

**FROM JIHAN TO SUSANNE  
TWENTY YEARS OF PERSONAL STATUS LAW  
IN EGYPT**

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**1 Introduction**

In this article, we would like to provide a general overview of Egyptian personal status law as it stands after the various changes it went through during the last twenty years. Attempts to reform personal status were initiated and achieved from the 1979 decree-law, known as “Jihan’s Law”, up to Law No. 1 of the Year 2000 (which owes much to the President’s wife support, i.e. Suzanne Mubarak), via Law No. 100 of the Year 1985 and its interpretation by the Supreme Constitutional Court. Law No. 1 of the Year 2000 concerning some rules and procedures of litigation in matters of personal status is mainly known as the law which gave wives the right to *khul’* (divorce at the wife’s unilateral initiative).

Egyptian personal status law is characterized by two main features: First, it has a broad conception of personal status that encompasses questions of marriage, divorce, paternity, and successions; Second it is the only branch of law which is still organized around the principle of the religious personality of laws, i.e. the principle according to which each religious community has its own personal status law and the law applicable will depend upon the confessional affiliation of the parties involved. This contribution will focus on marriage and divorce in the laws of personal status that is applicable to Muslims, i.e. the law common to the vast majority of Egyptians.

The rules of Egyptian Muslim personal status have not been codified in a comprehensive and exhaustive code, and this makes its knowledge and understanding sometimes difficult. In many domains, though, e.g. procedural law, civil law, commercial law or criminal

law, codes were introduced as early as 1829 (*Qānūn al-muntakhabāt*), 1852 (*Qānūnnāme al-sultāni*), 1876 (Mixed Codes), and 1883 (National Codes).<sup>1</sup> Civil law was also codified, first in mixed and national codes, then in 1948 in a unified text prepared by the prominent jurist ‘Abd al-Razzāq al-Sanhūrī. However, in Egypt like in all Arab countries, personal status law does not belong, as in the French legal tradition, to the domain of civil law.

An attempt was made in 1875 by Qadrī Pasha, an Egyptian jurist, to compile the provisions of Hanafi law.<sup>2</sup> Although it was never promulgated, Qadrī’s codification remains a fundamental source of inspiration for judges adjudicating in the field of personal status. Khedivial regulations were adopted in 1880, 1897 and 1910 to organize *shari’a* courts and imposed, *inter alia*, that certain marriage contracts be registered by a specialized public officer (the *ma’dhūn*) to be used as a valid proof before a court. The first real impulse, however, came from the Ottoman Empire that promulgated in 1917 a Family Code based on the four Islamic legal schools. In Egypt, during the first half of the twentieth century, a number of statutory laws were adopted, among which Decree-Law No. 25 of 1920 concerning maintenance and some other questions of personal status and Decree-Law No. 25 of 1929 concerning some questions related to personal status (which gave women the right to seek divorce on different grounds); Law No. 77 of 1943 (concerning inheritance) and Law No. 71 of 1946 (concerning testamentary bequests). According to Dawoud el-Alami, “By selecting elements from the legal doctrines of the four Sunni law schools, the framers of these laws sought to adapt elements of Islamic family law to the needs of modern times and to improve the legal status of women vis-à-vis their husbands and paternal relatives.”<sup>3</sup> This reformist momentum in the field of personal status was interrupted and relegated to the domain of questions of secondary importance when the Arab Republic of Egypt was declared in 1952. In the seventies, however, the issue of personal status law came back to the foreground. Yet, no law was adopted until 1979, although several proposals and drafts were discussed in and out of the People’s Assembly. To sum up, the following texts were applicable before 1979:

- Law No. 25 of 1920 concerning maintenance and some other questions of personal status;
- Law No. 56 of 1923 amending the Regulation of *shari’a* courts (defines the legal age for marriage);

- Decree-Law No. 25 of 1929 concerning some questions related to personal status;
- Decree-Law No. 78 of 1931 concerning the organization of *shari’a* courts;
- Law No. 77 of 1943 concerning inheritance;
- Law No. 71 of 1946 concerning testamentary bequests;
- Law No. 68 of 1947 concerning notaries, amended by Law No. 629 of 1955 and Law No. 103 of 1976;
- Act No. 131 of 1952 concerning cases for dismissal of guardians of the person;
- Decree No. 119 of 1952 concerning guardianship of property
- Decree of the Minister of Justice of 1955 organizing the status of *ma’dhūn*;
- Law No. 462 of 1955 suppressing *shari’a* and communitarian courts and transferring all pending cases before national courts;
- Law No. 62 of 1976 modifying the provisions concerning alimonies.

Courts have to apply the laws on personal status that have been adopted by the Egyptian legislature. However, if no law is applicable to the case, the judge must apply the solution that corresponds to the dominant opinion in the Hanafi school, i.e. one of the four Sunni doctrinal schools (Art. 280 of Decree-Law No. 78 of 1931 concerning the organization of *shari’a* courts, abrogated by Art. 4 and replaced by Art. 3 of the law promulgating Law No. 1 of 2000). In other words, the judge must fill the blanks left by existing legal provisions by his referring in a subsidiary way to classic Islamic law. Often, judges simply refer to Qadrī Pasha’s unofficial codification.

In 1956, Egyptian courts were unified in a single system of national courts. *Shari’a* courts, which had kept so far an exclusive competence in the field of personal status of Muslims, were abolished by the Egyptian legislature. Since that date, personal status cases have been adjudicated by specialized chambers of ordinary courts. Until the adoption of Law No. 1 of 2000, these chambers had remained organized by Decree-Law of 1907 on the procedure to be followed for the execution of judgments of *shari’a* courts, Decree-Law No. 78 of 1931 concerning the organization of *shari’a* courts, as amended, Law No. 462 of 1955 on the abolition of *shari’a* and communitarian courts and Part. 4 of the Code of Civil and Commercial Procedure. Law No. 1 of 2000 abrogated these provisions and replaced them by new ones.

## 2 A new momentum in the codification of personal status law. Laws No. 44 of 1979 and No. 100 of 1985

### 2.1 Law No. 44 of 1979

In 1979, President Sadat issued a decree-law on personal status, while the Assembly was in recess. This decree-law was subsequently approved by the Parliament, in compliance with Article 147 of the Constitution, and became Law No. 44 of 1979. According to el-Alami, "it amended the personal status laws to include many of the demands made over the course of half a century by Egyptian feminists."<sup>4</sup>

The new law was controversial, both for its content and the procedure used by the Sadat regime for securing its approval. The President's wife, Jihan Sadat, was alternatively credited with, or blamed for, the passage of the law, commonly known as "Jihan's Law." Critics observed that the Egyptian parliament had little choice but to ratify the Presidential Decree that preceded the proposal's enactment into law. Among the most challenged provisions was an article (adding Art. 6*bis* 1 §2 to Law No. 25 of 1929) that gave the wife the right to be granted automatic divorce by the judge in case of her husband engaging in a subsequent marriage without her having to establish that the latter caused her harm.

### 2.2 The law is declared unconstitutional: Supreme Constitutional Court, 4 May 1985

Law No. 44 of 1979 was challenged by several personal status judges, who referred it to the Supreme Constitutional Court for a ruling on its conformity with the Constitution.

On 4 May 1985, the constitutional court struck down the law on procedural grounds: the initial decree-law had been adopted in application of the emergency procedure set up by article 147 of the Constitution, though no genuine necessity required that such measures be taken with no delay. Instead of considering the argument on the basis of Article 2 of the Constitution which stipulates, since its amendment in 1980, that "Islamic law is the main source of legislation", the Court decided to examine the issue from the angle of the President's powers. In this ruling, it is clear that the Supreme Constitutional Court (SCC) tried not to enter the field of Islamic law. This attitude of the SCC is confirmed by another ruling issued on the same day, dealing with

interest on overdue payment, in which the Court established the principle of the non-retroactivity of Art. 2 of the Constitution. According to the Court, laws promulgated prior to the date of the amendment are not subject to the obligation of conformity with Islamic law. Moreover, the principles of Islamic law have not become positive rules following the amendment of Art. 2: they still need to be incorporated into laws by the legislature so as to become Egyptian legal provisions.

The decision of the SCC was heavily commented. Scholars emphasized (and, we contend, over-emphasized) the political stance which was adopted by the court in favor of conservative Islamic milieus. Whatever the situation, this was considered a success for Islamicists and a blow to reformers. It also created a kind of legal vacuum since the new law had been totally abrogated and the old 1920 and 1929 laws still needed to be updated.

### 2.3 Law No. 100 of 1985

**2.3.1 Adoption.** Two months after the SCC declared Law No. 44 of 1979 unconstitutional, a new legislation was passed by the People's Assembly. Law No. 100 of 1985, which was the first legislation on personal status ever enacted by an Egyptian representative assembly, is nearly identical to Law No. 44 of 1979 to the major exception of women's right to divorce on the ground of their husband subsequent marriage. This new law does not abrogate the laws of 1920 and 1929 but modify or replace some of their provisions, or add new articles. It was also criticized and, following its promulgation, several attempts were made to challenge some of its provisions before the SCC on the ground of their alleged contradiction with Art. 2 of the Constitution. Several rulings of the SCC deserve special mention with regard to the implementation of Law No. 100 of 1985. The main provisions of Law No. 100 of 1985 will be presented in parallel with the SCC's rulings on their conformity with the Constitution.

### 2.3.2 Content

#### 2.3.2.1 Marriage

(a) Information which the husband must provide.

- The marriage certificate must specify the social status of the husband (married or not married) and in case he is married, the name and address of his spouse(s). [Article 11*bis* of Law No. 100 of 1985, the

same in Law No. 44 of 1979.]

- The notary (*ma'dhūn*) is required to notify the first spouse(s) of this new marriage, by a registered letter with acknowledgement of receipt.

(b) Maintenance obligation of the husband: The husband has a maintenance obligation toward his wife for the entire duration of marriage, including when the wife has personal resources and even if she is from a different religion. He must provide her with food, clothing, housing, medical expenses and other expenses that are required by the law. A court order for maintenance shall be executed on the husband's property if he refuses to comply. Maintenance is a debt from the moment the husband fails to provide it, and not from the day of the ruling of the judge condemning the husband to pay it. The amount of the maintenance is established according to the husband's wealth and must be assessed according to the circumstances of the husband when it was due and not at the time of the ruling imposing it (Article 1 of Law No. 25 of 1920 as amended by Law No. 100 of 1985)

(c) The wife's duty of obedience and the forfeiture of maintenance.

- The wife's desertion of the matrimonial domicile. According to Art. 11*bis* (2) of Law No. 25 of 1929, as amended by Law No. 100 of 1985, the wife loses her right to maintenance if she leaves the matrimonial domicile and refuses to return to it while her husband has required her to do so via a bailiff's notification. However, she can object to this summons before the court of first instance within thirty days from the date of the notification and by indicating the grounds on which she justifies her disobedience. The court must try to conciliate the two spouses. If it fails, the wife can initiate a procedure of divorce. If the wife does not object within the time-limit, she forfeits her right to maintenance. On 5 July 1997, the SCC issued a ruling concerning this provision. A husband had filed a case against his wife on the ground of her disobedience, asking that she reintegrate the matrimonial domicile. She refused and asked for divorce, on the basis of Art. 11*bis* (2) of Law No. 25 of 1929, as amended by Law No. 100 of 1985. The husband claimed that this provision was unconstitutional because, according to him, only husbands are allowed by Islamic law to put an end to the marriage contract. The SCC considered that there was no absolute principle in *shari'a* that forbids judges to divorce spouses, since the four doctrines diverge on this issue. It was thus within the power of the legislature to legislate and, in this case, the

legal provision did not violate Islamic law.

- The wife leaves the matrimonial domicile. Art. 1 of Law No. 25 of 1920, as amended in 1985, stipulates that alimonies are not due to the wife who leaves the matrimonial domicile without her husband's permission. However, she does not lose her right to alimony if she leaves the domicile in one of the cases that are permitted by the legislature, by custom or in case of necessity. She has also the right to go out for a lawful job, provided that she does not misuse this right, that it does not conflict with the family's interest, and provided her husband did not ask her to refrain from this. On 3 May 1997, the SCC issued a ruling on the question of the alimony due to the wife who continues to practice her profession while her husband required her to stay at the matrimonial domicile. The husband had contested the constitutionality of Art. 1(5) of Law No. 25 of 1920 as amended by Law No. 100 of 1985, considering that this provision was contrary to Art. 2 of the Constitution, because Islam requires the wife to obey her husband. The Court acknowledged that *shari'a* requires the wife to obey her husband, that the alimony due to the wife is the counterpart of her submission and that the husband has the right to require his wife to stay at home. The Court, though, underlined the fact that *shari'a* has also allowed the husband to give up this right, explicitly or implicitly. By doing so, the husband is bound by his own decision and his authorization cannot be withdrawn but to protect the family's interest or if the wife abuses her right. Article 1(5), therefore, had not violated the Constitution.

(d) The dowry: The only provision that can be found in Egyptian law with regard to dowry is Art. 19 of Law No. 25 of 1929, as amended by Law No. 100 of 1985. According to this article, in case of a dispute over the amount of the dowry, the proof shall be provided by the wife. If she fails to produce evidence to support her claim, the judge will accept the amount established under oath by the husband. If the judge estimates that this amount is obviously not appropriate with what custom habitually stipulates for women of the social standing of that woman, he can determine another amount.

### 2.3.2.2 Dissolution of the marriage

(a) Divorce, polygamy, and harm. Law No. 100 of 1985 stipulates that the wife's right to divorce her husband in the event that he took a second (or subsequent) wife depends on the court's discretion (contrary

to Law No. 44 of 1979 that gave her an automatic right to be granted divorce on this ground). Art. 11bis(2) makes it incumbent on the wife to prove that her husband's subsequent marriage caused her physical or mental harm that made continued matrimonial life impossible. Harm is not assumed anymore, it belongs to the judge's discretionary powers to appreciate the evidence. According to Art. 11bis(3), the first wife has the right to apply for divorce on this ground within one year from the date of her being informed of her husband's subsequent marriage, unless she consented to this marriage. If the new wife did not know that her husband was already married, she too can ask for divorce (Art. 11bis(4)). In both cases, the judge must try to conciliate the spouses.

On 14 August 1994, the SCC issued a ruling on this question. A bigamous man, whose first wife had asked for divorce on this ground, asked the Court to declare this provision unconstitutional, considering that the conditions which it provided limited the right he had received from the *shari'a* to marry up to four women. According to the Court, the Qur'an allowed polygamous marriage, but did not make it obligatory. Moreover, this right to marry four women is subordinated to the fair and equal treatment of all wives. Accordingly, the SCC refused to consider unconstitutional the fact that the first wife be allowed to ask for divorce by proving that she suffered from a moral harm due to her husband's subsequent marriage.

(b) Repudiation. Limits to the right to repudiation are already stipulated in the Decree-Law of 1929: Repudiation is null and void if performed in a state of inebriation or under duress (Art. 1); it cannot be conditional (Art. 2); its wording cannot be ambiguous (Art. 4). Besides, to be considered irrevocable, triple repudiation must be done in three separate pronouncements, not in one sitting (Art. 3). Article 5bis of Law 25 of 1929 as added by Law No. 100 of 1985 required that repudiation be registered by the *ma'dhūn* within thirty days following the declaration and that the *ma'dhūn* inform the wife that she has been repudiated. The repudiation takes effect from the date of its occurrence, though in terms of inheritance and other financial rights it becomes effective only from the date of the notification to the wife. Penal sanctions are provided in case of non-observance of these procedures. [The same in Law No. 44 of 1979.]

### 2.3.2.3 Consequences of the divorce

(a) Child's custody: The mother has the right to custody of her children. According to Article 18bis(2) of Law No. 25 of 1929 as added by Law No. 100 of 1985, the mother's right to custody in case of divorce shall come to an end on the boy reaching the age of 10 and the girl reaching the age of 12. The judge can extend the custody of the boy until he is 15 and of the girl until she marries, but without continued compensation from the father, should their interest so require. [The same in Law No. 44 of 1979.]

On 15 May 1993, the SCC issued a ruling on this question. The case concerned a divorced woman who had filed a suit in 1985, asking for the custody of her boy and her right to stay with him in the domicile house. Her husband referred that provision to the SCC for unconstitutionality. In its ruling, the SCC drew the famous distinction between absolute rules of *shari'a* (*ahkām qat'iyyat al-thubūt wa'l-dalāla*) and relative rules of *shari'a* (*ahkām zanniyya*). Whereas, according to the court, the meaning of the former does not change with time and space and they are not open to interpretation (*ijtihad*), on the contrary, the meaning of relative rules of *shari'a*, change with time or space and those rules are open to interpretation, i.e. to the legislature's (*walī al-amr*) intervention in the way which it deems suitable. As far as the case itself is concerned, the SCC stipulated that the legislature, when giving the custody to the mother up to 10 for the boy and 12 for the girl (with the possibility for the judge to extend it) bore in mind the interest of the child, and this conforms the principles of *shari'a*. The precise duration of this custody is a matter of controversy among jurists, and this allows *ijtihad*.

(b) Place of custody: Article 18bis(3) of Law No. 25 of 1929 as added by Law No. 100 of 1985 gives the mother the right to stay in the rented matrimonial domicile with her children for the duration of the custody or until the woman's remarriage. This right is extended to other custodians in case of the mother's replacement. The husband cannot stay in the matrimonial domicile unless he offers before the end of the waiting-period (*'idda*) another independent and decent housing. If the matrimonial domicile is not rented, the husband is entitled to live in it independently, on the condition that he provides an alternative appropriate accommodation. At the end of the legal period of custody, the husband has the right to return to the domicile house even if the judge has extended the period of custody. [With regard to

the attribution of the matrimonial domicile during children's custody, the 1985 Law extends the provisions of the 1979 Law].

On 6 January 1996, the SCC declared this provision unconstitutional. The Court considered it unconstitutional to require the father to offer a housing even in cases where the guardian has the financial means to face the expense or has her own housing.

(c) Women's right to compensation (*mut'a*): Article 18bis of Law No. 25 of 1929 as added by Law No. 100 of 1985 stipulates that the woman is entitled to maintenance (*nafaqa*) during the waiting-period (*'idda*) and to compensation (*mut'a*) if the marriage has been consummated and if the divorce occurred without her agreement and was not due to any cause on her part. The amount of the compensation should not be less than two years of maintenance and is evaluated according to the husband's financial means, the circumstances of the divorce and the length of the marriage. The judge will decide whether the woman is entitled to compensation and will fix its amount according to the circumstances of each case. [The same in Law No. 44 of 1979.]

On 15 May 1993, the SCC ruled on this issue. A divorced woman required her former husband to pay a compensation equivalent to ten years of alimony. The man refused, arguing that the 1985 Law run against Art. 2 of the Constitution. The SCC declared that no absolute principle of the *shari'a* stipulated the amount of the compensation. The rule of *shari'a* was only relative and the legislature was authorized to interpret it. The law took into consideration the harm suffered by the woman, and this was in line with *shari'a* principles.

(d) Child's maintenance: The father has a personal obligation to provide his minor children with maintenance if they have no personal resources (Art. 18bis 2 of Law No. 25 of 1929 as added by Law No. 100 of 1985). Maintenance is due by the father until the boy reaches the age of 15 and until the girl marries or is able to earn an income sufficient for her expenses. The term can also be extended if the boy is incapable of earning due to a physical or mental handicap, carries on studies or is unable to earn. Since 1985, maintenance is due retroactively from the day the father refused to provide for his child and not, as previously, from the date of the ruling condemning him to pay. Maintenance must be provided according to the father's means and the child's needs. However, if the child has personal resources, he/she must cover his/her own needs.

On 26 March 1994, the SCC issued a ruling concerning this issue. A man had been condemned in 1989 to pay alimonies which were overdue back to 1973 and decided to challenge that provision. According to him, Article 18bis 2 was unconstitutional because the Hanafi school stipulates that the maintenance is due from the day of the ruling. The SCC answered that this Hanafi provision was in no way an absolute principle impeding the legislature's intervention. To the contrary, with regard to current social conditions, allowing the father to delay his payment up to the date of the ruling would contradict the objectives of *shari'a*, that is, the protection of the child's interest.

### 3 Harmonizing the procedure and introducing some new provisions: Law No. 1 of 2000

#### 3.1 Adoption

On 29 January 2000, President Mubarak signed a new law organizing procedural matters in personal status law. Law No. 1 of 2000 was intended to facilitate and speed up litigation in personal status matters, and particularly in judicial divorce, after many previous attempts had failed. It suppressed most of the legal texts that were still organizing personal status litigation, mainly Decree-Law of 1907 on the procedure to be followed for the execution of judgments of *shari'a* courts, Decree-Law No. 78 of 1931 concerning the organization of *shari'a* courts, as amended, Law No. 462 of 1955 on the abolition of *shari'a* and communitarian courts and Part. 4 of the Code of Civil and Commercial Procedure.

#### 3.2 Content

**3.2.1 Procedural questions.** As a whole, the law seeks to facilitate the procedures in personal status matters. It mainly consists in the following points:

- The delays within which personal status cases must be settled are reduced (Art. 61-63).
- In case of divorce, all matters relating to the case will be resolved in one court (the court of first instance). Summary courts, normally competent in *haddāna* and alimony actions will have to refer the case to that very judge (Art. 10 and 15).
- Fees are suppressed at all stages of litigation in petitions regarding alimony matters (Art. 3 al. 2).

- The possibility to oppose a ruling *in absentia* (*mu'ārada*) is suppressed; appeal remains the only solution (Art. 56).

- The wife who has been given a ruling for maintenance may claim the amount from a public bank (a special fund with the Nasser Social Bank). She is only required to take a copy of the ruling to the Bank, which will give her the amount of the child support, then collect the sum from the ex-husband. The Bank is authorized to deduct the maintenance from the salary of the husband, when possible (Art. 71 and ss).

- The judge of provisional matters (*qāḍī 'l-umūr al-waḳtiyya*) of the Court of First Instance is allowed to allocate the wife interim maintenance to support her until the dispute over maintenance is settled. His judgments cannot be appealed; only a final ruling can reverse them (Art. 10 al. 4-5).

- An attorney's signature is no longer required on petitions before summary courts. In that case, the court will provide with an *ex officio* counsel (Art. 3).

### 3.2.2 Substantive questions

**3.2.2.1 Customary marriages.** The inadequately called "customary marriage" is a marriage that is concluded by two spouses who sign a marriage contract in presence of two male witnesses (or one male and two females) but is not officially registered by the notary (*ma'dhūn*) and transcribed in public records.

Customary marriages are concluded for various reasons: in case of polygamous marriage for instance the husband may wish to keep the subsequent marriage secret and not inform the first wife as required by Law No. 100 of 1985; it may be a way for minors to get married; for a couple to escape the high cost of marriage or for widows to remarry without forfeiting their widowhood pensions; or even, more simply, to legitimate sexual relationships without concluding a formal marriage.

According to Art. 99 § 4 of law 78 of 1931, no claim concerning marriage will be heard, when it is denied, unless it is supported by an official marriage document. A customary marriage, therefore, is not considered illegal, but in case the marriage is denied, the courts will be prohibited from hearing any dispute regarding such a non registered marriage. In other words it deprives the woman from claiming the right to divorce, alimony, maintenance or succession. With regard to children, though, the Explanatory Memorandum of Law 78 of 1931

had explicitly stated that suits for paternity could still be heard by courts. The main problem arises in case of contest between the spouses since the law forbids the judge to consider such non-registered marriages, making it impossible for the wife to ask for her divorce, to make her divorce effective (when she has been repudiated and her ex-husband comes back later on and requires her to resume their marital life), or to ask for the benefice of her subsequent rights.

Law No. 1 of 2000 introduces a very important change with that respect. Although Art. 17 al. 2 of the law reaffirms the non-admissibility of petitions concerning non-registered marriages, it gives the woman the right to use any written document to prove the existence of such marriage and to serve as the basis for her subsequent request in divorce (Art. 17 al. 1).

**3.2.2.2 Unilateral divorce by the wife (*khul'*).** Law No. 1 of 2000 sets out explicit procedures for the implementation and facilitation of the *shart'a*-grounded principle of *khul'*, by which a woman may buy her release from an unsustainable marriage. In Egyptian law, it became the procedure whereby a woman can divorce her husband without cause, whether or not her husband agrees, by returning the money and gifts given to her by her husband at the time of the marriage and forfeiting her own financial rights (but not the rights of the children). Art. 20 of Law No. 1 of 2000 reads as follows:

The two spouses may agree between themselves upon *khul'*, but if they do not agree mutually and the wife files a claim requesting it [*khul'*] and ransoms herself and releases herself by *khul'* from her husband by forfeiting all of her lawful financial rights and returns to him the dowry that he gave her [upon marriage], the court shall grant her a divorce from him.

The court shall only grant a divorce by *khul'* after there has been an attempt at reconciling the two spouses and it has appointed two arbitrators to undertake the endeavor to reconcile them within a period not exceeding three months and in the manner stipulated (...) and after the wife declares explicitly that she detests life with her husband and that continuation of married life between them is impossible and that she fears that she will not maintain the 'limits of God' due to this detestation. The consideration for *khul'* may not be the forfeiting of custody

of minors, or their maintenance or any of their rights”.<sup>5</sup>

Whereas, until the adoption of Law No. 1 of Year 2000, the husband could unilaterally end a marriage by repudiating his wife (*talāq*), a wife who wanted to terminate the marriage contract had only limited options: she could try to convince her husband to repudiate her and, in exchange, she would give up her financial rights (*‘iṣma* or *ṭalāq ‘alā ‘l-ibrā’*); the wife could also ask the judge to divorce her from her husband on various grounds: failure by the husband to provide maintenance; her husband suffering from serious chronic defect; his absence for more than one year without a valid reason; his condemnation to jail for more than 3 years; and on the ground of harm (e.g. if her husband took a second wife), but she had to prove that she had suffered a moral or physical harm in view of which the continuation of the married life was impossible. Thus, “[t]he establishment of *khul’* as a simply regulated procedure that allows a woman to seek divorce on the grounds that she does not wish to remain married to her husband is, therefore, nothing short of revolutionary.”<sup>6</sup>

If the two spouses do not agree on the dissolution of marriage by mutual consent before the *ma’dhūn*, the wife may apply to the court for *khul’*. If the spouses have a child, the court must try to reconcile the spouses two times separated by a period of no less than 30 days and no more than 60. If no conciliation is reached, the judge is required to pronounce the divorce, even against the husband’s will. The woman does not have to ground her petition, she may just declare that she cannot bear being married with her husband anymore. *Khul’* takes the form of irrevocable divorce. The ruling cannot be subject to any appeal. In exchange of her release, the wife must forfeit all her financial rights and give back all the gifts she received at the time of the wedding. She has to give up both alimony (a right which she normally enjoys for a year) and compensation and must give back the dowry and renounce its deferred portion. However, she does not forfeit her non-financial rights, i.e. right to children’s custody. *Khul’* also does not affect the right of the children to alimony from their father.

### 3.2.2.3 Other provisions

(a) Paternity: Art. 15 of Law No. 1 of 2000 stipulates that the judge cannot examine any action in recognition of paternity if the child

was born more than one year after the husband’s absence or death, or the spouses’ divorce. No action for *post mortem* declaration of paternity can be received without the evidence of an official document or a written letter (Art. 7).

(b) Conciliation in case of marriage dissolution: Art. 18 of the Law No. 1 of 2000 requires the notary who is asked to register repudiation to make an attempt at conciliating the spouses. However, the spouse(s) remain free to continue the procedure and register the repudiation.

(c) Registration of *‘iṣma*: *‘iṣma* is a kind of termination of marriage at the instigation of a wife whose husband granted her in the marriage contract the right to free herself in certain circumstances. Art. 21 al. 2 of Law No. 1 of 2000 stipulates that the exercise of this right must be registered by the notary. Before registering the repudiation, the notary must try to conciliate the spouses.

(d) Assessing the alimony: In case of conflict about the amount of the husband’s incomes, the judge can require the Public Prosecution to proceed to an investigation to help evaluate his real incomes. The Public Prosecution can ask banks to cooperate and it must deliver its report within 30 days (Art. 23 of Law No. 1 of 2000).

**3.3.3 Law No. 1 of 2000 and its aftermath.** An important provision included in the draft law was not passed by the Egyptian legislature. It regarded the right of the married woman to travel without her husband’s authorization. Under political pressure, the government withdrew it from the final project which the legislature voted. Article 1 al. 2(5) of the law promulgating Law No. 1 of 2000 states that disputes regarding the right to travel should be settled on a provisional basis by the judge of urgent affairs. Besides, on 4 November 2000, the SCC declared unconstitutional Ministerial Decree No. 3937 of 1996 that required a wife to obtain the permission of her husband before being issued a passport.

The same year 2000, a new standard-format marriage contract was adopted. A special place is provided in the end of the contract for special conditions which spouses may want to include in the contract. This is where the wife, for instance, can add special provisions like *‘iṣma*, the benefice of the apartment’s movables in case of divorce, her right to continue her studies or work after marriage, etc.

#### 4 Conclusion

Egyptian personal status law has been codified by the Egyptian legislature since the beginning of the twentieth century. Despite the fact that appealing to classical texts may give the appearance of an inflexible and monolithic body of norms, personal status law revealed to be relatively responsive to some of the changing needs of Egyptian society all over the century. The mere fact that personal status was partly legislated can itself be considered a deep transformation. By codifying these rules, the legislature introduced derogations or limitations, for instance in the field of repudiation and polygamy, two of the most sensitive institutions of Islamic law.

The provisions of Egyptian personal status law, as applied today, are marked by their Islamic inspiration. The Egyptian legislature has always presented the reform as being the result of an internal renovation within the *shari'a*, by using, among other things, *talfiq* (a legislative technique that allows to draw on the rules pertaining to the four Islamic schools of law) and *takhayyur* (another legislative technique that allows to choose the rules among the different solutions provided by the four Islamic schools of law) and by forbidding judges to examine certain matters. The government also tried to show that its reforms were consistent with religious law and were supported and endorsed by eminent religious authorities. However, the enactment of these reforms by a parliamentary assembly and their implementation by judges trained in modern law faculties made personal status law bear the signs of its positivity, i.e. its man-made nature.

The adoption of new personal status laws was always politicized. On the one hand, campaigns led by Jihan Sadat and Suzanne Mubarak had impact on the introduction of legislation intended to promote better protection of women's rights. Both campaigns tried to mobilize reformist activists and women organizations. However, these, like most civil society organizations in Egypt, revealed weak. On the other hand, the Egyptian legislature was systematically confronted with conservative segments of the population and of the religious establishment that mounted more visible campaigns against the laws. The law of 1979, for which Sadat resorted to his exceptional powers instead of trying to secure parliamentary approval, was followed by infuriated debates. When the question of its constitutionality was raised, some judges even decided to freeze its application. In 2000, the People's Assembly was

given an opportunity to debate the new measures. It is only after the most raucous debates the Assembly witnessed during the last decades that it passed the law, and this is mainly due to the submissive attitude of a parliament overwhelmingly dominated by the President's National Democratic Party.

From the turn of the nineteenth century onward and, even more significantly, during the last thirty years, reform of personal status law became the field of conflicting interpretations of the sacred law, each group referring to the same body of religious rules but adopting (sometimes very) different readings of them. This can be considered an example of the flexibility of this set of rules. This can also be interpreted as the clear manifestation of its positive nature. To be sure, legal reforms that stretched, in the field of personal status, from Jihan to Suzanne testify to the fact that even divine law is dependent on its human interpretation and implementation.

#### Notes

- 1 Peters, 1990.
- 2 *Kitāb al-aḥkām al-shar'iyya fī 'l-aḥwāl al-shakṣiyya 'alā madhhab al-imām Abī Hanīfa al-Nu'mān*, Cairo, al-Maṭba'a al-'uthmāniyya al-miṣriyya, 1347 H.
- 3 el-Alami, 1994, p. 116.
- 4 el-Alami, 1994, p. 116.
- 5 As translated by el-Alami, 2001, p. 124.
- 6 el-Alami, 2001, p.124.

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