

100 Years of negotiations on "personal status"

Editing & Introduction

Aida Seif Elldawla

Prepared By

Sarah Kadry

Asmaa Naem

100 Years of negotiations on "personal status"

Editing & Introduction

Aida Seif Elldawla

Prepared By

Sarah Kadry

Asmaa Naem

Preface

At first glance, it would seem strange that it would take a century - without a decision - to discuss how to organize the lives of two adults who decided to marry and form a family, irrespective of whether the project of this relationship succeeded or ended in separation. What is logical is for the two parties to agree on what is expected and required of each, whether in the event of harmony or disagreement, as is the case in all contracts. But the situation is completely different when it comes to personal status law.

Although contracts are generally concluded between parties of equal capacity, rights, and duties, this point is precisely the source of disagreement in the case of personal status laws.

Society and all its institutions do not consider the two parties to a marriage contract to be equal, neither in capacity, nor in responsibility, nor in rights, nor in duties. This is because one of the parties to the contract, according to the prevailing belief, is the man, the well-off, the breadwinner, the rational one, the one in control of his feelings, the logical one in his thoughts and decisions, the one responsible for the family and therefore the one who has the right to make the decision and implement it and the one who has the absolute right to unilaterally terminate the contract if he deems it so. The second party, the woman, is - also according to popular belief - the weaker party, dependent, emotional in her decisions, unable to control her feelings, and dependent.

In light of this perception and the resulting division of roles between women and men, it is expected that any law regulating the relationship between them will ensure the protection of women, who are supposed to be the weaker party. For example, it should protect them from unilateral divorce by the man, or him taking a second wife, with the resulting harm to the first wife, or

explicitly criminalizing the violence of the stronger party against the weaker one - until now, despite many demands from Egyptian civil society in general and women's organizations in particular both parliament and the state refrain from issuing a law criminalizing domestic violence - or guaranteeing the weaker party - the wife - the husband's support of her and their children, which many husbands are able to evade in the event of separation - and even in the event of no separation, where official statistics indicate that more than ٣٠٪ of Egyptian families are supported by women alone, either due to the husband's unemployment or his failure to spend for any reason, and sometimes for no reason.

The problem with this perception and this unbalanced contract is that it is a perception that has no relation to reality, even if the majority of society and its various institutions agree to claim otherwise. The matter is not related to regulating a relationship between a man and a woman. but by organizing that relationship in a way that preserves the value system of society and the roles expected of each, even if the details of daily life in many cases reflect another story. In fact - although it is described as a "personal" status law - there is almost nothing "personal" in these laws. The parties to the contract extend beyond the two parties to the contract, not only to the families of the parties, but also to the influential and controlling political, religious, and social forces in society.

The law does not provide protection for the weaker party, but rather controls her in favor of the stronger party, because that stronger party is the one who rules and controls, not only the relationship between two people, but also the entire society that clings to its masculinity and the superiority of its men, literally or intellectually. The question that arises here is: why this desire to control the weaker party? Isn›t it more logical that we seek to control the stronger party? Unless society realizes that women are not as weak as they wish, and therefore they must be tightly controlled.

The ultimate goal, then, is to maintain control over the status quo in society, and the power relationships that exist between men and women, and between the secular and progressive social elements on the one hand and the ruling, religious and conservative political elements on the other hand, and to make concessions only when the demands threaten to cause turmoil that threatens

the stability of the status quo, or based on the dictates or requirements of international players whose donations and aid are conditional on certain aspects of change.

Personal status law is not the only issue around which this political-religious debate revolves. Women›s rights, their private lives, and their bodies have always been the arena for debate, negotiation, and calculations between influential forces, especially between political and religious forces. It is the area in which each party tries to prove that it has the upper hand and that it is the one who draws the lines of what is permitted or prohibited. The debate that took place over female circumcision over decades and witnessed its climax at the International Conference on Population and Development in 1994 was only an example of this, until representatives of both parties - political and religious, which included Muslims and Copts - reached a compromise that criminalized the practice of female circumcision in public hospitals without prejudice to the interests of Doctors who practice it in private clinics, so it seemed like a victory for both parties, although in the end it did not lead to a clear condemnation of this type of violence against girls, nor did it affect the societal perception of the role of both women and men in their intimate relationship. This is just one example.

The objection to the equality of women and men in marital relations is based on something agreed upon between political, religious and legislative decision-makers that no law may conflict with the teachings of Islamic Sharia'a. We will not enter into discussions about the various interpretations of Sharia'a law and what legislators chose as their reference. We will limit ourselves here to one example in which legislators abandoned Sharia'a as a reference in favor of the male community, who are the ones who control most authorities in the country. According to Sharia'a law, adultery is a crime that is punishable for both the adulterous man and the adulterous woman. How can the text be modified to serve the gender hierarchy in society? By modifying the definition of adultery itself! The law considers a woman to be an adulterous wife regardless of the place where she committed adultery. As for a man, he is not considered an adulterer unless he commits this betrayal in the marital bed.

What does the law thereby advise men? According to a veteran Egyptian

lawyer, it tells them: If you must commit adultery, choose a place other than the marital bed. But of course this was not the stated explanation. Rather, the stated explanation was that this other woman might be his second wife, which is what the Sharia'a permits him to do. This is just an example of the subordination of the religious text itself to the direct interests of the "stronger" half of society.

In our opinion, the attempt to agree on a personal status law that guarantees equality, dignity, and decision-making power for both parties will require, sooner or later, that a "civil personal status law" be a demand capable of presenting itself forcefully and without political, religious, or patriarchal blackmail in the face of the political and religious insistence that the relationship between men and women in society remains hierarchical, even if it results in injustice. Sooner or later, women›s voices will rise, demanding their rights in marital relationships that respect their identity and choices as individuals. Also, sooner or later, the voices of men will rise who will realize that the voluntary continuation of marital life between two parties who have equal rights to establish or terminate it is the most honorable and most respectful of their humanity and manhood.

The following paper is divided into two sections: The first presents the development of personal status laws in Egypt from the ١٩٢٠s to the present day, against the background of the political and activism context existing at each stage, and the positions of the main stakeholders during those discussions and what they have reached at the present time, with a focus on how this impacts women's lives.

The second section deals in detail with these laws and the numerous amendments that were issued over a century



Section One

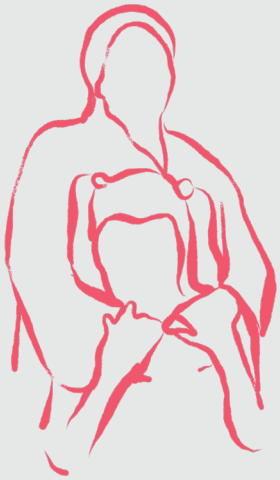
Historical context of the negotiation of personal status law and the role of the different parties

Introduction

In January 2024, Mariam Magdy, a Muslim mother of two, went missing for almost one week in Switzerland. Mariam traveled to Switzerland following the abduction of her two daughters by their father, Mariam's former partner. The father decided to abduct his two daughters to Switzerland without the knowledge or consent of the mother. Under Egyptian law, specifically the personal status law governing such cases, the father is allowed to "abduct" his children and travel with them without the mother›s consent. Mariam followed her daughters to Switzerland and filed several complaints against her former spouse to gain access to see her daughters. Mariam disappeared on the day she was supposed to see her daughters. The Swiss police discovered Mariam›s lifeless body after several days.[1] Mariam Magdy traveled thousands of miles to see her daughters because the Egyptian personal status law does not uphold her right to custody of her children, thus allowing former husbands to "abduct" and travel with their children with impunity. On the other hand, if the father had notified the legal authorities at the Egyptian airport preventing his children from travel,Mariam would not be able to travel with her daughters. Mariam's story is not an isolated case; it is one unfortunate

1 https://shorturl.at/hAGOS

example among hundreds of custody cases in Egypt. Egyptian women suffer from outdated laws that still control the realities of their lives.



In 1986, Amal, a Muslim mother of two children, stood before an Egyptian courtroom, desperately seeking a divorce after enduring a decade of physical abuse in her marriage. Despite the testimony of two witnesses corroborating Amal's account that her husband was indeed physically abusive, including instances where he would violently grab her hair, the court ruled in favor of the husband and mandated that Amal pay court fees[2]. Unfortunately, stories like Amal and Mariam's are not uncommon. Across Egypt, numerous women find themselves trapped in unbearable marital situations, with the legal system offering restricted resources.

At the intersection of these stories stand two integral entities: the state and religious institutions, both wielding significant influence over the shaping of personal status laws. The cases of Mariam, Amal, and countless others highlight how religion-based family law in Egypt not only diminishes women's autonomy in charting their own personal trajectory, but also plays a pivotal role in regulating what is considered the ‹private› sphere. When such laws exhibit a bias towards men or are less favorable to women, they must be recognized as fundamental to perpetuating patriarchal structures and values essential for the maintenance of the authoritarian Egyptian state's control over women's lives.

Hence, personal status laws should not be interpreted as a neutral set of regulations. Serving as public reflections of "private issues", personal status laws, with their juridical autonomy, empower the Egyptian state to regulate both religious and gender disparities in ways that constrain the possibilities for feminist and interreligious solidarity. Furthermore, they serve as a

2 Tarek Kahlil. "Wife asks for divorce because husband grabs her from her hair, but a court rules against her", Al-Gomhoreya. 9 August 1986.

depiction of the envisioned and ideal 'authentic' Egyptian family structure, dictating acceptable relations of power between men and women. While some advocate for the legal pluralism underlying these laws to uphold the right to freedom of religion, others argue that such pluralism is detrimental to women, enabling increased control by religious institutions.

The personal status law in Egypt is characterized by a plurality of laws based on religious affiliation. Non-Muslims follow their own religious laws regarding marriage and divorce, allowing them autonomy in this domain. However, non-Muslim communities that are not officially recognized are subject to Muslim family law, which serves as the primary legislation in Egypt. When one of the parties involved is Muslim, the Muslim personal status law is applied to the marriage and its consequences. In certain circumstances, specific religious laws can be applied as exceptions. For instance, non-Muslim couples belonging to the same officially recognized community and denomination are governed by the personal status law of that denomination.



For example, two Coptic Orthodox individuals would be subject to Coptic Orthodox personal status law, and the same would apply to two Latin Catholics. On the other hand, if the spouses belong to different communities or denominations, they are governed by Egypt›s general law, which is the Muslim personal status law. Thus, this law would apply in cases such as a marriage between a Coptic Orthodox individual and an Armenian Catholic, or even between two Orthodox individuals from different denominations, such as one Coptic and one Greek [3]. The practice of allowing religious minorities to follow their own personal status laws is referred to as the «millet» system. For example, the Coptic

3 Nathalie Bernard -Maugiron, "Personal Status Laws in Egypt : FAQ," PROMOTION OF WOMEN'S RIGHTS (EGYPT), March 2010

Church has had its own rules concerning marriage, divorce, and other family matters for over a millennium. Until the late 19th century, patriarchs held judicial authority over their Coptic followers in matters of personal status. However, the latter part of the 19th century saw the rise of a secular Coptic movement led by Butros Ghali. This movement advocated for the establishment of a Maglis Al-Melli (Coptic Community Council), which was first established in 1874 [4].Their goal was to limit the church›s authority to religious and theological matters [5].

Moreover, the conceptualization of the family and the woman›s position within it holds a fundamental importance. Personal status laws often perceive women merely as components of the family structure rather than recognizing them as individual entities with their own rights and agency. This perspective highlights the ongoing tension amongst religious interpretations and human rights discourses. The evolution of personal status law, deeply intertwined with religious mandates, has provoked a wide range of responses, from vehement opposition to cautious optimism. The Egyptian socio-religious landscape also colors the debate. The dichotomy of Islamist and secular perspectives, the treatment of women within the paradigm of the family institution, and the intersection of cultural authenticity with legal rights form a compelling matrix.This complex matrix of challenges and opportunities forms the backdrop against which discussions on personal status law reforms in Egypt unfold.

The question of personal status law reform in Egypt offers a poignant lens to examine the intricate tapestry of gender dynamics, power relations, cultural tensions, and religious interpretations. Rooted in deep historical, socio-political, and religious contexts, these reform debates have reverberated across various strata of Egyptian society, reflecting a multifaceted framework of change, resistance, and identity.

4 J. D Pennington,. "The Copts in Modern Egypt." Middle Eastern Studies 18, no. 2 (1982): 158-179

5 Ron Shaham,. "Communal identity, political Islam and family law: Copts and the debate over the grounds for dissolution of marriage in twentieth-century Egypt." Islam and Christian–Muslim Relations 21, no. 4 (2010): 410

To comprehensively examine the impact of personal status law in Egypt, it necessitates a process of retracing the legal trajectory and its subsequent reforms. This entails providing an insightful overview of the political landscape from the period preceding its inception until the present moment. The objective is to unfold the intricate interplay within the multifaceted layered tapestry of gender and class dynamics, power relations, and religious interpretations in the context of Egypt.Following this introduction, the report provides a concise overview of the development of personal status laws in Egypt, tracing their codification through history. Subsequently, it delves into a detailed examination of the period spanning from 1990 to 2020, highlighting the prevailing narratives that have influenced public discourse on the reform of personal status laws during this time frame.



Historical Context

The family is frequently pinpointed as a primary site of women's oppression, given that the personal status law "governs marital relationships comprehensively" [6] . It wields significant influence over gender dynamics and power structures within families. Initially enacted in 1925 as law 25, it underwent subsequent amendments in 1929, 1979, and 1985. Generally, personal status laws treated women within the regulation of the structure of the family, rather than as individuals possessing separate or equal rights [7]. Throughout the 1920s, ruling governments refrained from altering these laws to maintain the gender imbalance, despite advancements in women's education and employment opportunities. While societal mechanisms evolved, patriarchal family structures remained guarded against change [8].

Spanning from the 1950s to the early 1970s, a progressive national initiative garnered support from the majority of stakeholders, necessitating unified support from all Egyptians, irrespective of gender. During this time, the state rhetoric placed a strong emphasis on women's equality rights and underscored their pivotal role in national development, and in bringing the national project to the forefront. However, discourse concerning the regulation of women's sexuality and bodies largely remained within the confines of the 'family', with the state addressing these matters primarily through policy frameworks such as personal status laws [9].

The latter half of the century witnessed continued efforts at reform. Personal status law 44 of 1979 that allowed wives to seek divorce if their husbands remarried, and the proposed new marriage contract, has encountered vehement opposition from both secular and religious factions. When President Sadat issued the presidential decree known as Law 44 (or Jihan's Law, due to support from the then First Lady Jihan Sadat), it faced fierce resistance across the political spectrum. Legislators opposed it on procedural

6 Mona Zulfikar, "Women in Development: A Legal Study. Cairo" UNICEF.1995

7 Merva Hatemt, "The Enduring Alliance of Nationalism and Patriarchy in Muslim Personal Status Laws: The Case of Modern Egypt", Feminist Issues 6(1): 19-43, 1986

8 Nemat Guenena and Nadia Wassef, Unfulfilled Promises: Women's Rights in Egypt (New York: Population Council, 1999)

9 Aida Seif El Dawla, "The Political and Legal Struggle over Female Genital Mutilation in Egypt: Five Years since the ICPD," Reproductive Health Matters 7, no. 13 (January 1999): 128–36

grounds, citing the lack of Parliamentary approval. Meanwhile, the religious establishment, opposition groups, and other conservative forces objected to the law, arguing that it contradicted Sharia principles. The primary advocates for the amended law were its instigator and supporter, Mrs. Sadat, along with a group of feminists who hailed it as a triumph, marking the culmination of their struggle for a less discriminatory personal status law.

This law, however, was declared unconstitutional by the High Constitutional Court because it did not refer to the People's Assembly for approval, leading to its replacement with law 100 of 1985. This subsequent law required wives to prove harm from their husband's remarriage to obtain a divorce. All these attempts at reforming personal status matters, particularly struggles around better guarantees for women, faced strong resistance from conservative forces [10].

The law also restricted another practice known as bayt al-ta'ah (house of obedience). Under this practice, a man had the authority to request authorities to compel his wife to return to the marital home in order to enforce her obedience. This practice sparked considerable controversy as it effectively trapped women in marriages until they could legally prove that the relationship was unsustainable. Following the repeal of Law 44, if a wife disobeys or fails to challenge her husband's summons within 30 days, she forfeits her right to financial support. The widespread objections to Law 44 led to its reversal and subsequent reinstatement in amended form as Law 100 of 1985. The new amendment established Sharia as the sole basis for personal status legislation, replacing its previous status as one of the bases. Consequently, Islamic law became the sole reference for matters concerning personal status. [11]

Local NGOs, many of which feminist organizations, played pivotal roles in advocacy, research, and raising awareness about issues related to personal status laws. They actively provided legal assistance to women and sought to influence policy-making. In 1985, a groundbreaking initiative led by seven Egyptian women proposed a "New Marriage Contract." This "Group of Seven", or the Communication Group for the Enhancement of the Status of

10 Nemat Guenena and Nadia Wassef, Unfulfilled Promises: Women's Rights in Egypt (New York: Population Council, 1999)

11 Ihsan, Assal, "Bayt al-ta'ah" (House of Obedience), in Opening the Gates: A Century of Arab Feminist Writing, ed. Margot Badran and Miriam Cooke (London, UK: Virago, 1990), 160-167

Women in Egypt, comprised leaders from various NGOs, former ministers and lawyers. Their objective was to emphasize the contractual and civil nature of marriage, while also raising women's awareness of their rights. Despite the proposal's strong legal and religious grounding, it encountered resistance and was not unanimously embraced.

The concept of the new marriage contract emerged in the mid-1980s. Besides mandating a medical examination before marriage, this proposed contract did not impose any compulsory clauses. Aimed at promoting greater equity within the institution of marriage, this new contract offers a checklist covering various issues. While the existing marriage contract allows for the inclusion of mutually agreed-upon conditions by the partners, its lack of a standardized checklist intimidates women and discourages them from establishing a more equal position within marriage. For instance, one of the most contentious aspects of the new marriage contract is its provision that grants the wife's right to self-repudiate.This provision can be included in the marriage contract by the spouses at the time of marriage. Subsequently, the wife can unilaterally terminate her marriage by approaching the ma'dhun with two witnesses and requesting to register her self-repudiation. It's crucial to explicitly state in the marriage contract that the wife has the right to exercise 'isma' "whenever she chooses and as many times as she desires." Without this specification, her husband may reconcile with her after she self-repudiates. Granting the wife this option does not negate the husband's right to divorce her at his discretion. If this provision is absent from the marriage contract and the husband refuses to divorce her even for a financial settlement, the wife can only dissolve the marriage through legal divorce proceedings in court. This process can take years instead of minutes, and the wife must demonstrate that she has suffered harm [12].

Other potential clauses address ownership of furniture and the conjugal home, as well as rights to education and travel. Critics have denounced the new marriage contract, claiming it could lead to family breakdowns and an increase in divorces [13].

12 Nathalie Bernard-Maugiron, "Personal Status Laws in Egypt : FAQ," PROMOTION OF WOMEN'S RIGHTS (EGYPT), March 2010

13 Nemat Guenena and Nadia Wassef, Unfulfilled Promises: Women's Rights in Egypt (New York: Population Council, 1999)

During the 1980s, the Egyptian state began to relax its constraints on civil society organizations, a trend that coincided with the assassination of President Sadat and the subsequent transition of power to Mubarak in 1981. In that same year, Egypt ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that was adopted by the United Nations General Assembly on December 18, 1979. CEDAW came into force on September 3, 1981, following ratification by the twentieth country. Through this action, Egypt committed itself to the eradication of discrimination against women, while still maintaining reservations to articles it considered to be contradictory to Sharia'a.

Evolution and Reform: Personal Status Laws in Egypt (1990s-2000s)



The late 20th and early 21st centuries marked a significant evolution in Egypt's personal status laws, set against a backdrop of international influences, civil society activism, and a growing recognition of women's rights. These developments were intertwined with broader discussions on gender roles and the relationship between religion and the state. During this period, numerous influential voices emerged, each offering a unique perspective to the discourse. The subsequent years saw profound influences from various international events, with particular emphasis on the International Conference on Population and Development (ICPD) held in Cairo in 1994. This conference not only spurred action within the international community but also provided fertile ground for the expansion and influence of Egyptian civil society.

In preparation for the ICPD, a remarkable collaboration occurred among over four hundred Egyptian NGOs, showcasing an unprecedented level of unity. Together, they formulated a consensus platform, with a key focus on advocating for reproductive rights of women and amendments to the Marriage Registrars Regulations. These proposed changes aimed to enable the incorporation of substantial conditions within marriage contracts, a crucial step towards enhancing marital agreements.

The ICPD marked a significant milestone in advancing women's rights on the national agenda. During the ICPD, collaboration between the human rights movement and the burgeoning feminist movement flourished, leading to the establishment of networks, pressure groups, and international campaigns. The primary objective was to shed light on the persistent gender discrimination faced by women, despite the implementation of international women's rights and human rights conventions. Local civil society organizations such as the New Women Research Center and the Egyptian Study of International Reproductive Rights Research Action Group (IRPRAG) played pivotal roles in advocating for women's reproductive rights. Their campaigns encompassed issues ranging from the formation of task forces to combat female genital mutilation (FGM) to advocating for improved access to abortion and healthcare services. The most prominent and outspoken initiatives included the FGM Task Force and the Media Watch Group. The FGM Task Force concentrated on the elimination of female genital mutilation in Egypt, utilizing strategies derived from United Nation (UN) initiatives aimed at enhancing women's well-being within the context of women's health and reproductive rights. Likewise, the Media Watch Group consisted of independent female researchers and activists whose objective was to uncover gender stereotypes and emphasize their contribution to perpetuating and strengthening discriminatory portrayals of women in the media and educational material [14].

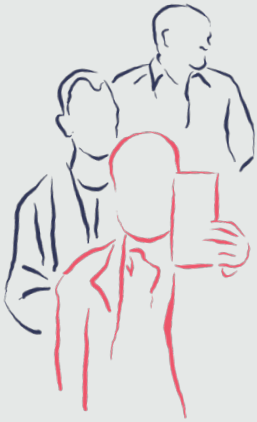
In July 1996, a decree issued by Dr. Ismail Sallam, the Egyptian Minister of Health, prohibited physicians from conducting female genital mutilation (FGM) in public healthcare facilities. While opposition voices acknowledged the decree's limitations, they considered it a significant step forward. This

14 Hala Kamal, "A Century of Egyptian Women's Demands: The Four Waves of the Egyptian Feminist Movement," Gender and Race Matter: Global Perspectives on Being a Woman, August 24, 2016, 3–22

decree marked a reversal of the previous Minister of Health's decision in 1994, which had lifted a 35-year ban and authorized FGM procedures in public hospitals [15].

By the following year, the climate was conducive to change. In 1995, the National Women's Commission took a significant stride by adopting a draft of the new marriage contract. However, this progress was not without its challenges. The draft encountered considerable opposition, notably from Shaikh al-Azhar, Jadd al-Haqq, who voiced concerns not grounded in religious or legal reasoning but rather in societal anxieties. He feared that the proposed contract might dissuade youth from entering into marriages.

Transitioning into the 2000s, the focus broadened from the New Marriage Contract to encompass a more comprehensive law regarding personal status procedures. This transition was underpinned by the staunch support of the annual National Women's Conferences, championed by Mrs. Suzanne Mubarak. This collective effort culminated in the passage of Law No. 1 of 2000. The dawn of the millennium also brought forth crucial legislation in January 2000, which streamlined litigation procedures, particularly empowering women with the right of khul' for divorce, a process by which the wife forfeits her financial entitlements in exchange for a divorce. Additionally, an onus was placed on the Nasser Social Bank to ensure financial sustenance for women and their immediate families post-divorce.



In 2021, a televised debate about the draft of the personal status law proposed by the Egyptian government was broadcasted following widespread conflicted public response regarding the draft [16].The program featured a panel of four guests including three lawyers and an al Al-Azhar scholar, each offering varied perspectives on the draft. One of the guests, Essam Hagag, an Egyptian lawyer, and vocal opponent of the draft, began his speech by asserting that Egyptian men have been facing discrimination since 2000, moving into this proposed draft of the personal status law.

15 A. Abd el Hadi, "A Step Forward for Opponents of Female Genital Mutilation in Egypt," Lancet (London, England), January 1997

16 https://www.youtube.com/watch?v=HOVEdrNhjqk&list=LL&index=6&t=649s

Throughout the televised debate, Hagag continued to express his frustrations as an Egyptian man whose rights, in his view, have been undermined for over two decades. He claimed that there has been an inherent intention to destroy the structure of the Egyptian family, citing the granting the right of "khul'" to women as evidence of discrimination against men. At first glance, one may struggle to locate the connection between the discrimination of men and granting the right to divorce to women.

In 2004 Egypt took another significant step with the establishment of family courts, realized through the People's Assembly's adoption of Law No. 11. This move aimed to centralize personal status matters, curbing the fragmentation that had previously plagued the system. This centralization was hoped to expedite the legal processes, especially benefiting women and children in the process. With the issuance of Law No. 10 of 2004 establishing the Family Court, the Center for Egyptian Women Legal Aid (CEWLA) published a report that critically engaged with the law, highlighting the practical challenges associated with its implementation. These challenges included the continued separation of personal status lawsuits instead of consolidating them into a single file, as stipulated by the law. This led to prolonged litigation processes, reliance on untrained experts to resolve family disputes, and judges' lack of conviction regarding the efficacy of family courts.

Such issues undermined the fundamental objectives of the Family Court, which aimed to achieve efficient justice by adhering to the principle of specialization among judges, and enforcement officers, and by facilitating legal proceedings through meticulous organization and oversight. One of the main criticisms directed at the Family Court Law was the provision that final judgments could be issued without allowing for an appeal or the issuance of a verdict, thus bypassing the appellate stage. This flaw resulted in the absence of law enforcement oversight, significantly impacting the direction of the campaign several years later by emphasizing procedural aspects and not limiting the proposal solely to substantive matters [17].

The structure of the Egyptian family has been deeply ingrained and maintained over centuries through the collective efforts of various religious institutions,

17 Azza Soliman and Mahmoud Abdelfatah , "A "just" family bill" New Women Foundation , March 2023

social norms, education, and legal frameworks. It is the structure of the Egyptian family that subjugates girls and women to persecution and various forms of social punishment for unintentionally violating its vague values and guidelines. According to the Egyptian regime's perspective, divorce poses a threat to the state's control over families, contributes to social crises, and imposes additional burdens on society, such as child homelessness, youth involvement in extremist organizations, and a sense of nihilism among Egypt's youth and adolescents.The Egyptian family could be that fragile in opposition of a singular legislation granting women the right to divorce, as Mr. Hagag highlighted the surface aspects of this legalization, without providing any deep or complex overview/analysis thereof. He overlooks other determining factors that encapsulate this legislation. In his analysis, he overlooked the interconnected impacts such as social stigma that women experience when they decide to go through this trajectory; he overlooks that women have to let go/yetkhalo of their financial rights in-order to be granted this right. The majority of Egyptian women would not voluntarily desire to go through the dire legal trajectory unless this is their last resort.

It is undeniable that the 25th of January in 2011 marked a turning point in the trajectory of the feminist movement in Egypt on multiple levels. The "No to Sexual Harassment" campaign benefited from the new trends in feminist activism and interaction with society in the past decade, as the revolutionary movement in 2011 opened up the political sphere and made it possible to address taboo topics and confront them, especially regarding the issue of sexual violence against women. Women gained both practical and symbolic power due to their active political participation, which reinforced their agency to engage in previously silenced issues. There is consensus among feminist activists that addressing the issue of sexual violence against women is one of the achievements of the 25th of January and that this achievement has a wide impact on the new generations of women. Since 2013, campaigns against sexual violence in Egypt have become a prominent feature of feminist activism, involving groups, initiatives, and individuals on social media platforms [18].

18 Hoda El Sadda, "Guardianship Is My Right; Let's Tell out Stories," New Women Foundation , March 2023



In February 2021, the Egyptian cabinet introduced a comprehensive draft of the personal status law to parliament. The proposal faced significant backlash, as it was seen as a regression in women's rights. Consequently, the bill was withdrawn, and President Abdel Fattah al-Sisi pledged to present a more balanced piece of legislation. The proposed Personal Status Law reflects a backward approach towards Egyptian women, granting male guardians the authority to strip women of fundamental human rights. Within this legislation, women are stripped of their ability to enter into marriage contracts independently. Instead, male guardians are empowered to unilaterally annul marriages without the woman's consent for various reasons, including social incompatibility of the couple. Furthermore, the law fails to acknowledge women's right to serve as witnesses for marriage contracts and undermines mothers' guardianship over their minor children's finances and education. Guardianship is exclusively bestowed upon fathers and grandfathers, disregarding situations where the wife is the primary financial provider for the family. Women, including those in positions of authority such as ministers or government representatives, are also denied educational guardianship over their own children. Coptic women face additional discriminatory measures, such as losing custody of their children if their husband converts to Islam. In essence, the proposed law is rife with restrictions and denials of women's rights [19].

The proposed draft of the Personal Status Law has stirred criticism within human rights and feminist circles for several reasons. One of the most important reasons is that it fails to address a fundamental issue in the philosophy of the existing personal status law, which considers women, all women regardless of age or practical life experience, as lacking the legal

19 "Egypt: Archaic Amendments to Personal Status Law Undermine Women's Rights," Cairo Institute for Human Rights Studies (CIHRS), March 4, 2021

personality and agency to manage their own affairs and the affairs of their children. It does not recognize their guardianship over themselves and their children. The governing logic of the current law assumes the guardianship of men over women in the family and enforces it in various provisions and judgments. Moreover, the proposed bill introduces a controversial provision granting the male guardian the authority to dissolve the marriage of women under his guardianship on the grounds of incompetence. This law affects the lives of all Egyptian women, Muslims and Christians alike, hindering not only matters of marriage, divorce, and child custody but also their daily interactions with state institutions, banks, their children's schools, and various aspects of daily life [20]. The draft proposal presented by the cabinet offers insights into the post-2013 regime and its treatment of various legal matters, shedding light on the transformation of the state apparatus. When comparing the personal status law to other legal domains such as the economy, public administration, and experiences with international organizations, the differences become strikingly apparent. Family law necessitates expertise in navigating traditional Sharia' interpretations while maintaining religious and social equilibrium. During the Mubarak era, experts encountered similar challenges but managed to navigate them effectively, unlike the current regime's officials.

Acknowledging this disparity, the regime enlisted the support of various government sectors in crafting its bill. The new personal status law has proven problematic for the regime for several reasons. Despite presenting itself as a moderate advocate of women's rights, the regime advocates for very conservative policies. Moreover, the inclination to codify all regulatory principles of family affairs will standardize and facilitate the enforcement of controversial religious rules. The draft legislation outlined the condition of the patriarch's approval for women's marriage, a stipulation currently implemented in marriage contracts in Egypt, albeit never formally written into laws to avoid criticism. The rationale behind this decision was to leave disputes to be resolved informally or at the discretion of judges. While this rule represents the most moderate legal opinion, its codification is still significant as it addresses rare cases. This article serves multiple interests of the conservative coalition that drafted the proposal, including reinforcing the idea that marriage contracts are a religious matter and empowering families to defend their

20 Hoda El Sadda, "Guardianship Is My Right; Let's Tell out Stories," New Women Foundation , March 2023

social status by protesting against cross-class marriage. Despite claiming authority over family law, the regime's new law failed to introduce new ideas to the conversation on family law. The draft legislation aimed to preserve the family unit with little attention given to the rights of individuals, women, or men. Despite its ultra-authoritarian disposition, the Egyptian government closely monitors public social debates and responds to strong, albeit limited, social pressures. This was evident when the government withdrew the personal status law proposal following heavy backlash and began assembling a new draft [21].

In conclusion, the trajectory of Personal Status law Egypt from its initiation in 1920 to the 2020s reveals a complex interplay of societal, religious, and political forces shaping women's rights and family dynamics. Unfortunate stories like that of Mariam Magdy and Amal underscore the dire consequences of outdated legal frameworks that prioritize patriarchal control over women's autonomy and agency over their livelihoods. Over the years, efforts at reform have been met with resistance from conservative factions within both religious and state spheres. Despite some progress, such as the introduction of laws granting women the right to divorce, significant challenges persist. The proposed Personal Status Law of 2021 exemplifies this, drawing criticism for its regressive provisions that further entrench gender inequality and limit women's agency within the family and society at large.

Moreover, the understanding of family dynamics and the role of women within it holds significant importance. Personal status laws often view women not as individuals but as integral parts of the familial structure. This perspective highlights the conflict between religious interpretations and principles of human rights. The evolution of personal status laws, influenced by religious doctrines, has generated diverse reactions, ranging from vehement opposition to cautious optimism. Egypt's socio-religious landscape further complicates the discourse. The contrast between Islamist and secular viewpoints, the treatment of women within the family framework, and the interplay of cultural authenticity with legal entitlements create a complex array of challenges and possibilities.

21 Reem Ahmed, "Personal Status Litigation in Egypt: The Unintended Effects of Women's Empowerment," CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, March 21, 2021

The debate surrounding the reform of personal status laws in Egypt provides a profound lens through which to analyze the intricate interplay of gender dynamics, power dynamics, cultural clashes, and religious interpretations. Embedded in rich historical, socio-political, and religious contexts, these discussions have resonated across various segments of Egyptian society, offering a nuanced exploration of transformation, resilience, and identity.



Section Two

Egyptian personal status law 1920s to the present

Introduction

The term personal status is a legal term applied to issues related to the human person, whether personal issues such as marriage, divorce, or family rulings. The term personal status in Egyptian law generally means everything that distinguishes a person from other natural or familial characteristics, to which the law has given legal effect regarding the role in social life, such as a person being male or female, being a husband, a widow, a divorced person, a father, or a legitimate child, or being fully competent or restricted for any legal reasons [22]. As for the issues of expenses of all kinds, they are considered among the in-kind factors, which the law considers to be issues related to personal affairs.

Personal status laws are a set of legal rules that regulate the relationship of individuals with each other, in terms of lineage, marriage, and what arises from them. Its legal rules are based on religious sources. There is the Personal Status Law for Muslims and its sources (the Qur'an and the Sunnah), and if they are devoid of a specific text, most likely teachings of the doctrine of Abu Hanifa are applied. As for the personal status law for non-Muslims and its

22 Dr. Muhammad Ali Mahjoub, Professor at the Faculty of Law, Alexandria University, from the book "Personal Status in Islamic Sharia and the Laws That Govern it in Egypt," Alexandria University 2010, page 14

sources for Christians, their doctrinal and sectarian laws are applied to the diversity of their sects, doctrines, and schools, and in the case of the Jews, their laws are applied, which are divided into Karaite and Rabbinic.

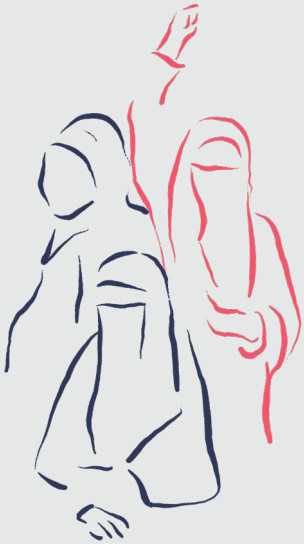
Personal status laws represent one of the most important legislative areas for women's rights, and they have a significant impact on the status of women in the family and society. Despite the development of legislation and the victory of women over the past two decades in obtaining their rights in many areas [23], the legislative area, especially personal status law, had the least share in that development over the past decades.

The philosophy of legislating personal status laws in Egypt is based on the provisions of Islamic Sharia'a in terms of its distribution of rights and duties between spouses, assuming that the husband is the breadwinner of the entire family, and that he is responsible for all financial matters of his family members. Based on this assumption, men are granted more material and legal rights in the personal status system than women, so they inherit a larger share than women even if they have equal legal positions, such as son and daughter, or husband and wife. This organization also grants men more legal rights than women in marriage, such as the unilateral right to divorce or resume the marriage, the obligation to obey the husband in exchange for alimony, guardianship over children's money, and educational guardianship. To understand the rules and laws regulating personal status in Egypt, we must note that these rules are divided into two types: "substantive rules and procedural rules."

23 Penal Code (2014) Articles 306 (a) and 306 (b) were amended to increase the penalty for assaulting a female and introduce a new sexual harassment article. The Penal Code (2016) (Article 242) was also amended to increase the penalty for female circumcision and raise the crime from a misdemeanor to a felony with a penalty of five to seven years, and up to 15 years if the incident results in permanent disability or death. The first Law No. 189 of 2020 was issued to criminalize bullying, Law No. 177 of 2020 was issued amending the Code of Criminal Procedure to include the protection of data for victims of violence, and Law No. 151 of 2020 was issued to protect the victim's personal data to enhance the protection of personal data that is stored virtually (online).Circular No. 7 of 2021 was also issued to the Financial Supervision Authority regarding compliance with the provisions of the Ethical Charter to prevent harassment, including sexual harassment, violence, and harassment within the work environment of companies listed on the Egyptian Stock Exchange and companies and entities operating in non-banking financial activities.Also, Law No. 10 of 2021 was issued amending some provisions of the Penal Code (articles of the crime of female circumcision. The amendments included deleting any reference to the use of medical justification and Article 61, increasing the penalties by raising the minimum and maximum penalties, introducing independent penalties for doctors and nursing professionals, and other penalties in the facility. It also introduced and expanded the scope of criminalization to include all forms of incitement, encouragement, or prosecution to commit a crime. The Penal Code was also amended by issuing Law No. 141 of 2021 amending the sexual harassment articles, Articles 306 bis (a) and 306 bis (b), to increase the maximum and minimum punishment, and to consider wired, wireless, and technical means of communication as acts of harassment, increasing the penalty to reach imprisonment for a period of no less than seven years in some cases

As for the substantive rules, they are regulated by Law No. 25 of 1920, amended by Law 25 of 1929, amended by Law 100 of 1985 regarding alimony provisions, some personal status issues, and some provisions in various other laws.

The procedural rules are those included in Law No. 1 of 2000 regulating certain situations and procedures for litigation in personal status matters, Law No. 10 of 2004 which established family courts, and Law No. 11 of 2004 regarding the family insurance system. Judicial rulings in personal status disputes are issued in accordance with these laws; in matters for which there is no provision in those laws,decisions are made according to the most established opinions from the doctrine of Imam Abu Hanifa. Judgments are issued in personal status disputes between non-Muslim Egyptians of different sect and religions in accordance with their Sharia'a law in a manner that does not contravene public order, in accordance with Article 3 of Law No. 1 of 2000.



Chapter I

Historical context of personal status laws in Egypt

Following the issuance of the Ottoman Family Law in 1917, the Family Law was issued in Egypt in 1920, which was published on July 15, 1920, in the Egyptian newspaper Al-Waqa'I (the official Gazette). It regulated the provisions of alimony and some personal status matters such as a missing person, separation because of a handicap [24], and the waiting period before remarriage for women, and it consisted of thirteen articles.

24 Separation because of a handicap in Egyptian law is whenan Egyptian Muslim wife submits a request for divorce by filing a lawsuit if her husband has a severe handicap, whether physical or mental, that cannot be cured, or requires a long time to recover from, and may affect the wife and it would be harmful if she stayed with her husband. The divorce in this case will be an irrevocable divorce."Dr. Jaber Abdel Hadi - Dr. Muhammad Kamal Al-Din, book "Family Rulings", Al-Saadani Press, Alexandria, 2009 page 259

This happened following efforts by many women and claimants in the first wave of the feminist movement at the end of the nineteenth century. Dr. Hala Kamal, in her book on the history of the feminist movement, divided the history of the movement into four main waves, which according to her began specifically in 1892 with the publication of the magazine Al-Fattah (The Girl) by Hind Noufal to be the mouthpiece of Egyptian feminists at the time. It was followed by the magazine Anis Al-Jalis in 1898, then Fattat-El-Sharq (Girl of the East) in 1906, and Al-Gins-Allatif (The Gentle Sex) in 1908, before the movement extended to reach the generation of the 1919 revolution. The discussions at the time revolved around issues of marriage, divorce, and polygamy, in addition to the topic of hijab and domestic life [25].

After that, veiled upper-class women took to the streets of Cairo to participate in women's protests against the British occupation. During the first months of the revolution in 1920, middle- and upper-class women formed the first official national organization for women, the "Central Wafd Committee for Women," headed by Hoda Shaarawi, but the male Wafd leaders ignored the Women's Committee and its demands.

With Egypt's formal independence in 1922, the Wafd women criticized the terms of independence, especially the point of leaving British forces in Egypt and leaving the question of Egypt's relations with Sudan uncertain. In 1923, upper and middle-class women established the first official national women organization, the "Egyptian Women's Union," chaired by Hoda Shaarawy. The program of the Egyptian Women's Union revealed the standpoint of Egyptian feminists that brought together the issues of the nation, society, and women. The program was divided into three sections, the third section of which, the "Feminist Section," focused on six main items that stipulated women's rights to education, voting, and the laws regulating marriage [26].

The Union adopted the method of collecting signatures on petitions to achieve the goals for which Egyptian women fought, such as reducing the practice of polygamy, limiting unjustified divorce, protecting wives from the "house of obedience", and prolonging the period of a mother's custody of her children[27].

25 Dr. Hala Kamal, from the book "Glimpses of the Demands of the Egyptian Feminist Movement throughout Its History," issued by the "Women and Memory" Foundation, from the Memory Papers series, page 12

26 Ibid. page 13

27 Dr. Hala Kamal, previously mentioned reference, page 37, Appendix 2, "The Egyptian Women's Union Program"

The disciples of Imam Muhammad Abduh also made amendments to the Personal Status Law, the most prominent of which was restricting the issue of polygamy. However, on March 25, 1929, when King Fuad I, King of Egypt, issued a decree amending Law No. 25 of 1920 with Law No. 25 of 1929, ignoring the proposed amendments and most of the demands submitted by the Egyptian Women's Union.

But it must be mentioned that that amendment in 1929 was the first codification of jurisprudence by bringing together the four Islamic schools of thought and jurists such as IbnTaymiyyah and his student Ibn al-Qayyim, and it consisted of twenty-five articles related to divorce, divorce for harm, absence, imprisonment of the husband, lineage claims, and some provisions for alimony, the abstinence period and the missing. One of its most notable amendments was that it raised the age of children's custody, so it became from seven to nine years for boys and from nine to eleven years for girls [28].

Feminist movements continued to demand amendments to the law regulating personal status rules. In 1942, the Egyptian Women's Party, led by "Fatima Nemat Rashid," demanded amendments to the laws related to marriage, polygamy, divorce, alimony, and child custody. [29] The "Daughter of the Nile" Union, led by "Doria Shafik," also demanded amendments to the law regulating personal status rules. On February 19, 1951, it demanded laws to protect the family by restricting the right to divorce and polygamy [30].

Dr. Aisha Rateb also drafted a personal status law in 1971, while she oversaw the Ministry of Social Affairs, which she prepared with a group of advisors. However, it was severely attacked and accused of being anti-men. It is worth noting that she was the first to suggest that Nasser Bank undertake the disbursement of alimony for the wife and then recover it from the husband [31].

28 Article 20 of Law No. 25 of 1929 stipulates: "The judge may authorize female custody for a male child after seven to nine years and for a female child after nine to eleven years if it appears that their interests require it."

29 Dr. Hala Kamal, previously mentioned reference. Page 43, Appendix No. 3, Program of the Egyptian Women's Party"

30 Dr. Ijlal Khalifa, the book "The Women's Movement in Egypt," published by the Family Library, 2008, pages 175-176

31 Hoda Al-Sadda and Imad Abu Ghazi, book "The Journey of Egyptian Women, Milestones and Positions," issued by the Culture and Media Committee of the National Council for Women, page 128

Considering the draft submitted by her, the President of the Republic issued Law No. 62 of 1976 amending some provisions on alimony, which included urgent consideration of lawsuits related to alimony and the Nasser Social Bank paying the debts owed to the wife or divorced women who were awarded alimony.

This was not the first amendment issued regarding personal status laws after 1929. In 1931, Decree Law No. 78 of 1931 was issued, including a list of the arrangement, formation, and jurisdiction of Sharia'a courts, lawsuits, pleadings, evidence, judgments, and methods for appealing them. Then in 1951, Law No. 26 of 1951 was issued adding a fourth book to the Civil and Commercial Procedures, Law No. 77 of 1949, which addressed procedures related to personal status matters, whether in pleading procedures related to the family system or proving lineage. In 1955 Law No. 462 of 1955 was issued abolishing the Sharia'a courts and referring the cases heard before them to national courts. However, the amendments affected the procedural aspects without addressing the substantive problems that women demanded through the various platforms available at the time.

In 1962, President Gamal Abdel Nasser announced the National Charter and Egypt turned to a socialist system based on the equality of women with men in many fields, including elections, work, and education; it did not address personal status laws.

Law No. 44 of 1979

There was no response to any of the demands to amend the law until 1979, when Sadat imposed a new family law, the first of its kind since the issuance of the 1929 law. The new law, Law No. 44 of 1979, was known as the "Jihan Law" after Sadat's wife, as she had a hand in its issuance with the aim of "Improving the status of women and children." The law met many of the demands of feminists during the years that preceded its issuance, especially regarding criminalizing a husband's second marriage and not depriving the wife of her right to alimony if she goes out to work without her husband's consent. The Mufti, the Sheikh of Al-Azhar, and the Minister of Endowments participated in drafting the law, which consisted of seven articles. However, it was met with violent criticism in many circles under the claim that it "violates

Islamic law," in violation of Article 2 of the 1971 Constitution, in addition to imposing it on the people in the absence of the People's Assembly at that time.

Due to the participation of the Mufti of the Republic at that time, Sheikh Jad Al-Haqq, in drafting the law, in 1980 he issued an official statement explaining the law. The statement centered around the two articles in question, Article 6, the second paragraph, which ruled that harm would befall the wife if her husband married another woman without her permission, which Islamic trends interpreted it as undermining polygamy, which was permitted by Sharia law. As for the second article, it was the fifth paragraph, which stipulated that the wife shall not be deprived of the right to alimony if she leaves the home for work.

Jad Al-Haqq said in his defense of these two articles: "There is nothing in them that conflicts with any text in the Qur'an, in addition to the fact that their ruling is included in the jurisprudential references. The Hanbalis and Hanafis, for example, allow the wife to stipulate in the marriage contract her right to divorce if her husband marries another woman. This text is not an attack on polygamy, but rather merely an affirmation of the right of a particular woman to prevent her husband from doing so. As for the wife's right to leave the house without her husband's permission, it is also established in Islamic jurisprudence, by allowing her to visit her parents, for example, and it is likewise permissible for a woman to work in trade and business projects.

When Sheikh Jad al-Haqq was asked about the need for a new personal status law, he replied: "The two personal status laws issued in 1920 and 1929 were good models for codifying jurisprudence, and Law 44 is only another small additional step in the same path. The combination of schools of thought is legitimate for making legal decisions in line with the requirements of the times, and it was approved by the Islamic Research Academy in its first conference, and there is no need to abandon it now." Thus, the Sharia'a became subject to being codified - as opponents of the codification of the Sharia'a say - similar to a new doctrine, the doctrine of the state, which is reviewed by its official sheikhs from time to time. [32]

32 Jacob Skow Fjaard-Peterson, "Islam of the Egyptian State: The Mufti and Fatwas of Dar al-Ifta," Translated by: Prof. Dr. Mr. Omar. Issued by Dar Nohoud for Studies and Publishing, page 44

However, the law did not last long, as the Constitutional Court abolished the law in its ruling in Case No. 28 of the Judicial - Constitutional Year 2 - referred by the "Al-Badari District Court for Personal Status" on September 2, 1980, after it ruled to freeze the case and refer the papers to the Supreme Constitutional Court for adjudication. Regarding the constitutionality of Decision Law No. 44 of 1979 amending some provisions of personal status laws [33], on May 4, 1985, the court ruled that it was unconstitutional in terms of form, forcing the legislator to issue Law No. 100 of 1985.

Chapter II
Current personal status laws and their amendments

Law No. 100 of 1985 added six new articles to Law No. 25 of 1929, namely Article No. 5 bis, 6 bis, 6 bis, 18 bis, 18 bis, and 23 bis.

It also replaced its second article with a new text from Article No. 1 of Amended Law No. 25 of 1920 regarding the provisions of alimony, replaced its third article with new texts of Articles 11, 7, 8, 9, 10 and 20 of the aforementioned Law No. 25 of 1929, organized in its fourth article the provisions for occupancy of the custodial residence in the event of divorce, and its fifth article also regulates what relates to litigation in the event of a dispute.

Although the introduction to the explanatory memorandum for the law stated that: "Nearly fifty years have passed since the issuance of these two laws, during which many material and moral changes occurred in society, the effects of which were reflected in social relations, which placed the judges with a great burden in issuing rulings on the incidents presented to them. This revealed deficiencies in some of the provisions of existing laws, which called for searching for provisions for new situations in the life of Egyptian society within the scope of Sharia texts without confiscating any right established with conclusive evidence for any family member. Rather, the aim of the project is to regulate the use of some these rights as explained below."

33 http://hrlibrary.umn.edu/arabic/Egypt-SCC-SC/Egypt-SCC-28-Y2.html

However, we find that the law has aroused the ire of many institutions, and the feminist movement has attacked it and considered it a retreat from the gains they achieved in Law No. 44 of 1979.

This law was issued after the 1979 law was ruled unconstitutional. It preserved most of the amendments introduced by the contested law, but with a fundamental change in some of them. This law was issued considering the strong presence of the Islamic movement in Parliament (the People's Assembly), which was clearly reflected in the amendments it approved or deletedfrom the law that was declared unconstitutional.

By the beginning of the nineties, the Egyptian state began to loosen its grip on human rights work, especially after Egypt signed the CEDAW Convention, which stipulates abolishing all forms of discrimination against women. Cairo also witnessed the holding of the International Conference on Population and Development, which was considered a major shift in the narrative considering women's reproductive rights. Many feminist movements presented research, and Egyptian civil society emerged as the party with the most accurate knowledge of women's issues and the most involved in working to achieve their demands.

As the state's fears of the increasing strength and credibility of women's organizations increased throughout the 1990s, Mubarak issued Law No. 90 of 2000 establishing the National Council for Women to be an official platform for talking about the conditions of women in Egypt, especially regarding communicating with international organizations and obtaining their support under the pretext of implementing the terms of the international agreements. Mubarak decided to change his policy towards the feminist issue, as he began working on what is called the state's feminist policy in the face of civil society feminism.

The establishment of the Council came after the issuance of Law No. 1 of 2000 regulating the conditions and procedures for litigation in some personal status matters, which was known as the "Khul'e Law." It was one of the most important laws issued during that era and was an important turning point in personal status affairs.

The law consists of 76 articles, perhaps the most important of which is Article 20, which stipulates that "the spouses may agree among themselves to divorce. If they do not agree on it and the wife files her claim by requesting it and redeems herself and divorces her husband by relinquishing all her legal financial rights and returns to him the dowry that he paid her, the court will rule to divorce her from him."

The Supreme Constitutional Court issued its ruling that Article 21 of the law was unconstitutional on January 15, 2006, which we will explain later in terms of facts and reasons.

To reduce the burden on the courts of first instance, the government decided to establish family courts, which have the same functions as Sharia'a courts, but with broader powers. The President of the Republic at that time, Mohamed Hosni Mubarak, issued Decree Law No. 10 of 2004 regarding the establishment of family courts and the organization of their work. The law consisted of 21 Article explaining the role and formation of the Family Court, settlement offices, the role of social and psychological experts and other procedural matters. [34]

However, Article 14 of the law constituted a legal and constitutional crisis that exists to date, as it withdrew one of the essential methods of appeal for litigants before the Family Court, which is the appeal before the Court of Cassation. Article 14 stipulated that judgments and decisions issued by the appellate chambers are not subject to appeal by cassation, justifying this in its memorandum explanatory note: "Given the special nature of personal status issues, the necessity of resolving them in a prompt manner, and in order to achieve the stability of the legal positions that arise from them related

34 The Supreme Constitutional Court issued a decision on April 11, 2015, in Case No. 56 of the "Constitutional" Judicial Year 27. The court confronted the Islamic trend opposing the presence of a female element among the psychological and social experts, within the formation of the Family Court, in implementation of the text of Article (2) of the Law Establishing Family Courts, Issued by Law No. 10 of 2004.The husband (plaintiff) sought not to assist the Family Court, which is examining his substantive dispute with his wife, who filed her lawsuit before the Family Court demanding the value of the deferred dowry, from a female expert, because he thought that for at least one of the two experts to be a woman leads to favoritism towards the wife, and the Supreme Constitutional Court refuted these allegations and ruled to reject the case.The reasons for its ruling were as follows: "What the legislator required is that one of the two experts be a woman, because family disputes mostly revolve around women and children, where women's opinions are of great importance, as they are - by nature - the most understanding in this area, and on the basis that in some personal status issues only women's opinions are accepted in Sharia, and no men's statements are accepted, such as the waiting period, menstruation, etc., which is considered an objective rule that justifies the preference for women in this regard. Hence, the contested text, if it distinguishes between men and women - as stated above - then this distinction was built on the basis of the aforementioned objective rule, and it constitutes justified discrimination that is not arbitrary.

to the most important affairs of the individual and the family, and which require keeping them away from prolonging the dispute and from worry and turmoil in their regard - the legislator has tended to cancel the appeal by means of Cassation, as it is an unusual method of appeal, and in view of the special formation of the Family Court guaranteed by the draft, so that it is composed of three judges, at least one of whom has the rank of president of a court, and is concerned with issues that were solely considered by a single judge, and the rulings of the Family Court are appealed to one of the circuits. The High Court of Appeal is composed of three judges, at least one of whom has the rank of President of the Courts of Appeal, while the rulings of the district courts are appealed - in the existing system - before one of the chambers of the Court of First Instance, which is composed of three judges - and all of this is in addition to what the draft stated regarding the use of experts."

The above contradicts the right to litigation guaranteed to all citizens in accordance with the explicit text of Article 67 of the Egyptian Constitution, which stipulates: "Litigation is a right protected and guaranteed for all people. Every citizen has the right to resort to his natural judge, and the state guarantees that the judicial authorities are brought close to the litigants and that cases are decided quickly. It is prohibited to stipulate in the laws that any action or administrative decision is immune from judicial oversight."
However, the Supreme Constitutional Court rejected all the cases referred to it that challenged the unconstitutionality of Article 14, so that the article continues to detract from the rights of litigants, ignoring the constitutional text in Article 67.

In implementation of the text of Article 71 of Law No. 1 of 2000, which stipulates the establishment of a family insurance system, to facilitate the possibility of implementing provisions related to alimony, Decreed Law No. 11 of 2004 was issued regarding the establishment of the Family Insurance Fund, the implementation of which is supervised by Nasser Bank. Article 72 of the law stipulates that Nasser Bank is responsible for paying the expenses, alimony, wages, and the like that are decided for the wife." However, it failed to provide accordingly, as many women complained that it did not pay the expenses under the pretext of the lack of financial allocations.

Chapter III

Position of Supreme Courts towards the struggle of women with personal status laws

The Supreme Constitutional Court has the exclusive authority to play the following three roles:



1. **Issuing binding interpretations of existing laws when differing opinions emerge regarding them.**



2. **Resolving disputes over the jurisdiction of different judicial bodies.**



3. **Exercising oversight over the constitutionality of laws.**

According to Article 29 of Law No. 48 of 1979, the Constitutional Court can exercise its role in constitutional oversight of laws only in specific cases, such as those referred to it by the substantive courts. If any court finds, while examining a specific case, that one of the current laws in force is unconstitutional, it may suspend the procedures and refer the case to the Supreme Constitutional Court. However, the appeals presented before the Supreme Constitutional Court are often brought by the litigants themselves. Following the ruling on of the law as unconstitutional, the case is returned to the trial court to pursue the case based on the clarification issued by the Constitutional Court in its ruling.

The Supreme Constitutional Court's reliance on substantive courts constitutes a structural weakness. The Supreme Constitutional Court cannot impose its oversight on laws before a specific dispute is referred to it by one of the courts, and citizens cannot file cases directly before it.

The problem lies in the fact that ordinary courts may be less willing to refer laws, especially since they are part of the patriarchal system that sees the necessity of not diminishing the rights of men in personal status laws, which is what we notice from our readings of the appeals presented before the Supreme Constitutional Court, where percentage of male plaintiffs is much

higher than the percentage of appeals referred by women.

In the 1990s, Islamists' appeals regarding secular laws were based on Article 2 of the 1971 Constitution, which stipulates that "the principles of Islamic Sharia are the main source of legislation." This article was added to the 1971 Constitution and was emphasized in the constitutional amendment in 1980, with the aim of supporting the religious legitimacy of the regime in that period, and perhaps Sadat never imagined that Article 2 of the Constitution would open the door to constitutional challenges, whether by activists of Islamic tendencies or by judges of the lower courts who sympathized with the Islamic movement." [35]

The Supreme Constitutional Court has rejected large numbers of Islamic appeals on a wide range of legislation issued before 1980, whether related to personal status laws or some aspects of the Code of Criminal Procedure[36].

However, we find that the court, through its ruling issued on May 4, 1985 in Case No. 20 of Judicial Year 1, implicitly enacted the principle that laws issued after the 1980 amendment are subject to oversight and must be in accordance with Islamic law.

The court annulled Presidential Decision No. 44 of 1979 in May 1985 and based its justification on the fact that the decision had violated the procedural conditions mentioned in Article 147 of the 1971 Constitution, which regulates the use of presidential decisions in emergency situations. The ruling in Case No. 28 of the Constitutional Year 2 issued on May 4, 1985, stated that "The President of the Republic issues executive decrees that have the force of law only when the People's Assembly is not in session and when the President is faced with a sensitive situation that requires immediate decision-making. The People's Assembly must later approve the President's decision when it reconvenes."

35 Dr. Tamer Mostafa, from the book "The Struggle over Constitutional Authority" (The Role of the Supreme Constitutional Court in Egyptian Politics), page 114

36 Ibid., page 116

But this ruling was less bold than it seemed at first glance, because the court did not overturn the presidential decision until after the assassination of Sadat and after directing sharp criticism to the substance of the law [37].

Since the file of personal status laws is one of the controversial files, especially between those calling for a civil state and the Islamists, the Constitutional Court tried to avoid a clash with both parties to the conflict regarding the matter. However, it could not do so for long since the nineties witnessed the emergence of a new type of human rights organizations, which not only documented human rights violations, but also challenged the state in courts, and among those groups was the Human Rights Legal Aid Center, which filed 500 lawsuits in the first year of its foundation, 1323 lawsuits in 1996, and 1616 in 1997; lawsuits related to women's rights account for 10% of these lawsuits. The Women's Center for Legal Guidance was also established in 1995 to provide free legal assistance to women facing several issues such as divorce, child custody problems, difficulties in obtaining marital expenses after divorce, and other forms of discrimination. The Center filed 71 lawsuits in the first year of its establishment, 142 in 1996, and 146 lawsuits in 1997, in addition to providing legal assistance to 1400 women in the first three years of its establishment. The Egyptian Women's Legal Aid Center was also able to refer its first case to the Supreme Constitutional Court. [38]"

37 Ibid., page111

38 Activity report of the Legal Aid Center for Human Rights, 1996, by Dr. Tamer Mustafa, ibid., page 204

Women's problems with family laws and the role of higher courts

1 Opinion of Higher Courts on the principle of obedience and entitlement to alimony



The Constitutional Court approved an important principle according to which a woman's departure to work does not constitute disobedience to her husband, in its ruling issued on May 3, 1997, in Case No. 18 of 14thConstitutional Judicial. The substantive dispute - around a woman's entitlement to her alimony - was based on her husband's denial of her right to work

.

The subject of the constitutional lawsuit concerned what was included in the fifth paragraph of Article 1 of Law No. 25 of 1920 regarding the provisions of alimony and some personal status issues - and in the field of applying its sections that relate to the wife's work and the conditions of this work. The court relied in justifying its position that the woman is the man's partner in reproducing humanity and other forms and patterns of life that are consistent with her nature, and absolutely denying her the right to work may cause her distress and embarrassment, and will not facilitate her affairs, or help her fulfill her responsibility, even towards her household and its members.

Despite the court's position, it acknowledged in its ruling the fifth paragraph of Article 1 of Law 25 of 1920, after it was amended by Law No. 100 of 1985, which benefits the wife's right to work without the husband's permission, in the following cases:

1. **If she proves her right to legitimate work in the marriage contract, whether she worked before marriage or will work after her marriage.**

2. **If she worked before marriage and he knew about it, then his non-objection amounts to his implicit consent to her leaving the house to work.**

3. **If she works after marriage, and the husband agrees to that explicitly or implicitly, he is not permitted to prevent her from going out to work. The Supreme Constitutional Court has ruled that if the husband permits his wife to work, and her work is lawful, then her continuing with it is a right guaranteed to her, and her husband should not prevent her from doing so, or turn her away from it, after he authorized her to do so.**

4. **If she goes out to work due to compelling circumstances.**

That is, her work is still conditional on the husband's consent and giving him the right to prevent her, but the court only restricted that right, which raises the question about the development of the rulings issued by the Constitutional Court and the extent of their effectiveness in practice.

The explanatory memorandum to Law No. 100 of 1985 regarding Articles 1 and 2 also stated the following:

"The first paragraph of Article 2 stipulates that the wife's spending is obligatory on her husband based on the principle of a valid contract if she surrenders herself to him, even by ruling, whether she is a Muslim or differs from him in religion, and this is what the existing law stipulates in the first article of Law No. 25 of 1929. Then it came the second paragraph of the text stating that the wife's illness does not prevent her from being entitled to alimony, and the alimony includes food, clothing, housing, treatment expenses, and other things required by custom."

2 The condition for a wife's alimony is exclusively obedience to the husband

In another ruling, the Constitutional Court supported the custodial woman and obligated the government to ensure that the woman reconciled her work in her community with her duties within her family, which is what the state should undertake, as it falls within the scope of its responsibility, and is covered by its obligations guaranteed by the Constitution.

During the session of February 13, 2005, in Case No. 81 of the 25th constitutional judicial year, the Supreme Constitutional Court issued a decision that the text of Article (91) of the President of the Republic's Decree by Law No. 49 of 1972 regarding the organization of universities, amended by Law No. 142 of 1994, was unconstitutional because it considered the child care leave within the period of ten years allowed as leave for a faculty member throughout the period of service. One female university professor was seconded to work in an Arab country for a period of six years, and then she obtained unpaid leave to care for her child for three consecutive years. She then submitted a request for approval to deduce the duration of the childcare leave from the period of ten years authorized as leave for a faculty member, in accordance with the text of Article (91) of Decree Law No. 49 of 1972 regulating universities, with a request to renew her unpaid leave to care for the child for two years. The decision of the President of the University included the renewal of her special leave without pay to care for the child until the date of completion of the ten-year period, which is a period less than the period requested by the plaintiff, which led her to resort to the Supreme Constitutional Court, to demand this right. The court responded to her requests and issued its ruling that Article (91) was unconstitutional.

The merits of this ruling stated: "The appealed text, by counting childcare leave within the ten-year period allowed as leave for a faculty member throughout the period of the service, has singled out mothers who are faculty members under a special organization that undermines the family's unity and cohesion, and violates the foundations upon which it is based without which the pillars of society cannot be stable, and thus discriminates, and on other than objective grounds, between them and other female workers in the state,

who are legally entitled to obtain this leave, as it is granted to them obligatorily in accordance with certain controls, which does not undermine its duration, or affect the essence of the right to it, while it deprived the mother faculty member of that leave if she had exhausted the ten-year period before giving birth on a scientific mission that is required by the nature of her work; the contested text also discriminates between women and men faculty members, as it gave the man the opportunity to benefit of the full period of authorized leave for conducting scientific studies or working abroad, while the mother is deprived of this advantage when it included the period of childcare leave in the aforementioned period, and thus has adopted an unacceptable arbitrary discrimination.

This caused embarrassment to the state in, as it was forced to amend the text in accordance with what was recommended by the Supreme Constitutional Court.

The role played by the Supreme Constitutional Court was not effective with thousands of women, as they face bureaucracy and slow litigation while trying to obtain their financial entitlements. In most cases, the lawsuit to claim alimony may take more than two years, and during this period the woman remains without resources, especially poor women who also need legal fees for the lawyers directing the case, and the period may be extended due to the complexities of investigating the husband's income and the complexities of the procedures for informing the husband. All of this is in addition to the limited amounts awarded and the limited percentages stipulated for withholding salaries and pensions from those with salaries and pensions to recover the debt of alimony and the difficulty of implementation for those with self-employment.

The courts usually have decided to suffice in proving the husband's financial status with what is called a salary statement if the husband is an employee. However, it is permissible to prove the financial status of the husband if the wife claims that the husband has other sources of income. Yet, this makes us wonder about the wife's burden of proving the husband's income, as about that 70% of male employment in Egypt is informal[39], in addition to Nasser

39 According to the combined annual bulletin of labor force research and the Central Agency for Public Mobilization and Statistics in April 2020

Bank's failure to perform its assigned role in providing the alimony awarded, whether temporarily or with final rulings, under the pretext of lack of financial allocations, which leads to the deterioration of the social, health, and economic conditions of women and children.

Article 11 bis of Law No. 100 of 1985 poses another problem for women in cases where alimony is forfeited from them, in three cases:

The first: if she apostatizes.

The second: if she refuses to surrender herself to her husband without right or is forced to do so for no fault of the husband, such as her having to stay in her family's residence to care for a sick family member.

And the third is if she goes out without her husband's permission....

The fifth paragraph of the article dealt with explaining the cases in which alimony is not forfeited and limited it to two cases, which are breaching Sharia law and going out to work. Decreed Law No. 44 of 1979 stipulates that it is permissible for the wife to go out of her house in cases where this is permissible according to Sharia law or according to custom or when necessary. Thus, the current text excludes cases in which custom may allow the wife to leave in contravention of the provisions of Sharia law.

The court competent to hear an imprisonment case against a spouse is the Family Court, in accordance with the provisions of Article 3 of the Family Courts Establishment Law No. 10 of 2004.

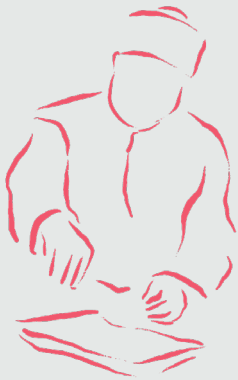
Conditions required to sentence the husband to imprisonment in accordance with the provisions of Article 76 bis of Law No. 1 of 2000:

1. **That the person seeking implementation obtains a final ruling in a claim for alimony, wages, and the like.**
2. **The ruling must be final and in accordance with a quorum.**
3. **To prove the ability of the person against whom the judgment was issued to pay.**

4 **That the person against whom the judgment was issued refuses to pay after the court orders him to do so, for a period of thirty days.**

A decision to stay the execution of the ruling may be issued based on evidence of payment if the detainee presents evidence thereof, and if spousal support is due according to a final ruling and the court determines his ability to pay, and where police investigation proves the defendant's ability to pay, and the court assesses the defendant's ability to pay and his ability to pay, and ordered him to pay, but he refused to pay, then the conditions of imprisonment are fulfilled, and the court ultimately rules it.

3 Opinion of the Higher Courts on the principle of divorce due to harm and polygamy



While marriage in Egypt appears to be a "civil" marriage, as the person performing it is a Ministry of Justice employee, the forms of marriage contracts are explicitly based on religious provisions, and the legal positions and civil and social rights of the parties to this marriage contract are determined in accordance with the provisions of Islamic Sharia. For example, a Muslim citizen cannot marry any woman who believes in religions other than those recognized by Islam, such as Christianity and Judaism. Likewise, a Muslim woman cannot marry any man who professes a religion other than the Islamic religion.

Marriage in Islam does not require more than acceptance, attestation, and publicity. Then documentation comes as an additional regulatory step, while rights are preserved by the provisions of Sharia'a law in their enormous diversity. In contrast, civil procedures are full of bureaucratic steps, thus complicating the marriage procedure and the joint life of spouses, and women in particular. Here, the law's injustice towards women becomes evident, because it did not aim to do justice to them in the first place as much as it aimed to establish and tighten control over society.

Furthermore, Egyptian law does not accept the recognition of the marriage bond without an official document. Article 17 of Law No. 1 of 2000 stipulates that: "Claims arising from the marriage contract shall not be accepted upon denial... unless the marriage is proven by an official document. However, a lawsuit for divorce or annulment shall be accepted according to the circumstances and not otherwise, if the marriage is confirmed by any writing." The absence of an official document in accordance with the previous text results in:

- Not accepting all claims arising from the marriage contract upon denial only. However, if the marriage is recognized and the age condition is met, the lawsuit is accepted.
- Non-acceptance includes all claims arising from the marriage contract, such as claims for dowry, alimony, obedience, inheritance, and the confirmation and acknowledgment of marriage.

It is clear from the above that failure to prove marriage in an official document causes serious harm to the rights of women, who cannot claim their rights without an official document, with the exception of the right to request divorce or annulment from customary marriage whenever the marriage is confirmed by any writing, even if it is not official, which is what we will cover in an upcoming booklet.

The legislator adopted a different approach when it came to proving divorce, as it was stated in Article 5 bis of Law 44 of 1979 that the divorcing person, whenever the divorce occurs or wishes to effect it, must take the initiative to document it by proving it with testimony from the notary, which supported the trend to abolish verbal divorce. This was maintained by law No. 100 of 1985, which considered divorce in the event of both testimony and documentation. Article 21 of Law No. 1 of 2000 confirmed that divorce is not considered in the case of denial except by testimony and documentation."

This article faced a lot of criticism, which led the Supreme Constitutional Court, on January 15, 2006, in Case No. 113 of 26th constitutional judicial year, to rule that Article 21 of Law No. 1 of 2000 was unconstitutional, where one of the women filed case No. 1299 of 2003, Sharia'a, before the Shebin El-Kom Court for Civil Status requesting the court to ruling proving her divorce from

the defendant as an irrevocable divorce as of May 2003, stating that she married the defendant in a valid contract on 12/15/1971, and that he entered into marriage with her and had sexual intercourse with her, fathering males and females from her, and that he regularly divorced her and returned her upon his own initiative. He did not document the divorce despite its legal occurrence, until in May 2003, he divorced her for the third time. However, the husband refused to document the divorce, which led her to file a lawsuit to prove the divorce. On 3/31/2004, the court ruled to refer lawsuit No. 1299/2003 Shebin Al-Kom to the Supreme Constitutional Court to decide on the constitutionality of the text of Article (21) of Law No. 1 of 2000, as it deemed it to be in violation of Articles (2, 12) of the Constitution.

The issued ruling stated, "Therefore, the legislator was keen, in Law No. 25 of 1929 regarding some personal status provisions and its amendments - in accordance with what was disclosed in the explanatory memorandum to Law No. 100 of 1985 amending some provisions of personal status laws - not to place a restriction on the permissibility of proving divorce in a judicial manner in all accepted manners of proof. However, in the appeals text, the legislator took a different approach regarding proving divorce upon denial. In this area, only one method was considered, which is testimony and documentation together, so that it is not permissible to prove it with any other evidence. At the same time, the legislator accepted that religiously the divorce had taken place. This text, although it falls within the scope of the jurisprudence that is legally permissible for the guardian, nevertheless - within the limits of its scope proposed in the present case - places the divorced woman in severe religious embarrassment, and makes her case difficult to manage, if the divorce occurred, she knew about it and the divorcing party denied it, or refrained from proving it to her detriment, while she was unable to prove it in the way required by the contested text, which conflicts with the controls of ijtihad and the overall objectives of Islamic law."

Despite this, no new legislation has been issued to address this issue, but rather refers to the methods of proof stipulated in the Civil Code, which is a new obstacle in women's progress before the courts. Considering the unfair legislative systems regulating the issue of divorce in Egypt, where the man has the full right to an unconditional and unilateral divorce without the need to resort to litigation to obtain this right, the woman must, to obtain a divorce

in the event of a lack of consensual agreement between them, to resort to litigation in extremely complex and lengthy procedures to obtain that right. In addition, the law recognizes verbal divorce as soon as a man desires it, while a woman must resort to the judiciary, as previously mentioned.

This leaves only three options for married women: either remaining with a husband from whom she may be exposed to many forms of abuse, or giving up everything she owns and all her rights so that he agrees to divorce her or resorting to the long and complicated and bureaucratic judicial path.

In addition, the government requires a woman, if she resorts to litigation seeking divorce or Khul'e, to submit to attempts at compulsory reconciliation, while a man is not asked to do the same thing, as he has the full right and authority to divorce. Thus, Khul'e is just another means used by some women to achieve their rights by giving up many of their important rights.

In a related context, the Supreme Constitutional Court accepted the text that punishes the husband who gives the notary incorrect data about his marital status, which is the text of Article (23 bis) of decreed Law No. 25 of 1929 amended by Law No. 100 of 1985. The substantive dispute revolved around the wife's request to punish her husband, the plaintiff in the constitutional lawsuit with the penalty prescribed in that article, because he declared in his second marriage document that he had no other wife, contrary to the truth. The husband resorted to the Supreme Constitutional Court to invalidate this text, but the court did not respond to his request, and ruled to reject his claim. The reasons for its ruling included the following: "The marital relationship has its sanctity, which makes it distinct from all other relationships between members of society, and the Holy Qur'an has considered it to be the same, as it described it as a "solemn covenant", an expression of the high status of marriage, given that it is based on mixing and compatibility between the spouses in a unity that they accept and that aims to preserve its components and take care of its boundaries. This means that honesty and sincerity are crucial in this relationship to guarantee its continuation away from anything that disturbs its peace and obstructs the flow of its tributaries whenever that happens. The appeal stipulated in the text of the paragraph is a penalty for committing the actions mentioned therein and was imposed by a social necessity based on the protection of the family and the continuation of marital

life based on honesty and loyalty, which are contradicted by the husband's attempt to marry another woman without informing his wife thereof so that she remains unaware of her situation. This is in contradiction to Almighty's words, "live with them in kindness." Determining this penalty does not violate Sharia law or the Constitution [40]."

However, the Constitutional Court did not reach a decisive opinion regarding its position on the wife's knowledge of her husband's marriage to another woman. Despite its continued support for the constitutionality of the text of Article (11) bis and the text of Article 23 bis of Law No. 25 of 1929, it established another new principle in 1994 in its ruling in Case No. 35 of the 9th constitutional judicial year, during the session of August 14, 1994, where a husbands requested to consider the constitutionality of the above mentioned law with some personal status provisions - which allowed the wife - even if she had not stipulated in the marriage contract that he should not marry another - to request a divorce in light of two objective conditions, the first of which is that she has been materially or morally harmed by her husband's second marriage, provided that this harm is described in terms of its effects, that it reaches a level of abuse such that coexistence is impossible. Second: The assessment of this harm should be up to the judge, and he must not divorce her from her husband irrevocably unless he is unable to reconcile them. The husband had filed the constitutional lawsuit seeking to invalidate that text by claiming that it wasted the right to polygamy or restricted it. The Supreme Constitutional Court rejected the lawsuit, and affirmed the constitutionality of the article, but it also stated in its ruling that the wife's objection to her husband's second marriage simply because she disliked the matter was not reason enough to separate between them. Rather, she must prove that unforgivable, irrevocable harm occurred and that cannot be amended [41].
Women considered this position a retreat from the gains they had obtained

40 Case No. 7 of 8 Judicial - Constitutional - dated 05-15-1993 Technical Office 5

41 As it was stated in the ruling, "The right of a wife who opposes the new marriage to separate her from her husband is not based on her mere hatred for him or her aversion to him for marrying over her, and she also does not have the right to request the severance of her relationship with her husband on the claim that his union with another woman is in itself considered harmful to her. Rather, she must establish evidence that harm forbidden by law has befallen her, through an act or omission on the part of her husband, provided that this harm is real and not imagined, real and not imagined, established, and not assumed, independent in its elements from the event of subsequent marriage in and of itself, and not consequential to it. It is unforgivable that he exceeded the limits that can be tolerated according to Sharia law, contrary to the good relationship between people like them, in a way that violates its foundations so that his abuse of her - without right - is resolved - the causes of which were linked to the subsequent marriage, and she was its motive. If this marriage was not the occasion to which the harm occurred in connection with it, then her right in separating her from her husband, the general rule of divorce for harm stipulated in Article (6) of Decree Law No. 25 of 1929, amended by Law No. 100 of 1985 regarding some personal status provisions, is reverted to the general rule of divorce for harm.

following the ruling of Law No. 44 unconstitutional, as Article 6 bis, paragraph two of it stipulated: "It is considered harmful to the wife for her husband to marry another woman without her consent, even if she had not stipulated in her marriage contract that he should not marry another, as well as the husband concealing from the new wife that he is married".

It was mentioned in the explanatory memorandum of the above-mentioned law that this ruling is taken from the doctrine of Imam Malik and Ibn al-Qayyim.

However, with the issuance of the ruling that Law No. 44 of 1979 was unconstitutional, Law 100 of 1985 was issued, granting in article 11bis the wife the right to request a divorce due to harm if she suffered material or moral harm that made it impossible to continue living with her husband. The difference between the two laws was that the first law considered merely marrying another woman to constitute harm to the wife, but the latter obliges the wife to prove the harm she suffered because of her husband marrying another woman.

The Supreme Constitutional Court confirmed this in its aforementioned ruling, and the Court of Cassation affirmed it in its successive rulings, as it established the same rule that marriage to another woman is not in itself considered an assumed harm that allows the wife to request a divorce, and the wife must provide evidence that she has suffered real harm that is not imagined according to the Court of Cassation's description in its ruling issued in Appeal No. 368 of the Personal Status 75th judicial year 75 in the session of April 28, 2007.

What we mentioned above makes it clear that the Constitutional Court confirms what is stated in the personal status laws, which is that the successive ruling regimes treated women as minors in the eyes of the law and always subjected them to the guardianship of male family members, and "they treat women as part of the organization of the family institution, not as an individual who should enjoy her rights independent or equal to those of men. [42]"

42 Nima Geneina and Nadia Wassef: "Unkept Promises: Women's Rights in Egypt," issued by (National Population Council, 1999), page 33

One of the results of these principles adopted by the laws and the Constitutional Court is to place the burden of proving harm on women for refusing their husbands to marry other women, because they frequently consider that there might be no alternative to this marriage if it ends, and there is no guarantee that they will actually be divorced from their husbands because the burden of proving material or moral harm falls on the wife alone, whether she is the first or second wife. Polygamy not only affects their rights to self-determination within marriage, but also affects their hereditary value after the death of the husband, as a fixed share of the estate is decided for the wife, whether it is one or more wives. The wives then are entitled to a quarter of the heritage in the event that the husband does not have children, or share in the heritage in the event that the husband has children [43].

4 Opinion of the higher courts on Khul'e



At the beginning of the year 2000, Law No. 1 of 2000 was issued. Article (20) of it stipulated the right of a woman to resort to the judiciary requesting a divorce. This text sparked a widespread media, societal and legal uproar, and great controversy. Opinions were divided between supporters and opponents. Until this text was presented to the Supreme Constitutional Court, it settled the controversy surrounding it, with its ruling issued in the session of December 15, 2002, in Case No. 201 of the 23rd constitutional judicial Year, which rejected the lawsuit filed challenging this text, affirming its constitutionality and its conformity with Islamic law. The rationale for its ruling included a foundation of the issue from a legal and constitutional perspective in detail that prevents this matter from being debated again, and in conclusive terms in its indication of its constitutionality [44].

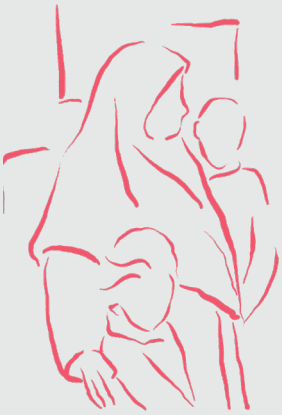
43 Work guide for employees of the Women's Complaints Office, Book Eight: Estates and inheritances in light of Law No. 77 of 1943 issued by the National Council for Women

44 The aforementioned ruling stated the following: "Since marriage was originally prescribed to be perpetual and to continue to be valid, and the personal relationship between the spouses is the connection that makes marital life valid and the marriage remains valid, therefore the Lord - Almighty and Majestic - was keen to maintaining affection and encouraging good treatment. But when hatred replaces affection and mercy, and discord intensifies and reconciliation becomes difficult, God Almighty has permitted the husband to end the relationship through divorce. He uses it when needed and within the limits set for him by the wise legislator, and in exchange for this right that the Almighty has decreed for man,it was inevitably a justice to grant the wife the right to request a divorce for several reasons, and he also decided for her a right to ransom herself and return to the husband what he had paid in advance of the dowry, which is known as khul'e. In both cases, she resorts to the judiciary, which divorces her for one of the reasons for divorce."

In its ruling issued on 12/5/2015, in constitutional judicial case No. 14 of the 30th judicial year, the Supreme Constitutional Court ruled to reject a case, which was filed as an appeal against the text of Article (22) of Law No. 1 of 2000 regulating some conditions and procedures for litigation in Personal status matters. The substantive dispute revolved around a woman's request to grant her temporary alimony, on the basis that she had been divorced against her will and without a reason on her part. The matter that the husband - the plaintiff in the constitutional lawsuit - faced was that she was still his wife. He took her back after the revocable divorce before the end of 3 months waiting period and without notifying her, which the wife denied. The contested text had stipulated - in the event that the divorced woman denied knowledge of the husband's decision to revoke the divorce - that she be notified of it with an official paper before the end of the waiting period, as "it is not acceptable upon the husband's denial that he claim he had reconciled with his divorced wife unless he documents this reconciliation in an official paper before the expiry of sixty days for a woman still in her reproductive years." This is the principle that the court emphasized in its ruling. [45]

45 The court stated the reasons for its ruling to reject the case, and its interpretation of the rejection stated, "Because that was the case, and the contested text had dealt with the deception of some divorced persons by issuing a revocable divorce against their divorcees, by claiming a review before the end of the waiting period, and not informing the divorced woman about it until after the end of her legal waiting period in order to circumvent the provisions of the waiting period." Or underestimating the right of the divorced woman to know of the review before the divorce becomes irrevocable, so the divorced person is obligated to announce to his divorced woman this review in an official paper before the end of her waiting period, in order to avoid her denying knowledge of this review on the one hand, and to protect her legal rights on the other hand, and thus this text has hedged a worthy interest. With protection, and intended to ward off greater evils and harms, the contested text purported to give the divorced wife the right to prove that her divorced woman had retracted her by all means of proof, up to the nudity of marriage, so that her commitment to the requirements of re-marriage would be achieved, so she would be prohibited from marrying another after her waiting period had expired, and at the same time it would prevent Without the husband exceeding the waiting period in order to circumvent the claim of review before its expiration, he will have sought to achieve a public interest worthy of care and protection, and he has come up with an organization that takes into account the differences in the legal rights of the husband and wife, aiming to achieve the public good, preserve the right to honor, and the safety of the family."

5 Opinion of the Higher Courts regarding custody, housing, and guardianship



On January 6, 1996, judgeAwad Muhammad Awad Al-Murr - President of the Constitutional Court at the time –ruled the unconstitutionality of article 18 bis, third paragraph, added by Law No. 100 of 1985 amending some provisions of personal status laws by Decree No. 25 of 1929 The article stipulates that the divorcing man is obligated to prepare a suitable residence for his children from his divorced woman/ custodian, even if the children have their own money, or their custodian has a residence in which she resides, whether rented or otherwise.

The article also stressed that if the marital home is leased, he must prepare a suitable home for his children within a period not exceeding the end of the post marital waiting period.

The presented case concerned a dispute over the marital residence, filed by a divorced woman from Alexandria and her daughter. She filed the lawsuit in 1985 demanding that she and her daughter be granted marital residence. The husband argued that the article on which the lawsuit was filed was unconstitutional, so the court allowed him to take procedures for filing a constitutional lawsuit to that effect. It ruled that the first and second paragraphs of the contested article were unconstitutional, as it stated in the merits of the ruling that "the two articles explicitly stipulate the entitlement of the children with their custodian to the marital home if the father person fails to prepare for them an appropriate home that includes all of them. However, linking these two paragraphs together indicates that they are arbitrarily discriminatory between two categories of divorced persons, while one of them is obligated - if the marital residence is rented - to provide the children with their custodian - a suitable residence within a period of time that does not exceed the waiting period of the divorcees, otherwise the children will remain occupying the marital residence without their father and will not leave except after the end of their entire custody period;as for the other - whose

residence is not rented –it is sufficient to provide her children with their custodian with a suitable residence to which they can return, even after the end of the waiting period of their divorcees, i.e. they are not bound by a specific time" .It added, "Divorced fathers - in their relationships with their children are similar regarding their legal positions among each other - the text of the aforementioned article limits their rights to prepare suitable housing for their children if the marital home is rented, due to the arbitrary discrimination it entails that violates the principle of equality."

This ruling results in an additional burden on mothers, especially if the residencethey occupy is rented, until a judicial ruling is obtained that grants them a right to the residence, which may continue for years. How did the Constitutional Court envision women remaining without a home, even if it was through debt, until a court ruling was obtained?

The Civil and Commercial Department also issued a ruling establishing a judicial principle in which it said: "The custodian who owns her own home, whether owned, rented, or is residing with her father, is not entitled to housing rent or another residence."

The ruling on the appeal was issued on December 3, 2014, headed by Counselor Khaled Yahya, in support of the ruling of the Constitutional Court issued in 1996 declaring the unconstitutionality of Article 18 bis. In justifying this position, he relied on what was stated in the constitutional ruling headed by Counselor Awad Al-Murr, and stressed the following: "It is necessary for the entitlement of the custodian in the custodial residence, whether it is the marital residence or a suitable residence that is freely available, that the children do not have enough available money for their housing, and that the custodian does not have a residence in which she resides, whether this residence is owned by her or rented." Thus, the basis for the custodian's entitlement to the custodian's residence is that the children must not have sufficient available funds for their housing and that she must not have a residence in which to reside, whether it is owned by her or rented.

What confirms the court's confusion in personal status laws and its attempt to balance between the parties to the conflict, men, women, and the government, is that it works to establish and ensure effective systems to

preserve families, especially vulnerable groups in them, and preserve their rights. Following the issuance of the Constitutional Court's ruling regarding Article 18 bis in 1996, on April 15, 2004, in constitutional case No. 23 of 2020, the Supreme Constitutional Court affirmed the principle that the husband must financially support his wife, even if she is well-off, or differs from him in religion.

The court justified its position by explaining, "What is legally established is that the wife's alimony is based on her retaining her husband's right over her - even if she is well-off or differs from him in religion - so that her husband may possess over her those benefits that he is the only one to enjoy by virtue of her confining them to him, with the permission of God Almighty, and through her surrendering herself to her husband in complete submission, actual or de jure. Alimony is thus an established right that she has over her husband in a valid marriage. Hence, her withholding or willingness to allow her husband to provide it to her is a reason for it being obligatory, and its amount is linked to her status and requirements, on the condition that it is not less than what is necessary to meet her necessary needs."

On March 5, 2016, the Supreme Constitutional Court approved an important ruling to protect the child and approved the doctrine of the legislator to protect the custodian and the child, seeking the best interest of the latter. It investigated not only the extent to which the text under challenge agrees with the texts of the Constitution, which is its main role and supreme mission - but also the effect of its ruling on society. In our opinion, the court could never be far removed from the reality of our society, especially in that issue, and the problems occurring within it. It sought to find solutions by assuming its role in monitoring the constitutionality of laws, through careful balancing dictated by necessities and results.

This was evident in its ruling in Case No. 6 of the 34thconstitutional judicial, where it ruled to reject the lawsuit filed in appeal against the text of the second paragraph of Article (54) of the Children's Law promulgated by Law No. 12 of 1996 and replaced by Law No. 126 of 2008 concerned with granting educational guardianship of the custodian as follows: "The educational guardianship over the child shall be for the custodian, and in the event of a dispute over what is in the child's best interest, any of the concerned parties

shall raise the matter to the President of the Family Court, in his capacity as a judge for temporary matters, to issue his decision, taking into account the wealth of the guardian, without prejudice to the custodian's right to educational guardianship."

The Court affirmed the constitutionality of the text, emphasizing the necessity of protecting vulnerable groups, namely children, and preserving their educational future, which subsequently affects society. Therefore, it was necessary for educational guardianship to be given to the custodian, as he is the one responsible for his upbringing and care and the most knowledgeable of his inclinations and potential.

In 2013, the court issued a pioneering and important ruling, in which it went beyond the limits of protecting the mother to protecting the grandmother and grandfather as well and affirmed the grandmother's right to communicate with her grandchildren, and see them, when the parents separate. In its ruling issued on May 12, 2013, in Case No. 37 of the 33rdjudicial year, the court, headed by Counselor Maher El-Beheiri, President of the Court, ruled that the text of the second paragraph of Article (20) of Law No. 25 of 1929 regarding some personal status provisions, replaced by Law No. 100 of 1985 amending it, was unconstitutional. The subject of the substantive dispute revolved around the maternal grandmother's request for a ruling to enable her to see her granddaughter once a week, and the contested text limited the grandparents' right to see her in the absence of the parents. The Supreme Constitutional Court ruled the following: "The contested text by limiting the right of grandparents to see their grandchildren in the absence of parents has violated what is required to maintain ties of kinship, maintain family ties, and the higher values that this and that carry that achieve the integration of the human soul that is aimed at by the noble objectives of Sharia law. From this point of view, it is in violation of the provisions of Sharia law and Article 2 of the Constitution. The contested text strays from achieving the legitimate interests of the family and then of the child in his relationship with his family, especially his grandparents, with the mutual feelings and sentiments that this brings between them that do not differ from those that exist between the child and his parents."

Thus, the Supreme Constitutional Court realized what the legislator had missed, and brought the matter back to the right path, keeping in mind the interest of the entire family, to issue its advanced ruling, in fairness to women (grandparents) from a legislative text that neglected their right to communicate with their grandchildren, and approved this right for them and their grandchildren.

6 The position of the Supreme Courts on the personal status of non-Muslims



In 2001, the Supreme Constitutional Court issued an important ruling in constitutional judicial case No. 107 of 21, headed by Counselor Dr. Mohamed Fathi Naguib (president of the court), ruling that the text of Article (177) of the Coptic Orthodox Personal Status Regulations was unconstitutional[46].

The case goes back to a woman filing a lawsuit requesting a ruling to prove the death of her husband and the father of her children on the basis that he traveled to the State of Kuwait in 1997, and there was no news of him, all attempts to find him failed, and more than four years have passed from the date of his disappearance, which necessitates a ruling of his death in accordance with Article (21) of Law No. 25 of 1929, amended by Law No. 100 of 1985 regarding provisions for alimony and some personal status matters. However, the text of Article (177) of the Personal Status Regulations for Copts and Orthodox, given that the plaintiff and her husband are Copts, prevented her from fulfilling her requests, which led her to resort to the Supreme Constitutional Court to decide on the constitutionality of this text. Indeed, the court ruled that the article was unconstitutional, considering that regulating the conditions of absence and loss of Egyptians is a matter related to their social lives, and it is a general matter in which there is no place for the application of a religious doctrine. The rationale for this ruling came as follows: "Regulating the

46 This text stipulates that: "It is permissible to judge the death of an absent person after thirty years have passed from the date of the ruling by proving his absence, or ninety years have passed since his birth."

conditions of absence and loss of Egyptians is a matter related to their social lives, and it is fully integrated into the provisions pertaining to regulating Egyptian family conditions in their absolute sense that transcends differences in creeds and religions, making it a general Egyptian matter in which there is no place for the privacy of belief and its spiritual subjectivity."

The text of the first paragraph of Article (21) of the amended Law No. 25 of 1929, stipulated that "the death of a missing person who is most likely to be lost shall be judged four years from the date of his disappearance," while the text of Article (177) of the Personal Status Regulations for Orthodox Copts stipulates that "it is permissible to judge the death of an absent person after thirty years of proving his absence or after ninety years have passed since his birth." The effect of the two texts together is that, although they were united in their organization of the rulings on absence and loss, they differed clearly in their regulations regarding the sect addressed by its provisions; if both sects are Egyptians, who must be addressed according to one legal rule, as long as it is a matter of regulating a specific issue related to their public life, otherwise some of them will be subject to regulation and others will be subject to a different regulation, thereby discriminating between them in the difficulty or ease of proof".

This ruling was a rescue for many Christian women who lost their husbands. They had to wait thirty years to be able to issue a ruling on the death of their husbands, but after that ruling, they became able to have equality with Muslim women.

According to the Personal Status Law, custody of children after divorce becomes the right of the mother until the age of fifteen [47], then the children have the choice of staying with one of the parents. However, if the mother is not a Muslim, this right is threatened, as some fathers resort to filing lawsuits to revoke custody of their wives. The precedents are based on some jurisprudential opinions that support dropping the right of custody from the

47 Cassation ruling, Appeal No. 592 of Personal Status Judicial Year No. 74, Law No. 4 of 2005 replaced the text of the first paragraph of Article 20 of Law No. 25 of 1929 and established the right to custody of women when the boy or girl reaches the age of fifteen, and the judge gives the boy or girl the choice after reaching this age to remain in the hands of the custodian without custody pay. This is until the younger one reaches the age of majority and until the younger one gets married. Although the article includes the precedence of women in assuming responsibility for custody, it includes an important principle, which is unifying the age of custody for children of both sexes, and it also includes the choice of children whether to remain with the custodian.

non-Muslim mother after the age of seven for the children for fear of the mother's influence on the religion of the Muslim child.

For example, we find that the Supreme Constitutional Court has ruled that Article 72 of the Coptic Orthodox Personal Status Regulations is unconstitutional, which stipulates that custody goes to the husband in whose favor the divorce ruling was issued. In that case, a Christian man filed a lawsuit against his ex-wife before the Bandar Giza Court, seeking the court to include their five-year-old child in his custody, saying that a final ruling had been issued in his favor divorcing him from his wife due to strong dispute and alienation between them, and her abandoning the marital home for a period of more than three years. During the hearing of the case, the mother argued that the text of Article 72 of the Coptic Orthodox Personal Status Regulations, which stipulates that custody should be given to the husband in whose favor the divorce ruling was issued, was unconstitutional.

After the Court examined the papers, it decided that the contested article was unconstitutional, and its ruling[48] stated: "The personal status laws for Muslims, even though they are full of age specifications for custody, and the arrangement of custody - and after them the custodians - give the mother of the child priority over all other women, yet they are devoid of a text regulating the eligibility for custody regarding the bigger family. Therefore, it is necessary to refer in this regard to the most dominant opinions in the jurisprudence of the Hanafi school of thought, in accordance with the first paragraph of Article Three of Law No. 1 of 2000. The most important evidence of the jurisprudence of this school of thought is - in addition to what is required for custody in terms of maturity, reason, and competence, and the trustworthiness of the child in custody and not keeping him with someone other than a relative to whom he is unmarriageable - the divorce of the mother of the child from his father, even if the divorce was because to her, does not in itself negate her eligibility for custody of her child. This ruling, even if it relates to Muslims, nevertheless - according to the considerations that were explained above - guarantees the fulfillment of the child's interest - whether male or female - even if his parents are separated."

48 Cassation ruling, Personal Status Appeal No. 15277 of 74 Judicial Year

Here the Supreme Constitutional Court ruled in favor of Christian women, applying to them the provisions of Islamic Sharia'a as the most appropriate for children in that situation.

The Court of Cassation overturned this ruling on June 15, 2009, considering that the mother's religion alone is not sufficient to revoke custody from her, specifying some conditions that must be met to revoke custody from a non-Muslim woman. However, they are additional conditions that the court does not consider if the mother is a Muslim, which perpetuates discrimination between female citizens because of religion. A husband in Alexandria filed a lawsuit to revoke his wife's custody and become custodian of his three children, as he converted to Islam after his divorce from his wife. His reason for his request was that she was a non-Muslim and he feared for his children and Islam. The Al-Attarin Court for Family Affairs ruled for him to take custody of the little ones, and the Court of Appeal subsequently upheld the ruling. The Public Prosecutor then appealed the ruling by way of cassation in the interest of the law, in accordance with the text of Article 250 of the Civil Procedure Code. The Court of Cassation accepted the appeal, citing the rules of Islamic Sharia in the Hanafi school of thought, as it stated in the merits of its ruling: "What is established in Hanafi jurisprudence - and according to the Court of Cassation's ruling - is that, unanimously, the person most deserving of custody of a child is the mother, even if she is non-Muslim, because she is more compassionate and more capable of nurturing, so giving the child to her is a matter of compassion, which does not differ depending on religion."

Those provisions were not the only ones that prevailed in the interest of the child in this regard. On March 1, 1997, the Supreme Constitutional Court, headed by Counselor Awad Muhammad Awad Al-Murr, ruled that Article 139 of the Coptic Orthodox Statute was unconstitutional, since itstated that the age of custody ends when the boy reaches seven years old and the girl reaches nine years old, after which they are handed over to their father or whoever has personal guardianship over them.

Although the Court of Cassation issued a ruling deeming the "obedience" ruling to be a ruling of a procedural nature that applies to Egyptian women in general and is part of public order, in Appeal No. 45 of the Personal Status matters issued on February 23, 1993. A woman from Alexandria appealed

the obedience ruling issued against her, which was filed by her husband, after their marriage according to Coptic Orthodox law, which is devoid of the principle of obedience. The court rejected her.

Despite the application of many provisions of Islamic law to Christians in matters of personal status, as happens in the rulings on obedience, Christian women cannot resort to Khul'e despite the same validity of being a procedural matter as was previously mentioned in Law No. 1 of 2000, a procedural law that regulates litigation procedures in personal status matters [49].

Despite Article 224 of the Egyptian Constitution of 2014, which stipulates that the state is obligated to issue laws compatible with the provisions of the Constitution, and since Article Three of the Constitution itself considers that the principles of the laws of Egyptian Christians and Jews are the main source of legislation regulating their personal status, it was obligatory for the two legislative and judicial authorities to enforce the constitutional texts, and Parliament must present a unified personal status law for Egyptians, or, at the very least, present a unified personal status law for Christian sects [50].

This was not the only source of suffering for Christian in personal status cases. At the beginning of the millennium, the term "returnee to Christianity" appeared, as some Christian women converted to Islam after the emergence of the Khul'e law, to be able to obtain a divorce from the court. However, the Civil Status Authority affiliated with the Ministry of Interior refused. The women appealed to the State Council to request that the body be obligated to cancel the negative decision to refrain from changing their religion despite their fulfillment of all the required requests and conditions, which the Administrative Judicial Court of the State Council considered a form of apostasy from Islam.

49 Cassation ruling, Personal Status Appeal No. 592 of 74Judicial Year

50 Ignoring the issuance of personal status legislation for non-Muslims and legislation specific to inheritance for them led to the succession of various rulings on the application of Islamic law in the event of resorting to litigation, especially in inheritance cases, which is what human rights lawyer Hoda Nasrallah fought against, so she filed a lawsuit before the Helwan Family Court, No. 3743 of 2019, the Helwan family, requesting Invalidating the declaration of death and inheritance pertaining to the investigation of the death of the deceased, their father Rashad Barsoum Nasrallah, regarding the distribution of shares in accordance with the principles of Islamic Sharia, which is similar to the invalidity because it violates the provisions of the Constitution, the law, and the judiciary, in what the opponents did not request, since the deceased and the heirs are Christians of the Coptic Orthodox sect, and Article 240 of their regulations must be applied and equality in Distribution of shares between the male and female beneficiaries of the inheritance, and the court responded to it in November 2019 and ruled to invalidate the inheritance notices issued to her and her siblings.

In 2004 the court, headed by Counselor Farouk Abdel Qader, changed its position. During his years as president of the Council, the court issued hundreds of rulings in favor of the plaintiffs and recognized their right to prove the Christian religion in their personal papers. The court supported the constitution and international agreements, as the court affirmed in its ruling that the position of the administration, represented by the Ministry of Interior, is contrary to what the Constitution guarantees in terms of the principle of equality between citizens, as there is no discrimination between them on the basis of gender, language, religion, or belief, and this is indeed what the Ministry of Interior did, when It accepted requests to convert to Islam from Christianity, while it considered the reverse conversion to be an apostasy that could not be approved. Rather, there were several attempts to discourage women from returning to Christianity by some officers by offering them financial assistance or help them marry a Muslim male instead of returning to Christianity and subsequently marry a Christian [51].

The ruling issued on May 31, 2005, stated: "And since this position on the part of the administration is considered an unjustified interference on its part and constitutes a coercion to choose a certain belief and religion, while they are not willing... just as proving the new personal data is merely proving a purely material fact related to their civil status in the document prepared for that, which is the identity card, as long as they are still living in this society..., therefore it is a protection for others and for any individual who deals with the two plaintiffs and for all state authorities, that their true identity (Christianity)religion be proven., as well as their real name, so that the person dealing with them is aware of their affairs, not only in terms of their names, but also in terms of their religion, without making a mistake. Hence, there is a legal obligation on the administration to take the initiative and prove the truth of the religion that the person embraces. It is not permissible under any circumstances for the administration to use its authority granted to it by law to force the plaintiffs to continue in Islam."

The court had issued its ruling canceling the negative decision to refrain from proving the religion of the two plaintiffs in the case. This is the same approach that the Administrative Judicial Court maintained until the end of term of Chancellor Farouk Abdel Qader as president of the State Council in September

51 A report entitled "Forbidden Identities - The State's Violation of Freedom of Belief" issued by the Egyptian Initiative for Personal Rights - Human Rights Watch, dated November 2007, page 67

2006, after which the court returned to its previous position considering the return to Christianity as a form of apostasy, and it rejected the appeals brought before it, headed by Counselor/Mohamed Al-Husseini.

On April 24, 2007, the court, headed by Counselor Muhammad Al-Husseini, issued 22 rulings, all of which rejected requests, and the Ministry of Interior did not give the plaintiffs new documents proving that they were Christians.

But in 2008, the Supreme Administrative Court settled the matter and issued its ruling in Case No. 13498 of the Supreme Administrative Judicial Year 53 - the First Circuit headed by Counselor/ Elsayed Nofal – acknowledging a woman to prove her Christian religion following her conversion, canceling the contested ruling, and obliging the administration to pay the expenses.

The facts go back to a Christian woman filing an appeal before the Administrative Court [52], demanding that the negative decision issued by the Civil Status Authority refusing to prove her conversion to Christianity be overturned. The court issued its decision to reject the appeal on April 24, 2007. The woman then filed her appeal against the ruling before the Supreme Administrative Court, which accepted the appeal on February 9, 2008. It stressed the importance of non-discrimination between different religions, and that accepting proof of a person's religion after his conversion, especially if he had converted from Islam to Christianity, is not an admission of apostasy, but rather is consistent with the requirements of the modern state. The ruling stated, "This is done based on the requirements of the modern state, which stipulates that every citizen must have in his hand a document proving his civil status, including a statement of religion, because each statement entails a legal status for the person that is not shared by anyone else. Therefore, the administration must document the personal data for a citizen in a realistic manner onthe date of its confirmation, including a statement of religion and any amendment thereto if the religion is one of the three recognized heavenly religions, so that civil and personal rights and duties and legal status resulting from the religion are determined in its light, provided that this is recorded in the birth certificate and identity card with reference to the religion. The precedent is for the ID to honestly express the person's true beliefs and the reality of his/her situation, based on which he/she must be dealt with.

52 Case No. 24937 of Judicial Year 58 - Administrative Judiciary



Conclusion

In his book "The Struggle over Constitutional Authority" "Tamer Mustafa" wrote that the Supreme Constitutional Court practically emptied Article 2 of the Constitution of its substance, and did not abolish any law based on that, despite the attempts of extremist Islamists to enforce it. The court did that in two main ways: It decided that the effect of the article does not apply retroactively to Egyptian laws enacted before 1980, and that it does not consider the principles of Sharia except those about which there is no dispute. Therefore, the article itself is not problematic if it is applied and Sharia'a is interpreted by non-religious judges appointed by the regime.

"Tamer Mostafa" also believes that "thanks to the relationships of activists and human rights defenders and their relationships with international networks, they were able to put pressure on the Egyptian regime, upon which the

Constitutional Court established its own initiative and the scope of its powers by resorting to international legal principles and Egyptian obligations to treaties to improve its image only.

However, after an analytical study of the position of the Supreme Constitutional Court through its rulings from the nineties to the present, which began following the January 2011 revolution, we find that it ignored the agreements signed by the state, such as "CEDAW" and the International Covenant on Civil and Political Rights, which emphasized equality between men and women and the prohibition of discrimination in rights and duties [53].

The 1990s witnessed the emergence of a new group of human rights organizations, as the state began to loosen its grip on their work, especially after it signed the agreements and hosted the International Conference on Population and Development. Human rights organizations not only documented human rights violations, but also challenged the state in courts, among other things. These groups include the Human Rights Center for Legal Aid, which filed 500 lawsuits in the first year since its founding, 1,323 lawsuits in 1996, and 1,616 in 1997, where lawsuits related to women's rights represented 10% of those lawsuits. The Women's Center for Legal Guidance was also established in 1995 to provide free legal assistance to women facing several issues such as divorce, child custody, difficulties in obtaining alimony after divorce, and other forms of discrimination. The center filed 71 lawsuits in the first year of its founding, 142 in 1996, and 146 in 1997, in addition to providing legal assistance to 1,400 women in the first three years of its establishment [54].

Despite the outbreak of the January 2011 revolution, which sparked a new stage in the feminist struggle, in her book "Glimpses of the Demands of the Egyptian Feminist Movement Throughout Its History" Dr. "Hala Kamal" points "that despite the brilliance of women in the revolution and the role they played, they were soon exposed to increasing areas of physical violence and discrimination, whether for political, religious, or social reasons, which led to the decline of organized feminist movements, although it also witnessed a female presence in the constitution-writing committees and the national

53 https://mada-research.org/post/4557

54 From the book "The Struggle for Power" by Dr. Tamer Mostafa

dialogue, which was announced by current president Abdel Fattah El-Sisi in April 2022.

Also, the government made many promises to the feminist movements of an advanced draft law that keeps pace with social and economic developments and the changing roles of male and female actors in society. However, everyone was disappointed in February 2021 that pro-state newspapers published a unified draft law on personal status, proposed by the Egyptian government in February 2021, as part of the regime's tendency to "reform the litigation system" by making it more disciplined, reducing the margin of diligence and the space left for the discretion of judges, and thus facilitating the regime's tightening control over the judicial system and controlling society[55].

The draft law received a lot of criticism, whether from women, feminist movements, or even men, to the point that it embarrassed the government, so it deleted every piece of news related to it. But the matter did not end there, as feminists and even state feminists and state agencies confronted it. Lawyer "Nihad Abu Al-Qumsan", member of the National Council for Women, described the draft as "abolishing the legal personality of women and depriving women of any legal status in the lives of their children." "Abu Al-Qumsan" also called on the Egyptian presidency to intervene to cancel the draft and form a committee of experts from multiple fields to study the laws of Arab and Islamic countries and issue a law that is in line with the time and the role of women.

The Women and Memory Foundation issued a statement in which it demanded that the interests of children be placed above all considerations and that the guardianship of an adult woman be recognized over her children in the event of the husband's death or separation from him.[56]

Although one of the articles of the draft stipulated that the husband who marries another woman without informing the first would be fined with an amount ranging between 20-50 thousand pounds or imprisonment for not less than a year, and the official would also be punished if he did not notify

55 https://rb.gy/1pc837
56 https://rb.gy/s4s0b7

the first wife, the draft law came with many disastrous provisions for women. It introduced a text that gives the right to any male relative of a woman who wants to marry to have her marriage annulled within one year on the grounds of the incompetence of the husband she chose, or if she married without the consent of this "male" or another male in the family, or if she did not receive a dowry from the person to whom she married herself off.

Also, according to the new law, the mother has no guardianship over her children in everything related to education, health, travel, issuing official papers, and other transactions that almost eliminate the woman's presence in every legal or official interaction related to her children. While the father can travel with his children without their mother's permission, the wife or divorced woman does not have the right to travel with her children without obtaining written approval from the husband, which women considered a disappointment after waiting more than four decades for the amendment and development of personal status laws.

Promises continue for a new, unified, and advanced personal status law that is in line with the actual reality of society and women's lives.

Reference List

1	A. Abd el Hadi, "A Step Forward for Opponents of Female Genital Mutilation in Egypt," Lancet (London, England), January 1997
2	Ihsan Assal, "Bayt al-ta'ah" (House of Obedience), in Opening the Gates: A Century of Arab Feminist Writing, ed. Margot Badran and Miriam Cooke (London, UK: Virago, 1990), 160-167.
3	Reem Ahmed, "Personal Status Litigation in Egypt: The Unintended Effects of Women's Empowerment," CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, March 21, 2021
4	Hoda El Sadda, "Guardianship Is my Right; Let's Tell out Stories," New Women Foundation, March 2023
5	Merva Hatem, "The Enduring Alliance of Nationalism and Patriarchy in Muslim Personal Status Laws: The Case of Modern Egypt," Feminist Issues 6(1): 19-43, 1986
6	Tarek Kahlil. "Wife asks for divorce because husband grabs her from her hair, but a court rules against her," Al-Gomhoreya, 9 August 1986
7	Hala Kamal, "A Century of Egyptian Women's Demands: The Four Waves of the Egyptian Feminist Movement," Gender and Race Matter: Global Perspectives on Being a Woman, August 24, 2016, 3–22
8	Nathalie Bernard -Maugiron, "Personal Status Laws in Egypt : FAQ," PROMOTION OF WOMEN'S RIGHTS (EGYPT), March 2010
9	Nemat Guenena and Nadia Wassef, Unfulfilled Promises: Women's Rights in Egypt (New York: Population Council, 1999)
10	Aida Seif El Dawla, "The Political and Legal Struggle over Female Genital Mutilation in Egypt: Five Years since the ICPD," Reproductive Health Matters 7, no. 13 (January 1999): 128–36

11	Azza Soliman and Mahmoud Abdelfatah, "A "just" family bill" New Women Foundation, March 2023
12	"Egypt: Archaic Amendments to Personal Status Law Undermine Women's Rights," Cairo Institute for Human Rights Studies (CIHRS), March 4, 2021
13	Mona Zulfikar," Women in Development: A Legal Study. Cairo" UNICEF. 1995
14	J. D Pennington, "The Copts in Modern Egypt." Middle Eastern Studies 18, no. 2 (1982): 158-179
15	Ron Shaham. "Communal identity, political Islam and family law: Copts and the debate over the grounds for dissolution of marriage in twentieth-century Egypt." Islam and Christian–Muslim Relations 21, no. 4 (2010): 410


الذاكـــرة
والمعرفة
للدراسات