (2022) specifically studied the influence of scientific socialism ideology on Islamic inheritance law in Somalia, as regulated in the Family Code of 1975. Therefore, this study will specifically address a research gap by examining the extent of reforms in Muslim family law in several key substantive areas that have been the primary focus for reformers, such as the right to maintenance of husband and wife, and the rights of minors and guardians. This article will compare the current state of family law in these areas across three contexts: Pakistan, Turkey, and Somalia during the socialist period.

## MUSLIM FAMILY LAW REFORMS AND WOMEN RIGHT WITH SOME SELECTED RIGHTS

### Minor and guardian right in family law

Islamic development in human life is typically divided into several stages; the prenatal period, which encompasses the time when a fetus is still in the mother's womb; the childhood period (*Thufulah*), referring to early childhood from birth until the child reaches the age of *tamyiz*, when they can distinguish between right and wrong; the *tamyiz* period, which lasts from when a child becomes *mumayyiz* until they reach puberty; the *Baligh* period, marking the transition from *tamyiz* to puberty; and the *Rushd* period, characterized by the attainment of full intellectual maturity (Mega & Octariza, 2022). In the Islamic conception, there is no fixed age limit for marriage; instead, it requires individuals to be both *aqil* (mentally mature) and *baligh* (having reached puberty). Most scholars agree that the age at which someone becomes *aqil* and *baligh* can vary significantly among individuals. This flexible approach to the age limit for marriage is considered very Islamic, as it prioritizes the best interests and welfare of the child (Retnowulandari, Indrasti, & Fitriliani, 2024).

Regarding the age limit for marriage in Sharia/Islamic law, there are no specific provisions or explanations about underage marriages. The Qur'an indicates that a person may enter into marriage according to their maturity. This is explained in the word of Allah Subhanahu wa Ta'ala (SWT) in Surah Al-Nisa verse 6:

"And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them..."

This verse emphasizes the importance of both physical maturity and sound judgment as prerequisites for marriage (*baligh*), rather than a specific age limit. In Islamic jurisprudence (*fiqh*), the term *baligh* is commonly used to denote the onset of maturity. This phase is marked by "nocturnal emission" (*hulum*), as mentioned in Surah Al-Nur, verse 59. According to all four major schools of thought (*madhabs*), experiencing a nocturnal emission signifies that a boy or a girl has entered the *taklif* stage, where they are obligated to fulfill religious duties. In the case of girls, maturity can also be indicated by menstruation or pregnancy alongside wet dreams (Maisarah, Afrizal, Zulfahmi, Mauliza, and Murni, 2019). However, Islam also acknowledges the marriage of minors who have not yet attained maturity. The majority of jurists maintain that if a minor who has not reached puberty but demonstrates the ability to distinguish between right and wrong and evaluate consequences, enters into marriage with

the consent and involvement of their legal guardians (parents), such marriages are considered valid. Furthermore, Islamic jurists contend that while mental capacity and puberty are prerequisites for a valid marriage contract, marriages arranged for minors before puberty, with the expectation of a successful marital life as perceived by their guardians or representatives, will be deemed valid. This perspective finds support in evidence from the Sunnah and reasoned interpretation (Acar, 2003).

All four madhabs cite the Hadith regarding the marriage of Aisha as evidence of the permissibility of marrying minors. This is derived from the well-known narrative of Aisha (may Allah be pleased with her), who was married during her childhood, as illustrated in the following hadith:

“Narrated `Aisha (may Allah be pleased with her): that the Prophet (PBUH) married her when she was six years old and he consummated his marriage when she was nine years old. Hisham said: I have been informed that `Aisha remained with the Prophet (PBUH) for nine years (i.e. till his death)” (Sahih al-Bukhari 5134).

Analyzing the normative foundation from a sociological perspective involves looking at the age of baligh (maturity) or the marriage age limit according to Islamic jurists (fuqaha), in places like Medina, a girl is considered to have reached maturity at the age of 9. This viewpoint aligns with the directive of Prophet Muhammad (PBUH) that Muslims should teach their children to perform prayers by the age of 7 and discipline them by the age of 10 if they fail to comply (Kumedi Ja'far, Mukri, & Susanto, 2021). Besides this, the four madhabs have made the following statements regarding the marriage of minors:

Imam shafi'i holds the view that a father can marry off his daughter, even if she is around fifteen years old and has not yet experienced menstruation, as long as it does not harm the child. The basis for this permissibility is the example of Abu Bakar, who marriage off his daughter Aisha (may Allah be pleased with her) to the Prophet Muhammad when she was six years old. Additionally, it is reasoned that all matters concerning young children fall under the father's responsibility. For the marriage to be valid, it must also fulfill the element of kafa'ah (compatibility) between the bride and groom (Al-Shafi'i, 1993).

Maliki scholars affirm that prophet Mohamed (PBUH) married Abu Bakar Sadiq's daughter, Aisha (may Allah be pleased with her), when she was still a young girl, around the age of 6 or 7. Consequently, they assert that a father has the right to marry off his daughter, even if she is still a child. Guardians must base their ability to arrange a

child's marriage on the child's best interests. (Ibn Abd Al-Barr, 2001).

Ibn Qudamah, representing the Hanbali school of jurisprudence, opined on the marriage of minors, particularly citing Aisha's marriage. He argued that since Aisha's consent was not challenged, her marriage stands valid. He justify her consent to that of an unborn child, suggesting that her lack of objection implied consent. This viewpoint highlights the importance of understanding the circumstances and conditions surrounding the marriage of minors in Islamic law (Abdurrahman Ibn Qudamah, 1994).

According to Hanafi scholars such as Imam Sarakhsi's opinion, representing the Hanafi School, explicitly supports marriages conducted by young children (Hamid & Maulidin, 2022). Scholar stated that the capability to marry minors is based on the criteria of compatibility (kafa'ah) between the bride and groom, facilitated through the payment of mithl dowry (equivalent dowry). This is established through a contractual process that allows for the option of khiyar (choice) if either party reaches adulthood later (Ibn Abidin, 1979).

The scholars (fuqaha) mentioned above have agreed on two criteria: acceptance of guardianship for minors with the condition of Kafa'ah (compatibility), and the criteria for puberty and age of maturity. Scholars also acknowledge the acceptance of the contractual process that allows both parties to have khiyar (choice). However, they differ in estimating the age limit for the realization of these criteria for puberty. According to Abu Hanifa, the onset of puberty may occur as the age of eighteen for boys and seventeen for girls. According to Shafi'i, the age limit for reaching puberty is 15 years for males and 9 years for females. On the other hand, according to the Hambali School, puberty is indicated by a wet dream for boys or reaching the age of 15, while for girls, it is marked by menstruation. Maliki scholars differ from other schools in that they provide a more extensive list of signs indicating physiological changes to the body, which includes growth of pubic hair, body odor, and voice changes. In instances where none of these signs develop, Maliki jurists consider the age of eighteen as the age of maturity for both males and females. (Tan, 2018) . Even though these four madhabs offer differing interpretations, Muslim countries generally maintain a distinction between the marriage age limits for males and females. However, not all countries align the legal age limit for marriage for men and women equally, as depicted in the following table:

**TABLE 1** Minimum Age Marriage in Muslim Countries

No	Country	Minimum Marriage Age (Female)	Minimum Marriage Age (Male)	Marriage Age Approval Detail
1	Afghanistan	16 years old	18 years old	15 with the consent of a parent or guardian and the court
2	Algeria	19 years old	19 years old	
3	Azerbaijan	17 years old	18 years old	
4	Bahrain	15 years old	18 years old	marriages below the designated age limits can be authorized by a Sharia court
5	Bangladesh	16 Years old	21 years old	Parental consent is required, which could permit marriages for girls as young as 16.
6	Egypt	18 years old	18 years old	
7	Indonesia	16 years old	19 years old	
8	Iran	13 years old	15 years old	Girls as young as nine may be married with permission from both the court and their father. Boys under 15 require court approval for marriage.
9	Iraq	15 years old	15 years old	By law, the minimum age for marriage is 15 with parental permission
10	Jordan	15 years old	15 years old	Both male and female may be married with the consent of both a judge and a guardian
11	Kuwait	17 years old	18 years old	
12	Lebanon	17 years old	18 years old	
13	Libya	18 years old	18 years old	
14	Malaysia	16 years old	18 years old	
15	Oman	18 years old	18 years old	A judge may permit a person to marry at a younger age when it's deemed in the minor's interest by either the judge or the family
16	Pakistan	16 years old	18 years old	
17	Palestine	18 years old	18 years old	Religious law permits marriage from age 15, but child marriage seems uncommon.
18	Qatar	16 years old	18 years old	
19	Saudi Arabia			The law doesn't set a minimum marriage age, but Sharia suggests girls can marry after puberty. Some senior religious leaders mention girls as young as 10 may marry.
20	Somali			The current Somali federal constitution does not stipulate a minimum legal age for marriage
21	Sudan	10 years old	15 years old	
22	Syria	17 years old	18 years old	Aged 15 or older, marriage may occur if a judge deems both parties willing and physically mature, with consent from fathers or grandfathers
23	Tunisia	18 years old	18 years old	
24	Turkey	16 years old	16 years old	Marriage is allowed at 17 with parental permission and at 16 with court approval.
25	Yemen			Marriage had no minimum age requirement, and girls as young as eight were wed.

Source: pew research center (2016) Marriage Laws around the World.

[https://assets.pewresearch.org/wpcontent/uploads/sites/12/2016/09/FT\\_Marriage\\_Age\\_Appendix\\_2016\\_09\\_08.pdf](https://assets.pewresearch.org/wpcontent/uploads/sites/12/2016/09/FT_Marriage_Age_Appendix_2016_09_08.pdf)

This table indicates that there's significant variation in the minimum marriage ages across Muslim countries. For females, the minimum age ranges from 10 years old in Sudan to 19 years old in Algeria. For males, it ranges from 15 years old in several countries to 21 years old in Bangladesh. There's also a noticeable gender gap in the minimum marriage age, with females often being allowed to marry at younger ages compared to males. For

example, in Iran, females can legally marry at 13 years old, while males must be at least 15 years old.

Besides the legal age set by the government, there are two other factors that can allow a person to enter into marriage: parental approval and court decisions. Parental approval, which the four madhabs accept as valid for minors, has been a major factor applied in many Muslim countries. For example, in Turkey, the legal age of

marriage is 18, but there are a few exceptions that allow someone to marry before turning 18. A 17-year-old may be granted permission to marry with the consent of their parents or legal guardian (Polat & Reva, 2019). In Somali Socialist Family Law reform, Article 16 stipulates that individuals are allowed to freely contract marriage upon reaching the age of 18. However, a woman who is at least 16 but not yet 18 years old may marry with the consent of her guardian. The law also grants the court the authority to exempt parties from adhering to these age limits in cases of necessity. Furthermore, Article 19 of the law specifies that girls who have not reached the age of maturity can be represented in the marriage contract by their father. In the absence of the father, the representation is shifted and done by the mother, followed by the grandfather, elder brother, and then the uncle. These provisions reflect the legal framework in Somalia socialist family law aimed at regulating marriage age and ensuring that minors are protected through guardian consent and judicial oversight, while also allowing for familial representation in marriage contracts in the absence of parents (Somali family law, 1975).

The difference between the concept of legal guardianship in Islam and the provisions outlined in Somalia's socialist family law reform lies primarily in the roles and eligibility criteria for guardians, especially regarding women. In Islamic jurisprudence, particularly under traditional interpretations of Islamic law (Sharia), guardianship (wilayah) is typically restricted to male relatives for certain matters, including marriage contracts. According to these interpretations, women generally cannot act as guardians in formal legal contexts such as marriage contracts. This is based on interpretations of religious texts and societal norms prevalent in many Muslim-majority countries (Farooq, 2019). On the other hand, Somalia's socialist family law reform, as outlined in Article 19, introduces a more inclusive approach by allowing women, such as the mother or other female relatives like the grandmother or elder sister, to represent girls who have not reached the age of maturity in marriage contracts. This provision expands the scope of legal guardianship beyond traditional Islamic norms, recognizing the authority of female relatives in familial representation and decision-making processes concerning marriage. Additionally Somalia's socialist family law reform demonstrates a departure from this norm by allowing for broader familial representation, thereby aiming to ensure minors are protected through a more inclusive and gender-neutral approach to guardianship and legal oversight.

In contrast Pakistan regulates marriage age through the Child Marriage Restraint Act of 1929. According to

this law, child marriage is defined as a marriage in which either party is under the age of eighteen if a boy, or under the age of sixteen if a girl. The law considers individuals under this age as minors and criminalizes such marriages. It stipulates that anyone who performs such a marriage can be punished with simple imprisonment for up to six months and a fine. This approach aims to protect minor's right from the risks associated with early marriages, irrespective of parental consent, thereby prioritizing legal age limits over parental wishes in the interest of safeguarding children's rights (The Child Marriage Restraint Act, 1929).

In most Muslim countries, modern legislation has largely abolished the guardian's right to arrange a minor's marriage. However, in Pakistan, guardians still retain this right. Under the Muslim Family Laws Ordinance of 1961, a girl can annul such a marriage before the age of eighteen, provided the marriage was contracted before she turned sixteen and has not been consummated. Similarly, in Turkey, the consent of a minor's guardian is both necessary and sufficient for arranging a minor's marriage (Ersay, 2021; Akçay, Yiğit, & Bay, 2024). In the Somali Socialist Family Law, the will of the girl is also given significant consideration to preserve her rights to enter Marriage. Article 16 stipulates that if a guardian refuses to consent to the marriage of his ward that is over 16 but less than 18 years of age, a Judge or an authorized person from the Ministry of Justice and Religious Affairs will assume guardianship and carry out the marriage according to the ward's wishes. This approach highlights the balance between traditional guardian authority and the individual autonomy of the minor, reflecting an effort to ensure that the minor's preferences are respected while still adhering to legal frameworks.

These comparisons highlight diverse approaches to marriage age regulation shaped by religious measures and efforts to safeguard minors. Turkey, Pakistan and Somali Socialist Family law appreciate parental or guardian consent alongside legal age limits, accommodating flexibility within their legal frameworks. In contrast, Pakistan has laws criminalize underage marriages to uphold children's rights to enter marriage at less than sixteen years. These differing strategies illustrate how countries navigate societal challenges surrounding early marriage through distinct legal lenses.

## MAINTENANCE RIGHTS OF HUSBAND AND WIFE

Maintenance, termed "nafaqa," is derived from the Arabic word "infaq," meaning "to spend, to consume." It includes provisions, money spent to meet needs, and other

material values. "Nafaqa" appears twice in the Qur'an (Al-Baqarah 2:270; Al-Tawbah 9:121) and is mentioned in over seventy places from its root. It is also frequently referenced in Hadith. In Islamic law, nafaqa extends beyond family law to cover social justice, animal rights, and environmental protection, encompassing necessary expenses to support both living beings and non-living entities under one's responsibility. This illustrates the comprehensive and universal nature of Islamic law's approach to nafaqa (Erbay, 2006).

In Muslim law, marriage is a civil contract that creates certain rights and responsibilities, including the husband's duty to provide maintenance for his wife. This obligation of the husband is reinforced by numerous verses in the Holy Quran and the Sunnah (Ferdousi, 2021). Under Islamic law, the established principle that the male is the 'provider' is largely derived from the explanation in Surah Al-Nisa while mentioning maintenance rights in other verses. The Holy Quran states:

"Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they (men) support them (women) from their means" (Al Quran, Surah 4: Verse 34).

The above verse explicitly outlines that a woman has the right to receive maintenance from her husband. Furthermore, Islamic law establishes that a Muslim wife is entitled to maintenance throughout the marriage. The Holy Quran also addresses the issue of maintenance both during marriage and in the event of divorce, stating that:

"Let them live where you live during their waiting period, according to your means. And do not harass them to make their stay unbearable. If they are pregnant, then maintain them until they deliver. And if they nurse your child, compensate them, and consult together courteously. But if you fail to reach an agreement, then another woman will nurse the child for the father" (Al-Quran, Surah Al-Talaq 65:6)

"There is no blame on you if you divorce women before consummation or the fixation of their dower, but bestow on them (a suitable gift) the wealthy according to his means, and the poor according to his means, - a gift of a reasonable amount is due from those who wish to do the right things" (AL- Quran, Surah Al Baqarah 2:236).

"For divorced women Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous" (Al Quran, Surah AL Baqarah 2:241).

All the verses mentioned above indicate that maintenance is a financial entitlement of the woman and a responsibility of the husband. The husband is required to provide maintenance to his wife regardless of whether

she is divorced or still living with him. Clearly, a wife who resides with her husband is entitled to maintenance to a greater extent than a divorced wife. Additionally, the Quran specifies that the maintenance should be in line with the husband's financial means (Siddique & Gul, 2019).

The Hadith also provides guidance on maintenance obligations. The Prophet Muhammad (PBUH) stated:

"When a Muslim spends something on his family intending to receive Allah's reward, it is regarded as sadaqa for him" (Sahih Bukhari, 2630).

In another instance, Narrated Aisha:

"Hind bint Utba approached the Prophet and said, "O Allah's Messenger! Abu Sufyan is a miser, so is it sinful of me to feed our children from his property?" The Prophet replied, "No, except if you take for your needs what is just and reasonable" (Sahih Bukhari, 277).

Furthermore, Muslim scholars and jurists agree that a woman's right to maintenance begins with marriage, making her the primary recipient of this entitlement, even before children, parents, and relatives. However, the applicability of this right varies by Muslim country. In some Muslim countries, such as Iran, Tunisia, and Pakistan, a wife is entitled to seek a divorce if her husband fails to provide maintenance (Naqvi, 1974). Pakistani law, under the Muslim Family Laws Ordinance, 1961, mandates that a husband must provide adequate maintenance to his wife during marriage and through the 'iddah period after divorce, with failure to do so allowing the wife to seek redress through an Arbitration Council. The law, however, does not address post-'iddah maintenance, despite recommendations from the Law and Justice Commission of Pakistan, and the judiciary generally bases maintenance amounts on the husband's financial capacity, affirming that maintenance is a financial right of the wife and an obligation of the husband in all living arrangements, only enforceable until the end of the 'iddah period (Siddique, 2023).

Pakistan's family law aligns with the general principle upheld by classical Muslim jurists, which does not hold a wife responsible for supporting her husband. However, an exception is found in the view of Ibn Hazm, who argued that a wife could be responsible for her husband's maintenance during the marriage if he is impoverished and unable to support himself and the family (Balta, 2022). Jurisdictions where the concept of a wife's duty to provide maintenance for her husband, as articulated by Ibn Hazm, has been implemented in Turkish family law. The Turkey's family law stipulates that a wife must financially support her "innocent" husband, according to her

financial capacity, for up to one year if he experiences significant financial difficulty following the divorce, even if she was not at fault for the reasons behind the divorce (Naqvi, 1974). This view is slightly reflected on the Somali socialist Family legal framework introduced in 1975, which includes the following provisions:

- a) Both spouses are required to share the expenses of the marital home in proportion to their incomes. However, if one spouse is unable to contribute, the other spouse must cover all the expenses on their own.
- b) In the event of a dispute between spouses, the court may consult experts on the matter and make a decision based on their advice.
- c) If either spouse fails to meet their maintenance obligations, they must still contribute their share, provided they are not completely impoverished.
- d) If a spouse cannot obtain maintenance from their partner due to reasons other than the partner's financial inability, the court will determine the amount of maintenance. This amount will be charged to the defaulting partner, and the other spouse will be permitted to incur debts up to the specified amount.
- e) The creditor has the right to seek repayment directly from the party against whom the court has issued a judgment.

These comparisons reveal different approaches to maintenance rights and responsibilities. Pakistan follows the principle that wives are not required to support their husbands financially. In contrast, Turkey adopts Ibn Hazm's view, which mandates that wives provide financial support in cases of need. Meanwhile, Somali socialist family law includes detailed provisions for sharing expenses and enforcing maintenance, holding both spouses accountable for covering any unpaid amounts. In Somalia Socialist, the Family Law mandates that both the husband and wife share the expenses of the matrimonial home in proportion to their earnings. If one spouse is unable to contribute due to financial constraints, the other spouse is responsible for bearing all the expenses. In the event of a dispute between the parties, the court has the authority to seek the opinion of individuals who have knowledge of the dispute and to make a decision based on the best interests and circumstances of the involved parties. This approach ensures a fair and equitable distribution of financial responsibilities within the marriage (Wani, 2003). These variations in Family law across these countries demonstrate how different legal systems address financial obligations within marriage.

## DYNAMICS OF FAMILY LAW: SOMALI SOCIALIST GOVERNMENT, WOMEN'S GROUPS, AND ISLAMIC SCHOLARS

At independence, African countries faced the challenge of deciding the type of state to establish. Between 1950 and the mid-1980s, thirty-five African countries adopted socialism at some point. During the 1960s, socialism in Africa was seen as a tool to achieve independence from Western influence and to spur rapid economic development while emphasizing African values. African leaders viewed socialism as a means to assert political sovereignty and to foster economic self-reliance. The ideology was attractive because it promised to break free from colonial legacies and create a distinct path for African nations. The African leaders believed socialism provided the best opportunity to overcome the numerous obstacles faced by these new states. Initially, African leaders developed hybrid versions of socialism, known as African socialism. However, by the 1970s, several states shifted towards a more orthodox version of socialism, known as scientific socialism (Thompson, 2019).

In some African countries, such as Algeria, Tunisia, Egypt, and Libya, socialism is understood in the context of nationalism and as an ideology that can help these countries free themselves from colonial dependency, which is primarily based on capitalism and imperialism. For instance, Algeria, after independence, faced a diversity of cultures, languages, and religions, alongside political, economic, and social problems. Nationalist leaders like Mohamed Boudiaf sought to unify Algerians to eliminate these differences. In contrast, in other African countries like Ghana, Nigeria, and Mali, socialism is understood in the context of Pan-Africanism. Pan-Africanism is a political movement calling for unity among Africans to resist the return of colonialism. Simply put, Boudiaf embedded socialism in nationalism, whereas Nkrumah integrated it into Pan-Africanism (Remouche, 2020). The classification of socialist states in Africa highlights the diverse approaches to socialism adopted by different countries on the continent. These can be broadly categorized into three types:

- African Socialist Countries: These were the first-wave countries where the initial leaders adopted a socialist path but worked to develop a unique, indigenous African socialist ideology. The focus was on aligning socialism with African traditions and values, creating a distinctive version of socialism that was not merely an import from Europe but rather an adaptation suited to the African context.



- Afro-Marxist Countries: In these countries, military dictators adopted Marxist ideology, often labeling their states as people's republics. This form of socialism is sometimes referred to as "praetorian" or "scientific socialism" due to its structured and often authoritarian nature. These regimes often implemented strict Marxist policies and maintained strong central control over the state apparatus.
- Afro-Communist Countries: These states had a strong dependence on the Soviet Union and attempted, to varying degrees, to emulate the Soviet system. The influence of the USSR was significant, and the political and economic structures in these countries closely mirrored those of the Soviet model. The extent of Soviet influence varied, but the alignment with communist principles was a defining characteristic (Lösch, 1990).

The differences in these classifications reflect the varying interpretations of socialism across Africa, influenced by local contexts, leadership, and external alliances. African socialist countries focused on creating a home-grown ideology, Afro-Marxist countries emphasized strict Marxist principles often under military regimes, and Afro-communist countries closely aligned with the Soviet Union, adapting its systems and practices. Regarding the previously mentioned classification, Somalia was categorized as an Afro-Marxist country. It was the first nation in the Horn of Africa to embrace socialism, and its socialist experiment remains one of the most notable in the region. On October 21, 1969, General Mohamed Siad Barre seized power through a coup d'état. A year later, in October 1970, Barre declared that Somalia had adopted scientific socialism and had become a socialist state (Muhumed, 2021). This alignment made Somalia a key ally of the Soviet Union. To understand the Soviet Purpose in Somalia, it's crucial to consider the country's historical significance and strategic location. Somalia has long been a key area for foreign powers. During European colonialism, Britain and Italy relied on military force to secure their positions there. The Soviet Union utilized Somalia to enhance its presence and influence in the region, capitalizing on its strategic location, while also promoting it as a "socialist state." After the October 1969 coup, the Soviets significantly increased aid and investment in Somalia. By 1974, they had established key facilities, including a meat factory in Mogadishu, a deep-sea port in Berbera, and a fish plant in Lasqorey. Moscow leveraged the Somali state to further its regional political goals, using it as a tool to advance its objectives and promote it as a developing socialist state, aiming to create a society free from "exploitation" (Guudle & Ozev, 2019).

For the Somali socialist government, the immediate external goal behind the military regime's decision to apply scientific socialism was to secure military assistance from the Soviet Union amid ongoing territorial disputes with Ethiopia and Kenya. Although the Ethiopian-Somali War (1977-1978) led to fallout between Somalia and the Soviet Union, as the Soviets shifted their support to Ethiopia, the socialist policies continued in Somalia until 1980 as Somalia began seeking economic, military, and political assistance from Western countries. Afterward, Somalia shifted its focus to Western countries for economic, military, and political support (Mubarak, 1996). Internally, during the 1970s, the socialist regimes increasingly used socialism as a tool for consolidating and maintaining political power. The government aimed to leverage socialist principles to strengthen its domestic control and stabilize its rule (Lösch, 1990). Somali government increasingly focused on using socialism to consolidate and maintain political power. The regime hoped that embracing socialist principles would strengthen its control domestically and stabilize its rule. To consolidate power within society and ostensibly legitimize a regime that had come to power through undemocratic means, the regime established and utilized the Somali Women's Democratic Organization for its own purposes. President Siad Barre viewed women as a valuable means to legitimize his authority and consolidate his power to the point of achieving complete Gramscian hegemony (Ingiriis, 2015).

During Somali socialist government's rule in Somalia, there were notable advancements in gender equality. Women saw improved rights in citizenship, better access to social services and jobs, and the introduction of paid maternity leave. Additionally, women gained significant political representation, making up 10 percent of the members of parliament. These reforms were part of Barre's broader efforts to modernize the country and promote social justice (Gardner & El Bushra, 2004). Various laws were enacted to enhance women's roles in society, with the most notable being the Family Law of 1975, which became effective in 1978 (Touati, 1997). This law establishes equal responsibilities for maintenance for both partners and provides equal inheritance rights. It describes marriage as a contract between a man and a woman who are equal in rights and duties with its foundation being mutual understanding and respect. This law is grounded in the principles of a socialist state, with its central concern being the promotion of equal rights for both men and women (Qurratul & Rahmatan, 2022). The provisions in this law directly conflicted with Islamic law, which, along with customary law (Somali: *xeer*), had traditionally governed family matters in Somali society.

Consequently, many of these new regulations encountered resistance and were frequently disregarded by conservative Islamic factions within society (Ingiriis & Hoehne, 2013).

Siad Barre's military regime had been involving itself in religious matters well before the introduction of this law. To curb religious movements across the nation, the government had assigned religious affairs to the Ministry of Judicial and Religious Affairs, aiming to control the country's religious narrative (Mohamed, 2015). The regime maintained that the new Family Law was not at odds with Islam but instead represented a modernist perspective. In contrast, Islamic scholars contended that the law advanced secularization by meddling with the most sacred aspect of society—the family. They argued that family issues were strictly regulated by Islamic jurisprudence and saw the law as a violation of Shari'a and a rejection of Qur'anic principles, which they equated with outright apostasy (Abdullahi, 2011). This brought tension between the regime and religious scholars, highlighting the broader conflict between secular and religious-based approaches to family law.

After the Family Law proclamation and the subsequent crackdown on Islamists, numerous prominent scholars were either imprisoned or fled to Saudi Arabia. Notably, this took place during a period of booming economies and a resurgence of Islamic revivalism across the Arab Muslim world. The resulting economic prosperity and access to education empowered the emerging Islamic movement to reorganize. The regime's harsh treatment of Islamic scholars, combined with support from conservative Arab regimes and exposure to various Islamic ideologies and activism, significantly altered the Islamic landscape in Somalia (Abdullahi, 2011).

In August 1975, six months after the Family Law controversy, 60 prominent, high-ranking officers were dismissed from their positions. Among them were leaders of the Islamic awakening: Sheikh Maxamad Geryare, Sheikh Maxamad Macallin, and Sheikh Cabduqani. Sheikh Maxamad Macallin and Sheikh Cabduqani were imprisoned, while Sheikh Maxamad Geryare escaped the country via Kenya to Saudi Arabia. In addition to those imprisoned, several activists of the Islamic awakening fled to Saudi Arabia and Sudan to regroup (Abdullahi, 2011).

In additionally three main perspectives explain why the Somali regime adopted the Family Law and executed scholars. The first thesis argues that these actions were driven by foreign assistance and lacked ideological motivation, aiming to show the regime's strength and commitment to secular socialist ideology to compete with Marxist Ethiopia for support from socialist countries. The

second thesis attributes these actions to the dictatorial ambitions of President Siyad Barre, viewing the Family Law event as a pre-emptive strike against the emerging Islamic movement, perceived as a threat to the revolution alongside clanism. The third thesis considers the motivation ideological, seeing the adoption of the Family Law and suppression of Islamists as preparatory steps for forming the Socialist Revolutionary Party in 1976, intended to lead the socialist transformation of Somali society. The adoption of the Family Law and the suppression of its opponents were intended to achieve all three objectives (Abdullahi, 2011). Despite these intentions, the Family Law did not achieve its objectives. It lacked community support and acceptance, particularly from women who were reluctant to embrace the new laws due to their conflicts with religious and traditional norms (Ingiriis & Hoehne, 2013). This reflects a broader principle articulated by Roscoe Pound, who posited that law functions as a tool of social engineering. According to Pound, a successful law is one that resonates with the society it governs and is effectively integrated into the community's existing practices and beliefs. Similarly, Islamic law, as a "living law," is widely used and aligned with societal values and state regulations. The disconnect between the Family Law and the community's established law illustrates a failure in achieving effective social engineering and underscores the importance of aligning legal reforms with the values and practices of the society they aim to regulate (Zayyadi, Ridwan, Arif Hidayat, Ubaidillah, & Masuud, 2023). For instance, the Somali socialist government enacted Family Law that prohibited polygyny. Despite these prohibitions, religious figures and individuals close to the regime continued to marry multiple wives, thereby this undermining the law's effectiveness. Additionally, the Family Law inadvertently led to increased levels of domestic violence and divorce, revealing its disconnect from societal practices and needs (Mohamed, 2015). This misalignment contributed to the discontinuation of the Family Law's application in Somalia. Currently, the Somali federal government applies Sharia law to family matters, aligning legal practices more closely with the cultural and religious values of Somali society.

## CONCLUSION

The exploration of Muslim family law reforms and women's rights reveals a complex interplay between tradition and modernization, reflecting diverse interpretations and adaptations across different jurisdictions. The formal limits set by government is attached to the Islamic juristical view. For instance The Islamic legal framework emphasizes the importance of maturity and guardianship

in marriage, allowing flexibility in defining the age of marriage based on maturity rather than a fixed age limit. However, practices and interpretations vary significantly, as evidenced by the diverse marriage age regulations across Muslim-majority countries. Somalia's socialist family law reforms, notably the 1975 Family Law, aimed to promote gender equality by incorporating progressive provisions such as the inclusion of female guardians in marriage contracts. Yet, these reforms faced challenges due to their discord with traditional Islamic and customary practices, ultimately leading to a reversion to Sharia law for family matters.

Maintenance rights also highlight the variations in how different legal systems address marital responsibilities. While Islamic law mandates that husbands provide maintenance to their wives, some countries like Pakistan and Turkey have additional provisions affecting financial support within marriage. Pakistan enforces maintenance obligations during marriage and the 'iddah period, while Turkey extends financial support requirements of both partner even after divorce. Somali socialist law also reflects a unique approach, emphasizing equal responsibility of both partners to maintenance and proportionality in financial contributions and providing mechanisms for resolving disputes. These variations reflect ongoing debates about gender equality, aiming to balance the protection of women's rights with broader ideological considerations of class conflict and equitable treatment

Socialism became widely popular in several post-independence African regions, including Somalia. Many African countries adopted socialism to enhance political sovereignty, foster economic self-reliance, and move away from colonial legacies. The ideology offered prospects of rapid development and freedom from Western influence, and it was implemented in various ways across the continent. However, despite its developmental promises, there is a general agreement in the literature that socialism did not succeed in Africa, failing both as an ideology and as a development strategy (Muhumed, 2021). Under the Somali socialist government, Somalia adopted Afro-Marxism and aligned with the Soviet Union for military and economic support. Somali Socialist regime introduced notable reforms, such as the 1975 Family Law to promote gender equality and women right. However, this law clashed with traditional Islamic and customary practices, facing resistance from religious groups and illustrating the difficulties of implementing reforms that diverge from Islamic law and societal norms. The failure of the Family Law shows the need for legal reforms to align with cultural and religious values. Somalia's eventual shift back to Sharia law for family issues emphasizes the importance of aligning legal systems with the values of the communities they serve.

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