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Women between Islamic Shari'a and Personal Status Laws

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Women between Islamic Shari'a and Personal Status Laws

First: Introduction

1- Development of the Personal Status Laws

In most Arab countries the personal status laws are based on the provisions of the Islamic Shari'a. Yet, they differ according to the established Islamic doctrines; they of course vary between conservatism and liberalism. This is despite the fact that the Islamic Shari'a retains a great deal of diversity and flexibility and compatibility with the conditions of society in every age according to certain "Fikh" rules highlighted in Quran and Sunna. And also despite the fact that the Islamic Shari'a opens a vast space for intellectual methodology to apply its tools of measurement, induction and deduction as basic methodologies of the Islamic "Fikh," there has been a great deal of regression in women's legal status. On the eve of drafting the contemporary legislation concerning women, especially those of the personal status laws and family laws. These laws were laid in Egypt in the first quarter of the 20th century. Legislators at that time followed the strictest and most conservative "Fikh" traditions. They narrowed to the limit the space allowed for women to practice their rights and reduced their freedom by applying the traditional judiciary system that was laid before the 19th century. This conservative and strict mentality in legislation was very much manifested in the provisions regarding marriage, divorce, children, custody and the amount of freedom allowed to wives as well as with other matters.

There has been a great deal of confusion in perceiving the conditions of the Arab society before and after the spread of Islam. Those legislators did not regard the principle Islamic idea about women's rights, and they never regarded that women's rights are flexible and relative differing according to the time, place, the nature of society and the age.

Women's rights are basically based on the Islamic fundamental principles and the Islamic basic rights that can never be negotiated. Islam regards such rights as human rights for both men and women. The Holy Quran emphasized this idea over and over.

Women were being treated as human beings in the Quran; thus they were equal to men in the religious duties they should perform and in the outcome of what they do. Such Islamic mechanisms invoked a revolution in women's status at that time in the Arab society. It laid the ground of a genuine reception of women's humanity.

When Saida om Salama heard from her room the prophet calling at the mosque "Oh you people," she said to her maid cover my hair, so the maid said "God Bless you mam, he says "Oh you people" so Om Salama replied "We are among the people". This implies that women were regarded as part

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of the whole society and the whole community.

2- Inheritance:

Yet regarding what has been said about the inequality between men and women in some matters, (e.g. inheritance) it should be noted that women before Islam, could not inherit anything. Women were considered a commodity that was inherited from one generation to the other. Islam divided inheritance according to the responsibility laid on men and women in society. Men were entitled to most of the responsibility in the society in many cases. So it is wrong to perceive this as a sign of inequality between men and women in Islam because shares in inheritance according to the Islamic legislation are varying. In some cases women inherit half of the inheritance and in some other cases they inherit double the men, while in other cases they are equal to men in what they inherit.

Moreover, the Shii Imami doctrine makes the share of women in inheritance quite equal to that of men. This is more compatible with the contemporary economic changes in society.

3- Polygamy

Regarding polygamy, the marriage of more than one wife. It is important to know that Islam made the principle of polygamy as allowed in principle in appearance, but it retained it forbidden in essence. Islam made allowed polygamy with certain conditions as stated in the Holy Quran. The Quran states that polygamy is allowed if the man can equally treat all his women. Yet it also states that if the man cannot treat them equally he should retain only one wife. The Quran was very realistic when dealing with this issue because the holy verse stated that people can never be absolutely equal and it told men that they cannot be equal to more than one women even if they were eager to do so. In the sense, despite the allowance of polygamy in Islam, there has been an essential emphasis on equality.

Before Islam, men used to have many wives. So Islam happened to limit this phenomenon and made it maximum of four wives. It used the technique of gradually abolishing mass polygamy in the Arab society, the same way that was done in abolishing wine and freeing slaves, taking it gradually and not through one act. This was to avoid any social disturbance. The Islamic principle about these things was very much contradictory to the conditions of that age. It could even be said that polygamy according to the rules and principles of the Islamic Shari'a is a kind of a positive discrimination for the favor of women. This is because it has been allowed in certain limited cases with certain conditions to protect women, yet not the same protection or conditions are allowed to men. Among these conditions for polygamy are: the sickness of the wife in a way that would prevent her from continuing the husband wife relationship, the sterility of the wife who cannot have children. If one of these conditions is there, the wife should be consulted and her approval is a must for the man to have another wife. He should give her the chance to choose between staying with him or separating from him if she can

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support herself or she has a place to continue her life. If she agrees to polygamy, he should be very just and fair between the two wives and he should treat them both equally.

However, if the situation were reversed, and the husband is the one who cannot continue the husband wife relationship, he is not allowed the chance to choose the wife's only option will be to separate from him. And at that time he will have no one to take care of him.

4- Divorce

It is a fact that Islam allows the man the right to divorce, but still this allowance is not absolute without constraints. The women on the other hand were not fully deprived of the right to break the marital relationship through the so-called "Khula'."

Regarding the Egyptian Christians divorce, it is in the hands of the judge to decide about it, according to the regulation of the year 1938. The judge decides about this divorce according to the same reasons for divorce of the Muslim Egyptians. This is with the exception of divorce due to the husband's inability to finance the family. The Christian woman could not ask for divorce if the husband declines to finance his family. On the contrary, she is obliged to finance him, if he has no money, according to the article 151 of the regulation of the year 1938. For divorce due to the husband's impotence, the law has a provision that a span of five years should pass to make sure that the condition of the husband is incurable. This is found in article 55 paragraph 2 of the regulation of the year 1938. So still there has been a great deal of discrimination against women, as the wife has to wait a long time to prove her husband's impotence is incurable. This provision disregards the wife's suffering from this case. On the other hand, if the man gets a divorce and she was the one who asked for it, and she was the one who caused it, she would be deprived of the custody of the children according to article 29 paragraph 3 of the regulation of the year 1938. She will also be deprived of the custody of her children if she were not Christian and married to a Christian man.

Moreover, the Christian wife might get a divorce through legal procedures, yet the church rejects the recognition of the divorce, which comes through the judiciary. So this wife cannot remarry again.

Still there have been attempts to reform some of these elements in the Christian legislation because it is very firm about breaking the marital relationship. In some provisions it is impossible to break this relationship no matter how one or two of the parties is suffering.

Second: The Personal Status for Muslims

a- The Organizing Laws:

Organizing the personal status for Muslims in Egypt started in the early 20th century, through a regulation for the organization of the Shari'a courts and other concerned measures. Two royal decrees were issued for that dated December 10, 1920 regarding family financing and some personal status matters and the law number 25 for the year 1929. Since that date personal status laws were not changed, though a number of amendments were introduced, the last by the law number 100 for the year 1985.

A great deal of debate was witnessed lately in Egyptian society regarding the personal status law especially when a certain law was discussed that was assumed by some people as an amendment of the personal status law. Yet the topic being discussed at that time, was an amendment of the procedures of the court in dealing with the personal status matters, it is not an amendment of the law itself. This will be explained later.

The previously mentioned laws were resetting the issues of family financing, divorce, absence of the husband, disappearance of the husband, and the children being named after the father. Many other issues regarding family relationships were discussed, however this paper couldn't enumerate them all. Only a few will be mentioned.

These laws adopted a certain philosophy concerning women. Actually they considered the woman as a kind of commodity that the man can buy. She is only a machine for having children. Women were regarded, as followers to men who submit to their will in everything. The strictest ideas and "fatwas" were taken as grounds for the legislation of the personal status laws. The Quran itself was not regarded as the principle point of reference. Referring to the Quran, the relationship between husbands and wives is based on equality and intimacy i.e. material and psychological stability together with love, passion, mutual respect, mercy and kindness. These laws do not regard any of these moral and humanistic dimensions. The Islamic Shari'a based the construction of the family on the well being of the two partners of the relationship, the husband and the wife. It made the basic cornerstones for a marriage 1) the concession of the two partners and 2) the announcement of this marriage. Without these two principles the marriage does not exist. Even if the parents of both the husband and the wife agree to the marriage and one of the concerned partners objects, this marriage is not a correct one because the Shari'a aims to safeguard love, passion, mercy and stability of the relationship. If it is not found, the Shari'a does not recognize such a marriage. If the relationship between the husband and the wife is severely affected divorce is allowed to men and the Khula' allowed to women.

Regarding the personal status laws since 1925, divorce was allowed only to men without any conditions. Regarding the women, there has been a hint about divorce for paying money, i.e. Khula', without stating any procedures

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that concerns this matter. Consequently this thing remained ambiguous and attracted the attention of very few people who found out about the discrepancy in this. For the judges, they will never allow the chance to apply this.

The law gave women the right to ask for divorce through the judge but it enumerated only five conditions through which women can ask for divorce. To prove one of these conditions it is almost impossible without causing severe harm to the spirit of the husband and wife in the sense that taking legal procedures will abolish all possibilities for passion and mercy between the two partners. On the contrary they will have to hate each other and the outcome will be severe especially regarding raising the children who could be abused by the father or the mother for a retaliation of the other person. Following, the paper will state the five conditions for a divorce and comment on them:

1- Divorce for not Financing the Family

Not paying money or financing the wife is one of the reasons for a divorce. The wife can prove that the husband declined from supporting her by filing an alimony lawsuit to explain her situation to the court, to prove her claim, in order to get a court verdict that he pay her some money. Such a lawsuit might take a number of years until the wife is able to prove her claim and get the court verdict for that money. And still having that kind of court verdict can be approved when asking for a divorce and any other kind of procedures such as police investigations and some other things. All these measures take years and the husband has the right before the verdict is declared by the court (even after years) to announce to the court that he is willing to finance his wife and thus the claim is over. So these are some of the problems when wanting a divorce for this reason.

2- Divorce for Harm

In this case, divorce is granted to the wife, according the law, if she proves the physical or moral harm that would affect her and consequently makes it impossible for marital relationship to continue. Proving the harm is one of the most complicated and difficult procedures. It is also the most humiliating to women and children and sometimes to the man as well. Estimating the amount of harm and its effect on the marital relationship is granted to the judge to decide. Insulting the wife or beating her is considered by one of the judges as a weak claim and it is not the kind of harm that would justify asking for divorce. Other judges think differently and consider such deeds as enough for granting the woman a divorce.

Among the most common procedures in this regard is to see a woman standing in front of her house and calling for the neighbors' help to save her from her husband who is beating her. She gets beaten in the streets in order to be able to have a police station report about the incident and bring witnesses who have seen this beating take place. Having to do such a thing in order to prove to the court that the harm is taking place is very humiliating to the woman and the children. It uncovers all the family relationship and is thus

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very psychologically harmful whether the woman is a real victim of violence or if she is just saying this. This thing became very common now to the point that it lost its credibility. Many women prefer to live with the worst husband and in the worst conditions just to avoid that kind of humiliation. Moreover, those women cannot get a divorce from the man so they live consistently under this kind of torture. In addition there are some measures that are more complicated to prove the impossibility of the continuation of life between the husband and wife that are set in the law as follows:

- Appointing two mediators from the families of the husband and wife or who are close to this couple to help reconcile between the two.
- Two mediators should set the date of the commencement of this effort and the date of their termination. This period should not exceed six months. They could be allowed another time span to continue this effort but it should not exceed three months, after which they will file a report or else they are considered not to have agreed to a reconciliation. The two mediators should know about the reasons behind the dispute between the husband and the wife and try to reconcile things.
- If the two mediators cannot meet an agreement, a third expert is appointed. If this also fails, the court will pursue the verification procedures, which might take a number of years. The court does not decide on a date for filing a report about this.
- If the court is incapable of mediating between the husband and wife, and finds out that it is impossible to continue this marriage and if the wife insists on divorce, the court will grant her a divorce. However she will lose some or all of her financial rights and she might even be forced to pay compensation. This happens despite the fact that the court recognized the impossibility of them continuing as husband and wife and the necessity of divorce.
- Marrying another woman is not a reason for asking for divorce in the court. Only if the second marriage imposes a harm to the first wife she might ask for a divorce. This appeal of hers for that divorce will be under the previously mentioned procedures and measures. The wife will lose her right to ask for a divorce due to harm when her husband marries another woman if one year passes after her notification of that second marriage.

3- Divorce Due to the Absence of the Husband:

If the husband is absent from his wife for one year or more without an accepted reason, the wife has the right to ask for the judge to divorce her due to harm imposed on her because of this absence. If messages can be conducted between the husband and the wife, the judge will give the husband a chance to move his wife to live with him. If the time span decided by the judge is over without a response from the husband, the judge will grant the wife the divorce.

The accepted justification for the husband's absence is something that can be

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estimated by the judge. Travelling for work for a number of years is not a reason. The husband's absence is proven either by confirming that the husband is lost somewhere and that is done through a court verdict that is issued after four years of the husband's absence. There should be no ways of communication with him or getting any information about him during the four years thus the court will issue its verdict saying that he is probably deceased.

If the husband leaves or immigrates for not less than seven years without leaving any trace to follow him, the court might issue a verdict of divorce. However proving this might take long investigations by the police and of course police stations do not respond easily for that kind of measure.

4- Provisions about the wife of the lost husband:

Here we enclose a number of provisions regarding the wife of the lost husband. It is very astonishing that the current legal system deals with women as possessions of the husband; in the sense that if the husband is missing, the wife is the "thing" that belongs to that missing person in the eyes of the law. The legislator has set a number of provisions to settle the dispute on that aspect without any consideration to the will of the wife or asking her about her response to the absence of her husband. Such provisions include the following:

- If wife of the missing person was not married to someone else after considering him dead, she could be returned to him if he returns alive without a new marriage contract.
- If the wife of the missing person has married another person after considering him dead, and he is back alive and the new husband did not start the marital relationship with her she eventually returns to the former husband.
- If the wife of the missing person married someone else and she started her marital life with her new husband and her new husband had good intentions not knowing that the former husband is alive at the time of the contract or before starting his relationship with her, the wife will remain with the second husband
- If the wife takes a new husband and he started his relationship with her on bad intentions knowing that her first husband is alive she will be returned to the first husband.

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5- Divorce Due to the Detention of the husband:

The woman has the right to ask for divorce if her husband is sentenced by one of the freedom constraining penalties for a period of three years or more.

She has right to ask for a divorce after one year of his detention in prison. At that point the wife cannot be granted a divorce until a final court verdict is issued for that husband for at least three years of imprisonment. This means that all levels of court appeals are finished. Such court appeals might take a number of years before a final verdict is issued. Women have no choice but to wait for the final verdict and this verdict should be at least for three years. However if it is less she will have to wait until he finishes his imprisonment and she will have no right to ask for a divorce at that time.

Yet if all conditions were in her favor she has to wait for a whole year of the three years of the husband's imprisonment until she asks for her divorce. There is no justification for this one-year delay but still the court does not consider that a three years verdict for the husband is enough. She has to wait for the whole period of the trial and a whole year after the verdict.

This provision ignores greatly the shock that the wife would have about her husband and how she loses confidence in their relationship and loses trust in him. This kind of regulation also ignores the moral harm to the wife who will be married to a criminal. If the legislator was keen about considering the feelings of this criminal husband who should not be shocked for seeing his wife asking for divorce what about the wife whose sentiments and feelings are severely damaged?

6- Divorce for the Husband's Impotence or Illness

The woman has the right to ask for divorce if the husband has any kind of illness that will hinder the possibility of continuation of the marital relationship. Yet she loses the right to divorce one year passes after she is notified of his illness.

The legislator considered that if one year passes after the wife knows about her husband's illness, it means that she had an implicit acceptance of this. The legislator did not consider that she might have been waiting for a whole year hoping that the husband will recover. This kind of prospective can be interpreted as a hostile thing that provokes wives not to attempt to cure their men or help them, or else the wife will lose the right for divorce. If the wife neglects her husband and does not attempt to cure him the legislator will award her with a divorce.

On the contrary one who remains patient with her man for a whole year will loose her rights afterwards for that divorce. In the sense the wife who is confronted with that situation will have to ask for divorce promptly. And proving that the husband is incompetent or has an illness that will prevent the marital relationship to continue is another obstacle to overcome.

b- Custody for the Money of the Adolescent:

Based on the legislator's position as considering the woman as a follower to the man who does not have enough mental capabilities to manage things, the legislator does not give the woman the right to look after her children's money if the father dies. She will not have the legal status over them and consequently she will have no right of dealing with the money. The man in custody of those children will be the father or the grandfather from father's side. The only consideration for this custody is the moral obligation and the known limits of the law.

Yet if the mother dies the father of the children will be superior over their money and his authority over his children will be very vast and not limited by the moral obligations and the gender rules of law. The legislator assumes that the father is totally honest and totally keen on the money of his children while the mother is not.

So, if the mother is appointed the custody over her children, this takes some legal procedures because the custodian will be appointed through the legal system to monitor and manage the money of the adolescent.

The custodian must have a court verdict when he starts any kind of transactions with that money starting with feeding the children and all other details for the investment of their money. As the legislator considers that the mother is not fully competent to do these measures and could be influenced by others in a way that harms the children, it stipulates a court verdict for every transaction that takes place.

Of course when the father dies there is eventually a struggle between the grandfather and the mother because the grandfather will be in charge of the children as "wali" (supervisor) while the mother will be a custodian. In many cases this struggle is settled in the grandfather's favor that might be the main cause for destroying the financial position of his grandchildren. Sometimes he will take all the money and deprives them even of their right to an education.

Third: Amendments of the Litigation Procedures in Personal Law no. 1 for the year 2000

Lately the Egyptian community has witnessed a great deal of debate about the law of legal procedures regarding personal status matters. This new law has been tackled in all forms of media. All these deliberations showed a great deal of mix ups in the minds of the people between this law which deals with the procedures of the court system (i.e. the measure that should be followed in launching the lawsuits regarding personal status and how to ratify marriage contracts and other matters on one hand and the personal status law itself on the other hand) which shows an objective law that regulates relationship between the different members of the family. Many people thought that the

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amendments of the legal procedures of the law were an attempt to change the personal status law itself. It should be pointed out that despite the fact that these new amendments did not satisfy the ambitions of those who wanted to introduce more changes to the law to make it more just, as stated in the Holy Quran, this law made some great changes in some areas which will be explained in detail as follows:

1- Al Khula'

- Article (20)

Article 20 of the law states that

"For the husband and the wife, they have the right to agree on the Khula'. If they do not agree to it and the wife filed a lawsuit to demand it to pay for herself by giving away all her financial rights and give the husband back the money he paid for her at the beginning of the marriage, the court will give her the divorce, i.e. the Khula'.

The court does not grant a divorce through the Khula' unless an attempt is made to reconcile between the husband and the wife. The court will appoint two mediators to pursue the reconciliation between the two parties in a period that does not exceed 3 months, according to Paragraph 2 of article 2 of article 18 and paragraph 1 and 2 of article 19 of this law.

If the wife states that she hates her husband, and that there is no way for continuing the marital life between the two of them, and that she fears that she will not follow God's teachings when dealing with her husband because she hates him, the Khula' will be granted to her.

Dropping the custody of the mother over her children and their right for a financial support from the father can not be assumed as a price in return for the Khula'. The Khula' does not mean that the woman has to abandon any of these rights. When the Khula' takes place, it is considered as a final divorce.

The Verdict of the Khula' in all cases is unquestionable by any means of another court appeal. The husband cannot take the Khula' verdict to a higher court.

- Articles (6) and (24)

The Khula' is the abolition of the marital status through the wife's will in return for a tangible item. The Khula' is nothing new in the Egyptian personal status law because of the following reasons:

- Al Khula' has been stated before in the regulation for the organization for the religious courts.
- The system of Khula' that has been stated by the Islamic Shari'a has been found in that regulation (law no. 78 for the year 1931) in two articles, which are article 6 and 24. Yet, it was not legally organized in

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the way that makes it applicable.

Article 6 says that “the concerned courts are to see the issue and come up with a primary resolution in the disputes regarding the following matters: Marriage and all relevant issues, marriage, Khula’, and Mubaraa (i.e. the wife takes her freedom by giving away all her rights before the husband), and the separation between the husband and the wife in all its religious reasons.

Article 24 states that “the lawsuit is forwarded to the court where the concerned party is resident, whether it be the wife, the mother, or the one in custody of the children in the issues of divorce, Khula’, and Mubaraa.

The legislator thought that the society needed to regulate a legal system, that shows the way where the Khula’ can be applied, because this kind of divorce will enable the husband to restore the money that he paid at the beginning of the marriage as a “Mah’r”, and it will save him the burden of any legal financial rights he should pay to his wife. In this sense, he will not be harmed in any way because continuing to live with his wife after she decides to get a Khula’ from him will be an absolute harm for this husband. This would violate the religious legal rule that forbids harm and harming.

This system will also help the wife who can not continue to live with her husband. It will help her to set herself free, when she hates living with him. This Khula’ will protect her from committing a sin, violating his right as a husband or violating the rules of God because of such hate.

The explanatory memorandum for this law emphasizes the former ideas because it has a comment on the law. It says “on the bases of the social vision of the law, and within the limitation for a procedural law, the following has been invented: organization of the procedures of khula’ according to the rules and provisions of the Islamic Shari’a”.

Comment on the text of the articles:

The text of this article says that the religious legal base of Al Khula’ is the consent between the husband and the wife. If they do not reach such an agreement and the wife calls for the khula’ before the court, the judge would grant her that khula’, yet, with certain conditions:

The wife should pay for her freedom and get the Khula’ from her husband by giving away all her legal financial rights, which include the money paid at the end of the marriage (Moakhar), the money given to her in the period directly after the divorce, the money paid for the period of the marriage (Motaa) and all that he paid in the beginning of marriage (Mah’r)”...

This goes that way despite the fact that Hadith that has been narrated about Prophet Mohamed to have asked the wife of Thabet Ibn Quayes, if she would give her husband back his garden (for a Khula’), and she said “yes, and even more”. So, the Prophet said “yes for the garden, but for what is more, it is not

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to be given." This in itself is a regulation set by the Prophet, meaning that setting a divorce should be limited to only what was given at the beginning of the marriage (the Mah'r) and what the husband paid her, but not more of her financial rights.

A comment is due on the attempt of the judge to reconcile between the husband and the wife according to article 18 paragraph 2, and article 19 paragraphs 1 and 2.

These articles said that the judge is committed to exert all possible efforts to reconcile between the husband and the wife. He should propose reconciliation at least twice, with a time span not less than 30 days and not more than 60 days between each, if the couple happened to have children the court should assign both the husband and the wife to name a mediator from his and her family. If this was not settled, the court would appoint mediators from their families.

The mission of the mediators is to find out the real causes of the dispute between the husband and the wife, and try to abolish the elements of disagreement and hatred between the two.

Such procedures violate the religious legal wisdom of the Khula' as a right of the woman parallel to the right of the man in divorce. In this sense, the legislator was submitted to the social pressures and the surrounding conservation currents in the society, which would not accept treating woman as full human beings. They would welcome a situation that violates the Shari'a itself in order to preserve this mentality. Some people think that some texts and rules of the Shari'a could be postponed or hindered to satisfy such social conservation.

2- The Struggle upon the Wife Travelling Abroad

Article 1 of the decree had in its second paragraph a point about the specialty of the temporary matters judge in primary courts and his entitlement to issue an order on a lawsuit in personal status matters. Such an order is limited to a number of issues enumerated by that text. In article 5 of this document, there is the issue of "disputes on traveling abroad" and the judge's right to issue an order to hear from the concerned parties.

It is known that the judge of the temporary matters is the head of the primary court. The party who wants to have an order on a lawsuit submitted at his request, with his events enumerated and proofs presented could file all this to the court and accompany it with all the supporting documents.

The temporary matters judge will issue the order without hearing from the one who is the opponent of this matter. He would do that because the law does not stipulate that the other party (the wife) should attend.

The law stipulates that the judge issues his order in writing on one of the two

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copies of the lawsuit. He does not have to mention the reasons upon which he constructed his order. This will include a temporary procedure or a precautionary one in the issues that require speed and punctuality, without harming the essence of the disputed right.

The issue of the wife traveling abroad was subject to many discussions and debates that came up with the idea of making this issue under the authority of the temporary matters judge. It is important to note that this regulation violates the concept of citizenship, because getting a passport is one of the human rights regardless of gender. The passport is a legal document, similar to the personal ID, which should not be objected by any party other than its holder. Yet, the legal framework and the legal wording of this text emphasizes the idea that the legislator wanted to give the temporary issues (that are dealt with by the temporary issues judge regarding travelling abroad) some new form and a special legislation that is separate and different from what has been there in the general provisions of the civil and trade laws. As explained before, making the order on the lawsuit document without hearing from the other party and without requesting the attendance of that party is a controversial matter. On the other hand, the current text (of the new law) says that it is required to hear from the people of concern, i.e. the one that asked for the order should attend as well as the one whom the order is supposed to be against.

So, it becomes a must to notify the one whom the order is against that this person should attend with the one who submitted the request. Each of them will forward his or her proofs and clarifications about the issue being tackled.

This kind of arrangement is intentionally designed by the legislator to violate the right of the woman who wishes to travel for an important matter. Even if she wanted to travel and the travelling date was settled, she could be prevented from mounting her plane at the very last minute because the husband is against that. This happens so continuously. If the wife at that time would ask for an order from that judge and made the necessary procedures to notify the opponent (the husband) to attend and discuss the issue, the appropriate time for the travel would be over and the objective of it would be ended.

As the text did not specify which party is to refer to the temporary matters judge to get that legal order against the other party, it means that the basic element is to grant the right of travel to both parties of the dispute and the one objecting could refer to the judge to prevent the other from travelling. In this sense, the woman can refer to the temporary matters judge-according to this text-to prevent her husband from travelling abroad if this would violate his family obligations. So, it is the suggestion that the legislator should have left the issue of travelling and moving to the family (the husband and the wife) so that they would decide between themselves about it with or without the intervention of any external party (even the judicial one). This is important, especially as this issue is concerned with the topic of "limitations" in its

political sense-not the mere issue of travelling. There is a great deal of difference between travelling to Halayeb (border of Egypt and Sudan), to Salloum (border of Egypt and Libya) because the distance varies. It is a fact that travelling to Aswan or Toshki is much further in distance than travelling to Jordan.

3- Divorce from the Orfi Marriage

In article 17 paragraph 3, the law states that "the court appeal for divorce or separation is accepted in all cases if the marriage was proven by any means of writing".

- The explanatory memorandum of the law emphasizes that the verdict for divorce in the Orfi marriage cases does not have an effect beyond ending the marital bond of this marriage,. It is said that this will allow the woman to have another legal documented marriage and has no implications and effects that accompany the legal official documented marriages.
- The text of this paragraph was decisive about certain judicial and "Fikhi" disputes that arose from the text of article 99 of the regulations for the organization of the religious courts. It also decided about the contradictions between paragraphs 1 and 4 of the text.
- Yet, the current legislator made the same mistake that was made 59 years ago in the 1931 regulation (which has been cancelled). The legislation rendered the issue of the Orfi marriage so obscure to the extent that nobody can tell whether this text recognizes the Orfi marriage as a fully constructed marriage or somehow denies it.
- This kind of marriage, the Orfi one, has spread in our society for certain reasons. The legislator should have protected the rights of all parties and made all marriage lawsuits equal to each other without exception.
- The legislator could have converted the Orfi marriage to a civil marriage and given it the allowance to be documented before the concerned civil authorities and not before the Maazoun. Later, the civil marriage could be announced in the newspapers to make it public. If this was the case, Orfi marriage would have been granted enough legal protection to safeguard the legal and the financial rights of the woman, as long as the Islamic Sharia' has approved this marriage, provided that all conditions and factors are legally satisfied.
- With this kind of text, the legislator stops the manipulation and the abuse of the marriage by some badly intentioned people.
- The logic, adopted by the legislator in this law, was to close the current cases and open a state of mercy to the badly treated women from such kind of marriage, is truly naïve and short-sighted. Then, either women are entitled to have a good marriage that would safeguard their rights and their dignity, with all the legal and religious conditions satisfied, and in this case it is not important which kind of paper is used to document it, or it is nothing but a vast explicit adulatory that should have no legal

implication whatsoever.

4- The Impossibility of Proving Divorce when Denial, Except with Witnesses and Documentation

In article 21 of the law, it has been stated that "divorce cannot be proven in case of husband's denial of it unless there are witnesses and documentation."

In this text, the legislator invents a new resolution, which implies that the divorce cannot be legally recognized unless there has been witnesses for it and a document. This is equal to the marriage that has not been legally recognized since the issuance of the regulation for the organization of religious courts in 1931, unless it is officially documented, to avoid many problems that arose lately because some husbands would, for certain reasons, deny that they have divorced their wives. So the wife would have to go to the court to prove that she has been divorced in the way the doctrine Imam Abu Hanifa states. The divorce could be proven through witnesses or the oath.

With this newly introduced law, if the husband verbally divorces his wife and refuses to document this divorce and has witnesses for it, the wife would not be considered as divorced. This would prevent the husband from using the word of divorce easily and carelessly for some inappropriate reasons, as threat to the wives so they do not disobey their husbands, as long as they are under such a threat of divorce. In this case, the use of the word of divorce will be returned to its appropriate position as a sign for a final agreement to end the marital relationship, restore its respect and dignity, and protect it against being abused for shallow and careless reasons.

5- The Family Court

The legislator has newly introduced the family court system to examine the various disputes that take place among spouses. This court is concerned with all disputes that emerge between spouses, in order to avert having recourse to several courts.

- The establishment of a family court, which examines, before one judge, all the cases that come out from divorce cases, achieves a better speed and a more impartial justice.
- In order to enable this court to pass final verdicts in all these cases, this court is authorized according to this law to issue, while the cases are still in process, temporary verdicts regarding the vision or granting a temporary alimony or modifying what it had already decided about the value of the alimony (either by decreasing or increasing) until it passes a decisive verdict. Furthermore, it is not admissible to appear against the temporary verdicts in these three issues prior to the issuance of the final verdict.
- Thus the legislator has heeded that these three issues may need some

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alacrity in their temporary settlements, the thing that could not be postponed until the final verdict has been decreed in all cases.

- This provision is newly introduced and is deemed an exception among the general verdicts in the code of arguments, which allows appealing against the decreed verdicts and is suitable of being compulsive executed and the temporary verdicts as well.
- This manifests the legislator's keenness to prevent the breaking down the case into fragments and dispersing them among courts; the thing that results in obstructing the settlement of the dispute and prolonging the litigation period which overburdens the two involved parties.

The legislator has compelled the courts, whether they are courts of first instance or partial courts in which cases pertinent to alimonies or wages or custody or vision or the place of the guardianship, are originally filed to refer them to the locally specialized courts in examining the divorce or divorcing or corporeal separation, so that a single conclusive verdict may be reached in all of them.

Despite the procedural problems that arise by implementation, the assembling of all cases in one court is an important procedural amelioration of the system.

6- Abrogating objection as a means of appealing:

- The provision of article 56:

The means of appealing against the verdicts and the specified edicts in this law are appealing, reversing and requesting reexamination

Concerning the issues whereof no specific verdict has been disclosed in the following articles, the rules and procedures stated in the civil and commercial argument codes should be complied with.

- Commentary:

- It is clear from the aforementioned provision that the legislator has limited the appeals channel to three ways; namely, appealing, reversing and requesting reexamination. Accordingly the legislator has abrogated one of the appealing methods concerning in-absence verdicts in personal status that has been listed by the code of arguments of the religious courts, and that is the objection. This is in effect a favorable action on the legislator's part since objection in the in-absence verdicts lead in practice to needless prolonging of the litigation period and overburden of the parties involved.
- It is really astounding that in the past the legislation procedures in personal status cases that requires a considerable degree of speed in order for the verdicts to be settled in consideration of the stringent circumstances associated with this kind of cases, used to take longer

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than the litigation procedures in other types of cases due to the addition of a fourth way for it via the objection against the in-absence verdict.

7- Divorce Verdicts and Appealing Against them:

- The provision of article 63:

The verdicts decreeing the revocation or annulment of marriage contracts or divorcing shouldn't be executed unless the appealing dates are passed by means of reversing. Thus, if it is appealed against within the appealing period it's suspension continues until a decisive decision is made.

- The head of the court or whoever is his deputy has to specify a session to directly examine the appeal in front of the court in a period that should not exceed 60 days starting from the date of submitting the appealing petition. The public prosecution has to turn in a memorandum of its assessment in 30 days at most before the session in which the appeal will be considered is convened.
- If the court reversed the verdict it has to decide on the issue.

Commentary:

- This provision included a crucial verdict that the Egyptian family has invariably been suffering from, due to the lack of a provision capable of confronting it in the legislation. This is exemplified in what this provision comprised concerning the sustention of executing the verdicts decreeing the revocation or annulment or the marriage contracts, divorce, or divorcing, if it appealed against by means of reversing.
- The legislator has eradicated a problem that afflicted some of the divorced women who married after the passing of the verdict of the court of appeal decreeing their divorce, and who used to suffer when the court of cassation ordained the separation of the wife and the new husband as she might have had children from him.
- The legislator has regulated this so that if any of these verdicts have been appealed against, this verdict should not be executed until it has been decided on the appeal.
- The head of the court should set a session for examining the appeal in 60 days at most following the submission of the appealing report.
- The prosecution is obligated to submit a memorandum about its assessment of the appeal in 30 days prior to the session. If the court reversed the verdict it has to decide on the issue, in order to avoid returning the cases again to the court of appeal, that may lead to prolonging the period of litigation and overburdens women. The legislator diminished a great embarrassment that some women used to have.
- In spite of the fact that the provision compels the head of the court to set a session for examining the appeal in 60days at most, it is deficient because it did not regulate the invalidity or falsification or any form of

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punishment for not keeping this date, that may practically lead to the prolongation of the examination by the court of cassation.

- In order to achieve the purpose of this provision, it is necessary that the Ministry of Justice establishes authorities affiliated with the court of cassation for this specific kind of cases.

Fourth: The Role of the Egyptian Center for Women's Rights

A "Legal Aid Program" was established by the Egyptian Center for Women's Rights to detect these kinds of problems that face women to help those who are exposed to psychological or corporeal violence from their husbands, families or any other party.

This program aims at:

- 1- Create public awareness for women rights as part of human rights, so that a strong woman is that person that some body could rely on and can defend her rights and the rights of others.
- 2- Detect violence against women through individuals or the society as a whole.
- 3- Break the psychological constraint in women when reaching their rights through legal channels.

The Legal Aid Program is divided into three main parts, namely training, legal aid and publications.

1- The Training

The training targets various information spreading factors such as teachers for adult education, doctors in health clinics...etc. through holding legal training sessions that are based on discussion and practice mode rather than in lecture mode. Each training lasts for two to three days and targets 25 women. The training discusses many laws related to the daily life of the Egyptian women, aiming at spreading a critical view of laws as a first step toward creating a public awareness against laws that contain discrimination against women.

2- Legal Aid

ECWR offers legal assistance to those impoverished women who cannot afford an attorney. Our lawyers include the woman in the procedure in order to familiarize them with it. ECWR helps those women in following such procedures because in case of achieving success, this success greatly effects their personality, thus making them strong and capable to face the problems. Thus she could be appointed to implement regulations that would not lead to any harm if failed but a great change of her personality, if succeeded.

3- Publications

The program attempts to spread the legal awareness among the largest number of women. Therefore, it issued series of booklets (A-B law) which

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contain several volumes out of which each volume contains an explanation for an important legal issue or topic in simple language that women could understand. These series also contain some forms of legal papers to enable women recognize them whenever they need, in addition so some caricature drawings to simplify the complicated legal language.

4- Implications and Case Studies Extracted from the Legal Aid Program

- Training:

As mentioned above, ECWR carries out legal awareness training sessions discussing the most important laws that concern women and women's rights. These sessions are based on discussions and not lectures. This training is offered to teachers and doctors. As a result of the success of these training sessions, many men demanded to participate in them. ECWR found no objection to this, but held to the basis that the majority of the attendees were women. A couple of the many comments we have received from these men were:

"I don't know what you did to my wife, she was always crying, with no solutions. But now she became strong and reliable. Thank you"

"I came to the center and I was imagining that women's rights meant the deduction of men's rights. But now I have learned that they are an addition to men's rights, and the strong woman is much better than the weak woman, she could defend her rights and other's as well."

In addition to these testimonies, they also found that ECWR's work is not only considered as a message to women, but also for the whole society. They believe that women's rights should be respected as a human being's regardless of the gender.

. One of the Most Important Results of the Training

The woman was able to oblige her husband's employer to let him work, and his colleagues as well without any kind of threat.

The story starts after a woman had attended a training session discussing the laws concerned with checks and the dangerous it is to sign uncovered ones. Suddenly this woman contacted her husband and demanded he left work to come and meet her immediately. Her husband is working as a salesman in a company that forces him and his colleagues to sign uncovered checks as insurance for goods in their hands. If they refuse, they were fired.

After the explanation of the dangers of the matter, the woman asked her husband to withdraw the checks he signed even if it meant he had to leave his work. When he did this, he was going to be fired, however nine other employees stood by him and in the end the manager gave in and took out the check signing policy.

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This led to a great change of the relationship between this wife and her husband, to more respect of the husband and his friends to the wife, and their feeling of her strength and importance, not only as a maid in the house nor a child raising mother, but also as a partner in life with more awareness as they have.

- Legal Assistance

The legal assistance does not offer only assistance to poor women, but tries to give them more self-confidence and help them to rely on her selves, even in very difficult situations concerning their legal rights. Below are a few cases studies which serve as a positive example of how these women are empowered and helped.

. Case 1: Mrs. F.S.

This young woman is 20 years of age and lives in a popular area in Cairo with her family. They live below the poverty line and she believed that marriage would take her out of the poor life she leads. She got married and moved to live with her husband in Mansoura in the Dakahlia governorate. After the birth of her first child, she started noticing changed behavior from her husband. He used to spend days outside the house that led to disputes between them. One time, he kicked her out after midnight without any money and with her baby. She could not go back to Cairo as she had no money on her. She stayed in the streets crying until someone sympathized with her and helped her to go back to her family in Cairo.

As she came with one of her relatives to the Center asking for judicial help in filing for a divorce. She was completely desperate and depressed. She said that her husband and his mother threatened to leave her "hanging in the air" without divorce. And he will start another life again and leave her stranded.

The ECWR lawyers filed a divorce lawsuit for her and were able to obtain a ruling after only 40 days. When she heard the ruling she cried out hysterically in the court room from happiness not able to believe that she has been released from the prison of marriage she was in. Then she insisted to file more lawsuits in order to obtain the rest of her rights from her husband. Her husband then came to the center asking to resolve matters amicably, and to give her all her rights without resorting to the courts.

. Case 2: W.G.

She is 24 years old and she is married to a government employee. After having gotten married, she was surprised at the strange behavior of her husband. He would come home late and at times would spend weeks outside the house without notifying her. When she questioned him about his strange behavior, he told her that he is ill and has bad spirits inside of him. He claimed that he cannot work and sleeps in places he does not recognize.

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Due to her illiteracy and lack of education, she believed him, and tried to treat him for many years. She started working as a servant in homes to make some money. She also sold her gold and her furniture in order to take him to be treated. After five years she discovered that he was lying to her and he was married to another woman.

Some friends brought her to the center to file an alimony lawsuit. She helped the Center in some arrangements such as proving the income of the husband. She had to apply at the police station for someone to accompany her to her husband's workplace. At the beginning she was afraid to enter the police station, thinking that anyone who goes there will be put in prison. but she discovered that this was not the case and that she has rights and that these rights will protect her. She was able to prove her husband's income, which amounted to 1000 LE per month.

The courts ruled in her favor, and she obtained an alimony rule of 250 LE per month. Actually this amount is considered very large in Egypt. Our lawyers would have never been able to obtain such a rule without the help of this woman and the changes that happened in her character.

Case 3: S.B.

She lived with her husband and his family in a house in Oussim, a village outside Cairo. Her husband and his family, especially the mother in law, used to harm her physically and verbally and beat her regularly. One time he beat her and kicked out of the house and did not let her take her children with her. She hesitated before entering the police station, but finally she did. When she went to file a complaint, the policeman on duty yelled at her and condemned her for trying to get her husband in trouble. She obtained no support from the police station, instead she was reproached of her right to file a complaint at the abuse she was facing.

She heard about our center through the legal awareness sessions we convened in the villages. She came to the center the next day and one of our lawyers accompanied her to the police station and applied a statement against her husband for beating her and for taking her children, who are still legally under her custody. She asked the center to help her to obtain a divorce and to get her kids back. The center helped her but insisted that she needs to be part of the process. It turned out that she played an important role. She was able to make investigations which proved that her husband had two jobs and that he owned property, and this helped a great deal in the alimony rule.

The center helped her carry out the following:

- 1- Filing a divorce lawsuit which was ruled in her favor.
- 2- Filing wife alimony and child support which were also ruled in her favor.
- 3- Filing a custody lawsuit which was ruled in her favor after only one month.
- 4- Her husband sent her an obedience notice. This was opposed by our lawyers and was cancelled after the divorce rule was presented to the

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police.

These are a few examples of what these women face. Verbal and physical abuse is very common in these societies. Men are brought up to believe that this is their right and they can treat the woman however they like. The obedience law shows that the state supports this attitude of treating women as second class citizens. Therefore, it is important for women to learn their rights and to be comfortable to express them. The Legal Aid Program helps do this through its legal training, legal aid and counseling as well as its publications.