

First version

Shadow report on the status of Egyptian women in matters of personal status.

Based on Article 16 of the CEDAW Convention.

The situation of women in Egypt in 2008 did not witness noticeable change compare to the previous years because the Egyptian authorities insist not to provide the appropriate legislative and political climate for the prosperity of that status. There are numerous laws that hinder the appropriate atmosphere for real situation of equality among those the Law No. 1 of 2000 related to facilitating the litigation procedures in matters of personal status, including restrictions imposed on woman in using her right of the Khula, as woman must stated the reasons for divorce and will have to wait until she returns the dowry before she gets the divorce sentence. Consequently woman waits more than 3 to 6 months in case she has children.

Despite the enactment of Law No. 154 of 2004 amending the law to lift nationality discrimination against Egyptian women and achieving the equality between the Egyptian father and mother regarding the right to grant Egyptian citizenship to their children, the children of Egyptian women married to Palestinians are still suffering from difficulties in the implementation of the law and access to the Egyptian nationality. Those difficulties can be described as denial of the full equality stated by the law.

The Penal Code No. 58 of 1937 is full of discrimination against women as well. The penalty for adultery differs for man and women in the articles (274) (277) (237) (274) in terms of punishment and alleviated circumstances.

The application of the law 10 of 1961 related to fighting the prostitution is also a discrimination against women. The article 9 (c) stipulated to punish any person who used to practice prostitution and debauchery, without apparent discrimination against women, but the application was to punish the woman who committed the crime and not the man. He is even considered a witness against her!

Those are just examples of the insistence of the State to continue the discrimination against women at the level of Egyptian legislation and emphasized the absence of a specific strategy to lift such discrimination.

The Egyptian reservations on the Convention concerning the articles 2 and 16 are also in violation of the goals and objectives of the Convention.

It worth noticing that this report will focus on two key issues:

- 1 - The status of women in matters of personal status and highlighting the role of the recent legislation in achieving the real equality between men and women.
- 2 - The issue of violence against women and its forms.

Firstly- The status of women in matters of personal status and highlighting the role of the recent legislation in achieving the real equality between men and women:

The Convention (the Convention intended to abolish all forms of discrimination against women). It reflects the desire of the international community to achieve full equality between men and women, aimed at eliminating the bias or discrimination against women, so the objective was clear and acceptable, but going far that "the achievement of equality between Men and women requires a change in the traditional role of men, as well as the role of women in the society and the family " means violation of the nature of men and women. Even they are equal in the humanity, the key texts of Islam - Koran and the Sunna – do not tolerate all this change desired by the Convention in the justifications of the objectives as mentioned in preamble.

**(Grand Imam Sheikh Gad al-Haq Ali Gad al-Haq)
Sheikh of Al-Azhar (July 1995)**

- Definitive texts govern the Coptic Orthodox in their personal issues, including the law of monogamy, and divorce is only possible in the case of adultery. Those issues are resolved by verses in the Bible.

- What is enshrined in the verses of the Bible and the marriage contract governing the personal status of the Orthodox Copts , all these are not subject to the discretion or discussion even from the clergy.

(Note of Pope Shenouda III, Patriarch of the Orthodox Copts)

**On the law of monogamy
6-18-1996**

That is the fact that move in its orbit all the obstacles faced by the Egyptian women in matters of personal status. The official religious establishment in Egypt (Muslim and Christian) and the Egyptian government adopted the extremist views of the position of Islamic law, despite the raise of more flexible voices that adopt jurisprudence solutions to lift the injustice on women in the personal status legislation.

Although Arab and Islamic countries adopted those open and flexible views that seek to reconcile the purposes and principles of Sharia law and developments on the high level of community and family.

So the legislations adopted by the State are partial and not total. They treat the right to equality but did not reach to the fact that the community will get used to and it should be practicable by women and acceptable by men.

1 - Personal status laws in Egypt:

The personal status law No. 25 of 1920 is adopted in Egypt and amended by Law No. 25 of 1929.

After 50 years, Law No. 44 of 1979 was adopted and amended the previous laws, this law has been a quantum leap for women's rights within the context of a marriage.

This law has given to the first wife the right to divorce without proof of damage, if she requested to do so within a year from the date she knew the new marriage. The new wife has the same right if the husband lied about the another marriage so as the husband who wants to marry another would be honest to face the situation and divorce his first wife if she wishes so without the need to prove the damage.

According to this law, the wife is punished if she disobeys her husband by losing her right to alimony unlike the previous law that required the police to force the implementation of the rule of obedience.

The law also stated the independence of the divorced wife in the marital home until the end of the custody period, unless the husband provides alternative accommodation for her.

However, the law "did not take into account the circumstances of non-working and elderly women leaving her home in the end of the custody of their young children and the right to alimony."

In May 1985 the Supreme Constitutional Court nullified the law No. 44 of 1979 for a formal reason without any attempt to the content of the law, because it was issued by presidential decree during the People's Assembly (Parliament) vacation and was not presented later for ratification in accordance with the Constitution.

The invalidation of law No. 44 for the year 1979 resulted a dangerous situation which is using the laws of personal status of the twenties. These laws were issued under social and economic conditions totally different.

The Law No. 100 of 1985 is a decline in women's rights. It obliges the wife that her husband married with another woman without her consent and that wish to obtain a divorce to prove the physical or mental harm caused to her. In addition to denying her the right to retain the marital home during the children custody; Instead, husbands are required by law to pay their housing; It is regrettable that the practical application of the law shows that the court require husband - in most cases - to pay very limited amounts to cover the housing.

Law No.1 of the year 2000 (khula), which focused on some mechanisms to address the problem of the slow action that encounter many women and families in matters of personal status.

In August 2000 the Minister of Justice amended the certificate of the marriage by the decree No. 1727 of 2000 published 15/8/2000 in the official journal "The Egyptian Facts", which included a white blank that allows the spouses to add some conditions.

Law No. 10 of 2004 on the Family Court concerning the establishment of a legal system aimed at achieving the best interests of the family by providing a variety of mechanisms to resolve family disputes. Also it aimed at achieving the desired prompt justice. This should be achieved through the introduction of the principle of specialization, whether for judges, their assistants or those who work to enforce the sentences. And also facilitate the justice procedures through a lot of organization, follow-up and proper work.

- Law No. 11 of 2004 has established a fund for families run by the Government through the Nasser Social Bank.
- Its aim was to facilitate the implementation of court decisions concerning wife and children alimony.

Finally, Law No. 4 of 2005 on the custody age is as follows:

-End the child custody by the age of 15.

-The judge offers options to the child after reaching that age to stay with the custody mother until he or she reaches the majority age.

As for the Christian legislation on the personal status:

The Christian legislations backed to the year 1902. It was the first legislation for the evangelical community, followed by other legislation for all the factions and branches of the Orthodox churches, including the Catholic churches and its branches as well. The Islamic sharia courts and the Christian jurisdiction courts have been in charge of the personal status matters until 1955, when the courts have been canceled.

The Law 462 of the year 1955 decided to refer these cases to national courts. It also decided that the matters that were under the Christian jurisdiction courts should remain subject to the provisions that were applied by these courts before the cancellation. The group of the year 1938 was considered a reference in terms of sentences.

In 1978 began other efforts to establish a unified personal status law for the Christian communities in Egypt when the representatives of Christian churches in Egypt held their first meeting on 6-16-1978.

After nearly eighteen years have passed without holding a meeting, Pope Shenouda called for meetings of the representatives of the communities, to re-read the content of the project and make the necessary adjustments. This has happened in fact,

Meetings were held 20- January 1998, 28-October 1998, 15-November 1998, and then, a committee was formed to finalized the draft law. But the law has not been issued yet.

Comments and observations

Firstly the Law 10 of 2004 on the establishment of the family courts:

This is considered the most important law in the last four years as it came in response to calls from women's right institutions for the need to introduce psychological and social elements as well as women themselves within the judiciary and the allocation of places and headquarters for family issues in addition to offices for the settlement of disputes. Already this happened.

. But one can say that after four full years that the law (in terms of legal texts and the practical application) was disappointing for all (family, lawyers, Non governmental Organization, psychological, social and legal expert within the offices of family dispute settlement for the following reasons:

1 - In terms of application:

- Most Family Court does not rule a temporary alimony for the wife and children. This a violation of the law and increases the suffering of women and children.
- Some judges are not specialist and this prolongs the conflict resolution and provokes contradiction in decisions and judgments.
- The Family Court lacks specific Department of implementation in most districts despite four years of existence, This is violating the Family Court Law
- Non-completion of the headquarters of family court so as to achieve privacy and security for litigants, especially women and children.

The enactment of the texts of the Law wants the headquarters of the family courts to be in the District Court for its proximity to the litigants. The practice shows that what is applied is the exception and not the rule. Many courts are considered a journey for the litigants also the lack of providing a suitable premises to facilitate the settlement of the family dispute in a real and serious a procedure.

- Activating the text obliging prosecutors to investigate the income of the husband in accordance with the Law 1 of 2000 to ease the burden of Egyptian women and not leave them and their children without expenses.
- Non-implementation of the law that requires to put the family's court file before the court in each case linked to the same family.
- Non-scrutiny in the selection of workers (most of them are recently graduated) in addition, their training is not sufficient and not sustained to enable them to perform their work efficiently. Also the lack of special publications on Family Court and the lack of providing sufficient records.

- Absence of specialists for the number of the submitted issues as well as the absence of the stability in the profession because of the hiring system (from the other ministries such as social and religious affairs), which would negatively impact on the performance in the Tribunal and the Office of the settlement.

2 - In terms of legal text

- Non-mandatory presence of the parties of the conflict for discussion in the office of family dispute settlement.

There is a problematic related the obedience warning and the need to object it within thirty days from the date the wife was informed according to the law. Some courts do not consider resorting to the Office of the settlement as cutting the period of thirty days or resorting to the Office of the settlement as an objection to the obedience in accordance with the law. Non considering the objection before the Family Court as an objection in time results the loss of women's right to alimony because the obedience warning is not considered to be objected within thirty days.

For this reason, the wife is considered a rebel going out of the marital home without the consent of her husband in accordance with the law and therefore she lose her alimony.

- Secondly, with respect to the law No. 11 of 2004 establishing Family Fund -run through the Nasser Social Bank.

- The aim of its foundation is to facilitate the implementation of the provisions of the courts with regard to the spouse and child alimony.

The Family Fund obliges the family in accordance with the article (71) of Law 1 of 2000 the following:

- Fifty pounds for every instance of divorce or return paid by the husband.
- Fifty pounds for each marriage paid by the husband.
- Twenty pounds for every birth paid one-time for obtaining the birth certificate.

- **However, the resolution 148 of 2006 was issued by the**

Nasser Bank to refrain from carrying out marital and children alimony from the settlement office as well as the temporary alimony for non-government workers or the public sector.

Therefore, the Egyptian women become without insurance or financial cover in the face of the daily life demands to her and her children.

Thirdly - For the Law No. 4 of 2005 on the children custody age of and the visitation issue:

Article 1-20 of Law No. 25 of 1929 amended by Law No. 100 of 1985 and amended again by Law No. 4 of 2005 ends the custody of the young men or woman by the age of fifteen.

The judge offers options to the young man or woman after reaching that age to remain with the custody mother until he or she reaches the age of majority or married.

Both parents have the right to see the young person and the grandparents as well in the absence of parents. If the visitation did not occur the judge will arrange it by an agreement in a place not to harm the young person psychologically.

The visitation should not be carried out forcibly. In the case the person that has custody refuses the implementation of the judge ruling, the judge will transfer the custody to the person that follows.

The text of the visitation should be amended to become the right of parents and grandparents. There should be also a development that will allow the intervention of a third-party in order to ensure the best interests of the child.

Recommendations:

- The need for a new unified family law: based on justice, fairness and equality and contents provisions that governing the relationship of marriage and engagement in all phases. It should include also all the provisions relating to relations between family members in one law that fits the circumstances of the era and take into account the interests of the Egyptian women (Muslim and Christian).
The best interests of the children should prevail.
- The need to control the polygamy like requiring the judge permit or giving the first wife automatic right to divorce for damage in case of another marriage, while retaining all her financial rights.

- Review the substantive provisions related to the damage of the divorce in general and to the psychological damage in particular in order to facilitate access to divorce when the conditions are met in accordance with the provisions of Islamic Sharia that requires to keep the wife in good condition or let her go in good condition as well and not keep the wife for the sake of harming her.
- Find an imaginative compromise between the couple in order to share the common wealth (which they gathered during the marriage) after the separation. It should be governed by law and the state should ensure its implementation.
 - Increase the maximum amount of alimony as the current is 500 EGP, less than \$ 100 US dollar per month. This could be a minimum in light of the increase in the daily burden.
The Alimony Fund should play the role for which it was created, which is providing security for the wife and children.
- The Egyptian government should work on issuing personal status laws for Christians as it existed already a unified law for them in government drawer since 1979.

Questions to the Egyptian government:

- Why the Egyptian government is not working on making a unified personal status law for Muslims?
- Why the Egyptian government is not working on issuing personal status laws for Christians despite the existence of a unified law for them in government drawer since 1979 while non Muslim issues are in increase and they have to resort to the Islamic law to solve their problems?.
- Why the Government did not take into account the enlightened opinion of the Islamic jurisprudence and work to strengthen it with various means?
- Why the government allows access to the official media for the extremists and outdated to present women's issues?
- Why the government do not take the experiences of countries in the Arab and Muslim world such as Morocco in order to change the Personal status Law?