

## **Family Law Reforms and Women’s Empowerment: Family Courts in Egypt**

Mulki Al-Sharmani

### **Introduction**

In the last decade, there have been several significant family law reforms in Egypt that have impacted the struggle to enhance the legal rights of women in the domain of marriage and family. On January 26, 2000 the Egyptian Parliament passed Law No. 1 of 2000. This new procedural law aimed at facilitating and expediting the litigation process in family disputes.<sup>1</sup> This in itself was an important achievement for women since female litigants suffer most from the lengthy periods of time that divorce and maintenance cases take. However, the most important and controversial article in Law No. 1 was article 20 which gave women the legal right to initiate *khul* divorce. According to this article, women who file for *khul* can be granted divorce in exchange for giving up their dower and after an arbitration period of ninety days.<sup>2</sup> Article 20 in Law No. 1 of 2000 created such a public uproar that the Law has since been known as the *khul* Law. However, there were also other articles in the law that also aimed at strengthening and increasing the rights of women. For example, article 76 stipulates that a husband that fails to pay court-ordered maintenance to his wife or ex-wife and children will be imprisoned for one month.<sup>3</sup> Also, Article 17 gives women who are in *urfi* marriages (i.e. unregistered) the right to file for divorce.

Also, in August 2000, a new marriage contract was issued. The new contract had a blank space in which the couple could insert stipulations. In addition, in November 2000, Egyptian women were granted the right to travel without the permission of their husbands.<sup>4</sup> And in October 2004, Law 10 of the Family Court was passed. The idea behind the Family Court was to create a judicial system that was accessible, efficient, affordable, and attentive to the best interest of families and children. To achieve this goal, new judicial structure and procedures for handling personal status cases were introduced.

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<sup>1</sup> Law No. 1 of 2000, for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters, cut down the 600 clauses of previous procedural laws to a mere 79. The law replaced Decree Law of 1907, Decree Law of 78/1931, Decree Law 462/1955, and Part 4 of Code of Civil and Commercial Procedural.

<sup>2</sup> The draft law did not stipulate any arbitration period but this amendment was later added on to diffuse the uproar of critics of the *khul* law.

<sup>3</sup> The draft law set the imprisonment period as 3-6 months, but this was also amended and the period was lessened to 1 month.

<sup>4</sup> The draft Law No. 1 of 2000 included an article that allowed women the right to travel without their husbands’ permission but this article was later removed by the legislative committee as a concession to the opponents of the law. After the enactment of the law, the case was brought in front of the High Supreme Court which ruled that it was unconstitutional to restrict a citizen’s right to travel regardless of their sex and marital status.

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How have these reforms been brought about? Who were the actors involved in the process? Who are the various interlocutors in the public debate about these reforms? What does this debate tell us about their views and agendas in regard to women's rights and position in the society? This paper will answer these questions with the aim of providing the context for a study on family courts in Egypt. The purpose of this study is to examine how these reforms are being implemented, to identify the diversions and subversions in the process, and to determine whether these reforms are strengthening the legal rights of women in family disputes. In the first section of the paper, I will outline how *Shari'a* model of marriage is framed in family law, and the significance of the varied ways in which this religious legal model has been interpreted and implemented. This will be followed by a brief overview of the history of family law reforms in Egypt. Then, I will analyze the public debate about the recent reforms in Egypt in order to describe the socio-political context that shapes these reforms. In particular, I will identify the discourses and argumentation styles that are used by the different interlocutors in this debate and examine their significance. In the concluding section of the paper, I will explain the purpose of this study, the methodology adopted, and the research tools used in the collection of data. I will also briefly report and discuss the preliminary findings from the first phase of the study.

**1. Islamic *Shari'a* and Modern Family Laws: Constructions of Marriage**

An integral part of any family law is its embedded notions of marriage, the roles of the husband and wife within marriage, and constructions of their sexuality. Since family law in most of the Muslim countries in the Middle East, including Egypt, is based on Islamic *Shari'a*, the following questions arise: Is there a distinct Islamic model of marriage with determined gender roles and relations? Is this model reflected in Egyptian Family Law? In what ways is it gendered? And how does that work for and against women?

There is a consensus in the literature on Muslim family law that the *Shari'a* model of marriage is gendered. Islamic marriage is based on a contractual agreement between the couple in which the husband has the duty to provide for his wife and their offspring and in return the wife avails of herself to him and puts herself under his authority and protection. The husband's exclusive right to his wife's sexual and reproductive labour is earned through and conditioned upon his economic role. This model of marriage does not recognize shared matrimonial resources. Whatever possessions and assets the wife brings to the marriage remain hers. Likewise, apart from maintenance for herself and her children, the wife cannot make claims to resources acquired by the husband during marriage. In addition, the husband has unilateral right to repudiation and polygamy. The wife's right to divorce, however, is restricted and regulated.

However, historically the *Shari'a* model of marriage has been interpreted and put into practice with a lot of fluidity and diversity which did not necessarily assert male dominance or negate women's rights (Sonbol 1996, Brown 1996, Tucker 1998, Moors 1999, Esposito and DeLong-Bas 2001). Women were able to restrict their husband's right to polygamy and repudiation; they were able to negotiate a wide range of rights such as adequate maintenance for themselves and their children, maintaining their economic activities after marriage, choosing their place of residence, pursuing education, etc. It has

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been argued that the decentralized system of *Shari'a* courts made it more possible for women to negotiate and enjoy these rights (Abdel-Rehim 1996, Sonbol 1996). Moreover, inserting stipulations in marriage contracts was a widely common and sanctioned strategy that women used to protect their rights (Hanna 1996).

The codification of Muslim family law in different countries has been shaped by their various sociopolitical contexts; however, most of these modern laws continue to espouse a *Shari'a* model of marriage.<sup>5</sup> Mira-Hosseini's ethnography of divorce and maintenance court cases in Iran and Morocco shows that this model of marriage is not compatible with the social realities of Muslim families in the twentieth century. The reality of many of these families is that husbands are no longer the sole providers and in many cases do not provide at all. The wife's economic activities (and resources) are often crucial to the livelihood of the family. But Mira Hosseini's ethnography also shows that women manipulate the tensions that arise from the gap between the legally-sanctioned model of marriage and their own realities to negotiate more equitable and adequate legal rights. For instance, despite their knowledge of their husbands' inability or unwillingness to meet their financial demands, female litigants make legal claims to their right to dower and maintenance to negotiate divorce and child custody. Also, although family laws in both countries are based on the *Shari'a*, they reflect different understandings of Islamic model of marriage. For example, in Morocco the woman's physical presence in the conjugal home is not necessary for her claim to maintenance, whereas this is necessary in Iran. Thus women in Morocco who have left the conjugal home can still make legal claims to maintenance, whereas women in Iran have to persuade the court that they left the conjugal home because of compelling and threatening circumstances to be able to maintain their financial claims on their husbands.

Thus, since family law in most countries in the Middle East region continue to be based on the *Shari'a* model of marriage, this model continues to be relevant to any debate and effort to reform personal status codes. But interpretations and implementations of this religious-legal model of marriage have often varied. Also, the changing social realities of litigants and their legal strategies impact the performance of law and may even disrupt its embedded gendered constructions.

## **2. Family Law in Egypt: Historical Background**

The first codification of Islamic family law in the Middle East was the Ottoman Law of Family Rights of 1917. Before the codification of laws, family dispute cases were handled by *qādis* (learned religious scholars) who settled the disputes according to the doctrines of one of the four Islamic schools of law (i.e. *Hanbali*, *Shafi*, *Hanafi*, and *Maliki*). With decolonization and independence, the region witnessed wide scale efforts to codify family laws as part of the agenda of the newly independent states to strengthen

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<sup>5</sup> The Tunisian family law of 1993 is an example of legislation that reflects a highly dynamic interpretation of Islamic model of marriage, which is based on the notions of Islamic justice and public welfare. For example, the legislation outlaws polygamy on the grounds that it is not mandatory in Islam and that the practice is against public welfare. Also, the Tunisian family law gives both husband and wife equal rights to divorce which can only take place through court. The law does not require a wife to obey her husband but instead she is expected to shoulder part of the financial obligations of the family. See Tunisian Personal Status Law of 1993. See also Mashhour 2005.

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their control and to shape the social and cultural reproduction of their societies (Brown 1997, Moors 1999). In Iran, the codification, which took place between 1928 and 1935, was motivated by the Shah's agenda to build a modern nation. The codification in Tunisia took place in 1959 and was also part of an effort to modernize the country after its independence from the French rule. The codification of family laws in South Yemen was part of a subject making process through which the communist state was aiming at creating particular kinds of families that would advance its agenda. Nevertheless, the new personal status codes in all Middle Eastern countries with the exception of Turkey<sup>6</sup>, continued to be based on Islamic *Shar'ia*. Thus, the *Quran*, *Suna*, and Islamic schools of law remained the main sources of these laws. Several strategies were used to reform the laws while maintaining their religious bases. One strategy was to use the doctrine of *talfik*, which involves combining the doctrines of the four schools in the legislation of the personal status law to better address the social changes and needs of the society. Another strategy was to use the doctrine of *takhayur*, which involves selecting laws from any of the four schools that best address the changing needs of the society and enhance the public welfare.

Up until the 19<sup>th</sup> century, all aspects of life in Egypt were regulated by Islamic *Shar'ia*. At the end of the 19<sup>th</sup> century, the legal system in the country was codified and secularized. Commercial, civil, and criminal codes, drawn from the French Code, were introduced. Family life, however, continued to be regulated by *Shari'a* Courts. In 1920, Law No. 25, the country's first codified personal status law (hereafter PSL), was enacted. The codification, like elsewhere in the region, was motivated by state agenda of establishing a modern nation. Advocates for the rights of Egyptian women such as the Egyptian Feminist Union tried to incorporate their agenda for reforms in family law into the state's modernization project (Sonbol 1996, Mashhour 2005, Sonneveld 2002). For example, the leaders of the feminist movement such as Huda Sharawi called for raising the marriage age, and reforming divorce and custody laws. These efforts resulted in some reforms. Law No. 25 of 1920, for instance, included some changes in divorce laws that were aimed at improving the legal rights of women. Articles 4-6 in the law allow women to file for divorce on the grounds of husband's failure to provide maintenance, articles 9-12 allow judicial divorce if the husband suffers from contagious disease, while articles 12-14 allow judicial divorce on the grounds of husband's desertion or imprisonment. In December 27, 1923, another reform was introduced and marriage age was set at 18 for men and 16 for women. The women's groups in collaboration with the government tried to introduce further reforms that aimed at restricting polygamy by proposing the inclusion of stipulations in marriage contracts. However, the proposal for the marriage contract was rejected by the King in 1926. In 1929, PSL No. 25 was passed. The new law included further reforms such as women's right to file for judicial divorce on the grounds of husband's maltreatment. Also, repudiations that occurred under coercion and intoxication were considered invalid.

The social welfare policy of President Nasser's era brought reforms that improved the conditions of women and strengthened their rights in education and employment. An additional right that women obtained in that period was the right to vote. However,

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<sup>6</sup> Turkey's family law is based on the Swiss Family Code.

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reforms in PSL at that time were minimal. In 1964, the Ministry of Social Affairs adopted the proposal of issuing a new marriage contract with stipulations but the idea was again dropped. One significant reform in PSL at the time was the abolishment of the obedience ordinance. It is important to note that abolishment of this ordinance did not eliminate the husband’s legal right to demand his wife’s obedience and presence in the conjugal home. What was merely abolished was the practice of bringing a wife back to the conjugal home by the force of law.

President Sadat’s era was characterized by different kinds of government initiatives that had interesting and contradictory impacts on family law. Sadat started his rule by courting the Muslim Brotherhood group through acts such as the release of some of their members from prison. In addition, President Sadat amended the constitution in 1971. Article 2 in the new constitution states Islamic *Shari’a* as the main source of government legislation, a strong reflection of the government’s espousal of an Islamic discourse. The growing influence of Islamist ideology in the Egyptian society in the 1970s may explain the government’s efforts to strengthen its rule through assertions of its religious legitimacy (Lone 1995). Yet at the same time the late President initiated substantive reforms in family law that aimed at the legal empowerment of women in the domain of family law. The President decreed PSL No. 44 of 1979, which included revolutionary reforms such as women’s right to judicial divorce on the grounds of their husbands’ second marriage, and the wife’s right to the conjugal home in the case of divorce if she has the custody of the children. The new law also legislated *mut’a* compensation for women who are divorced by their husbands without their desire or fault. To avoid opposition from religious establishment, Islamist groups, and other conservative factions in the society, the President decreed the law at a time when the Parliament was not in session. PSL No. 44 of 1979, however, was later annulled by the High Supreme Court in 1985 because the process through which it was passed was ruled to be unconstitutional.<sup>7</sup>

In short, during Sadat’s rule, strong claims on the part of the government to Islamic discourse were coupled with bold efforts to introduce legislative reforms that aimed at establishing a family law that was sensitive to gender equality.

When PSL Law No. 44 of 1979 was struck down in 1985, it was replaced in May of the same year by Law. No. 100. The reforms that were introduced in the previous law were either crossed out or watered-down in the new law. For instance, Law No. 100 of 1985 does not give a woman the right to file for divorce simply on the grounds of her husband entering into a new marriage. However, the woman in such a situation will be granted divorce only if she proves to the court that she is ‘harmed’ by her husband’s new marriage. In addition, what constitutes ‘harm’ is very loosely defined in the law, which gives judges a lot of leeway in the interpretation process, a practice that has often worked against women in judicial divorce cases (Halim 2005). Moreover, a woman who is filing for judicial divorce on the grounds of her husband’s second marriage can only do so

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<sup>7</sup> On the grounds of his presidential power to issue decrees at times of emergency, President Sadat passed the law without presenting it first to the Parliament for review. The High Supreme Court ruled that at the time when the law was decreed, there was no emergency that would legally justify the President’s use of that power.

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within one year of her knowledge about the new marriage. Another drawback in PSL Law No. 100 of 1985 is that, unlike its predecessor, it does not give divorced women possession of the conjugal home during the period of their custody of their children. Instead, the new law obligates husbands in such cases to pay housing costs.

Unfortunately, the implementation of the law showed that in most cases the court ordered husbands to pay very little money for housing costs. The experiences of many female litigants, in fact, demonstrated that many aspects in the judicial system hindered these women from getting fair and quick resolution in family disputes. The number of divorce cases filed yearly was staggering. Some of the literature estimated it as half a million divorce cases per year (Shah 2000, Hammond 2000). Other sources estimated that a quarter of million women resorted to court every year (Tadros 2000, Sakr and Hakim 2001) resulting in an enormous backlog of five million cases. The number of judges, furthermore, was insufficient. For example, in 1997, 14 million lawsuits were filed but there were only 4,000 judges to preside on all these cases (Singerman 2005). Whereas a man could divorce his wife unilaterally and without the need for court permission, divorce cases initiated by women sometimes lasted several years during which female litigants' lives and future plans were put on hold. In addition, court orders that obligated husbands to pay alimony and child support were frequently hard to implement because of corrupt and poorly trained law enforcement authorities as well as the lack of effective sanctions against husbands who fail to comply with court orders. Thus, the new law was perceived by advocates for women's rights as ineffective because it had many gaps that disadvantaged women, and the reforms that it introduced were for the most part insufficient and inadequate.

Since the eighties and up till the present day, various efforts have been undertaken by a coalition of women activists, lawyers, local NGOs, government officials, and public thinkers to introduce a series of reforms that would address the above-mentioned gaps in the current family law of the country. The most notable of these efforts are the new marriage contract project and the new procedural law (Law No. 1 of 2000).

Ensuring the rights of women through the practice of inclusion of stipulations in their marriage contracts is an old practice that existed in the region as early as the first centuries of the Islamic empire and as late as the Ottoman empire (Tucker 1998, Hanna 1996). In Egypt, this was also a fairly common practice among marrying couples that was discontinued with the codification of family laws in the first half of the 20<sup>th</sup> century. As mentioned previously, re-introducing the practice of issuing marriage contracts with stipulations was one of the main proposals that activists for women's rights adopted at different eras of the modern state to address certain gaps in the substantive family law. For example, in 1926 the idea was proposed with the aim of restricting polygamy, but it was killed by the King. In the sixties, the Ministry of Social Affairs proposed again the idea of marriage contracts with stipulations in order to protect women's right to work, but once more the idea was shelved.

In the late eighties, the idea of inclusion of stipulations in a marriage contract was revived again. This latest attempt was initiated by a group of activists, lawyers, and public thinkers who called themselves 'The Communication Group for the Enhancement of the

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Status of Women in Egypt.<sup>8</sup> In 1988, this group published a booklet entitled *The Legal Rights of Egyptian Women in Theory and Practice*. The booklet informed women about their rights and showed them how to formulate stipulations in their marriage contracts. The proposed new contract included nine stipulations that were framed as questions that were to be asked by the *mazoun*<sup>9</sup> to the husband, who had the option to accept or reject them. The stipulations covered different rights such as a wife's right to work, pursue education, travel without restriction, to make claims to conjugal home and furniture, to initiate divorce, and to ensure that her husband does not contract another marriage. During the International Conference on Population and Development (ICPD) which was held in Cairo in 1994, the coalition of Egyptian NGOs presented their platform document in which they recommended the new marriage contract. Subsequently, the proposal was adopted by the Ministry of Justice and presented to the Grand Mufti of Egypt for review.

The main opposition to the new marriage contract came from the religious establishment as well as opposition parties that were aligned with Islamist groups such as the Labour Party. The religious establishment rejected the new contract on several grounds: It argued that some of these stipulations 'forbade the permitted and permitted the forbidden.' This referred specifically to the stipulation that restricted the husband's right to polygamy and the one that allowed wives to travel without permission from their husbands. Also, the religious establishment as well as other *ulama* argued that including stipulations in marriage contracts would cause harm because it would lead to mistrust between couples and discourage young men and women from getting married.

Shaham (1999) argues that the arguments that were made by the religious establishment, however, can be refuted on several grounds. First, according to one of the Islamic schools of Law (*Hanbali*), it was valid to enter stipulations in marriage contracts. Second, entering stipulations in marriage contracts was customary in Egypt in past eras. Third, it is a practice that takes place in other Islamic countries. And finally, since husbands always have the option of rejecting the stipulations, no harm could come of them. Shaham attributes the opposition of the religious establishment to the new contract to their fear that entering stipulations in marriage contracts will turn them into civil contracts. This would undermine the role that the religious establishment plays in regulating family affairs and relations.

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<sup>8</sup> The group was known as the Group of Seven and was spearheaded by the lawyer and member of National Council for Women, Mona Zulficar. The other six members of the group were: Aziza Hussein, Chairperson, Family Planning Association; Ingy Roushdy, writer and editor, *Al-Ahram*; Saneya Saleh, Former Professor of Sociology, American University in Cairo; Awatef Waly; Chairperson, Friends of the People Society; Mervat El-Tellawy, former Ambassador to Austria; and Magda El Mofty, teacher of simultaneous interpretation, American University of Cairo. Other main contributors to the work of the group and members of the larger coalition that pushed the proposal were: Zeinab Radwan, Professor of Islamic Philosophy, Cairo University; Fawzyia Abdel-Sattar, Professor of Islamic Law, Cairo University, Hoda El Sadda, Professor of English Literature, Cairo University; Tahany El Gibaly, Supreme High Court Judge, Fathy Naguib, Chief Justice, High Supreme Court; and Iman Bibars, Director of the Association for Development and Enhancement of Women (ADEW)

<sup>9</sup> The *mazoun*, who has religious education and carries a license from the government, officiates marriage contracts.

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*Al-Shaab*, the newspaper published by the Labour Party, also criticized the proposal and presented it as posing a threat to the stability and harmony of family life and relations. Interestingly enough, the proponents of the new marriage contract adopted this project because they perceived it as a less controversial and more effective way of introducing reforms in family law. In addition, their proposal was solidly based on religious grounds. They argued that according to the *Hanbali* School of Islamic Law, inclusion of stipulations in marriage contracts was permissible and the violation of these stipulations would be grounds for the dissolution of marriage. The granddaughter of Prophet Muhammed (Sukayna bint Husayan) included stipulations in her marriage contract which ensured her that she would live in the place of her choosing and that her husband would not contract another marriage. Despite their religious discourse and style of argumentation, the proponents of the new marriage contract failed to gain support from the religious establishment and subsequently the proposal was dropped by the government so as not to risk its religious legitimacy (Sonneveld 2002). Yet, in August 2000, a new marriage contract was quietly issued. The new contract did not include the nine stipulations that were proposed in the previous draft, but instead it had a blank section in which the couple could insert any stipulations that they wished.

The efforts to issue a new procedural law were also undertaken by the same coalition as another strategy to introduce indirect reforms in the substantive law. The introduction of a new procedural law was perceived by the proponents of the law as a strategy of starting a gradual, less controversial, and more effective process of reform. Interestingly enough, the articles in Law No. 1 of 2000 that caused uproar and a lot of opposition were those that introduced changes in the substantive laws governing divorce cases such as article 20 pertaining to *khul* divorce, and article 17 pertaining to filing for divorce in *urfi* marriages (Zakareyia 2003, Singerman 2005, Shaham 2005). Yet, some of the advocates for strengthening the legal rights of women in the family domain see that this gradual and indirect process of reform is inadequate. What is needed they argue is comprehensive changes in the substantive law, i.e. Law No. 100 of 1985.<sup>10</sup> The most recent efforts in reforming family law culminated in the enactment of Law 10 of 2004 which decreed the establishment of Family Courts and Law 11 of 2004 which legislated the establishment of the Family Insurance Fund.<sup>11</sup>

The public debate about the recent legal reforms reflects the agendas of different interlocutors, their views on gender roles and relations, and the challenges underlying efforts to eliminate discrimination against women and enhance their legal rights in the domains of marriage and family. In the following subsection, I will analyze some of the arguments and positions of the critics and proponents of these reforms.

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<sup>10</sup> Personal interviews with Dr. Iman Bibars, Director of Association of Advancement and Enhancement of Women (ADEW), Ms. Nehad Komsan, Director of Egyptian Center for Women’s Issues, and Ms. Azza Soliman, Director of Association for Egyptian Women’s Legal Assistance, February and April 2007.

<sup>11</sup> This Fund was established to address the challenges involved in the implementation of court orders for the payment of spousal maintenance, alimony, and child support. According to Law 11, Bank Nasser will undertake the task of paying court-ordered maintenance sums to female litigants and will collect the disbursed money from husbands’ employers. Not surprising, this system works well with husbands who work for government agencies or established businesses, whereas garnishing the wages of husbands who work as manual labourers, and others who work in the formal market is very difficult to implement.



### 3. Reforming Family Law in Egypt: The Public Debate

Efforts to reform family law as well as counter efforts to resist these reforms have involved different actors and various agendas. On the one hand, the Egyptian state has taken on the task of reforming family law (through codification and legislative changes) as part of a larger project that aims at strengthening its control and creating the kind of families and citizens that would enhance its modernist agenda. On the other hand, other agents who take active roles in reform efforts such as women activities, local NGOs, and international organizations, have been motivated by the goals of achieving gender equality, family empowerment, and establishing a culture of human rights. The religious establishment has welcomed some reforms and has vehemently opposed others. The strongest opposition to the reforms came from dissenting Azhar *ulama*, Islamists<sup>12</sup>, and some opposition parties<sup>13</sup>. It is significant, though not surprising, that all interlocutors who take part in the public debate about recent reforms in PSL use religious-based discourses to make their cases and to undermine the positions of their opponents. However, it would be inaccurate to categorize the debate about family law in Egypt as one that only revolves around what the true interpretations of *Shari'a* injunctions on family relations should be and how they are to be best reflected in modern family laws. Other important issues that come up in these debates are a myriad of concerns, fears, and attitudes that are related to changing socioeconomic conditions, painful and uneven transformation of gender roles and relations, and struggles between different entities in the society (such as the government, religious establishment, activist groups) over the scope and significance of their role in shaping the cultural and social reproduction of the society. In what follows, I will explain these points in more detail through an analysis of the public debate about the *khul* law.

The position of the Sheikh of Azhar was that *khul* article, unlike the new marriage contract, was in accordance with religious injunctions. Thus the official position of Al Azhar was supportive of passing Law No. 1 of 2000. In fact, when the draft law was presented to the Parliament, it was reported that 35 of the 40 members of the Academy of Islamic Research at Al-Azhar had approved the draft law. However, various articles in *Al-Ahram* as well as opposition party newspapers showed that many of the *ulama*, including a significant number of those who were members of the Academy were strongly opposed to the *khul* article. The dissenting *ulama* published a letter of opposition which they addressed to the President. They argued that the law violated religious injunctions since it eliminated the consent of the husband and made divorce in *khul* cases irrevocable (“A Manifesto” 2000).

Both the proponents of the law and the *ulama* who attacked it agreed that *khul* as a form of divorce was sanctioned by both the *Quran* and the *Hadith*.<sup>14</sup> Yet both disagreed on

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<sup>12</sup> I am using the term here to refer to organized Islamic groups such as the Muslim Brotherhood and public thinkers who adopt a similar religious ideology.

<sup>13</sup> These parties are the Labour and the Wafd.

<sup>14</sup> The religious injunction for *khul* is based on Quranic Verse 229 in Cow *Sura*. The injunction is also based on the Prophet’s *Hadith* regarding the wife of *Thabet Ibn Qays* who told the Prophet that she did not wish to live with her husband although he had not wronged her. The Prophet told her to return the dower to her husband (a garden) and then he granted her a divorce.

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their interpretations of how *khul* should be applied in accordance with the religious sources. The interpretation of dissenting *ulama* negated the purpose of *khul*, which was to give a wife the choice to exit a marriage in exchange for giving up her financial rights. In fact, the kind of *khul* that these *ulama* sanctioned resembled the kind of divorce that a husband initiated since it was conditional on his consent and was revocable within the waiting period that is set in the *Shari'a* laws.<sup>15</sup> The letter that the *ulama* sent to the President, however, expressed, a lot more than simply a dissenting religious opinion. The *ulama* said that the proposed law negated the “guardianship” of men and threatened the “continuity and coherence of the Muslim Family (A “Manifesto” 2000). Furthermore, the *ulama* claimed that the proponents’ use of religious discourse was insincere and similar to the colonialists’ manipulation of *Shari'a* in earlier periods of the nation. In other words, the letter was also expressing the *ulama*’s fears from changes in the status quo of Egyptian families, particularly the asymmetrical relations between husbands and wives, which they believe are sanctioned by Islam.

It is important to note that the religious scholars and establishment varied in their positions on PSL reforms. Whereas the official religious establishment, exemplified in Sheikh Al-Azhar, supported the *khul* law, many scholars from inside and outside the establishment rejected the law. This can not be simply attributed to the strong ties between the government and Al-Azhar.<sup>16</sup> In fact, in many occasions Sheikh Al Azhar and/or the Grand Mufti took opposing positions to those of the government regarding several PSL reform proposals. For instance, Sheikh Al-Azhar opposed the new marriage contract. So, the various positions of the religious establishment and other scholars on family law reforms can not be simply understood as one that agrees with the government’s agenda or opposes it. Instead, they need to be understood within the context of the constant struggle and negotiation between the religious establishment and various actors (such as the government and the civil society) about the role of the former in regulating family life and gender roles and relations.

The parliamentary debate about the *khul* article was even more heated and controversial. Opposition to the draft law, particularly the *khul* article, came not only from members from opposition parties but also from those from the ruling party. The argumentation style used by most of these MPs reflected a great deal of fear, alarm, and negative views on women’s rationality, morality, and sexuality. The common critique that was voiced by the members revolved around fears that the new law was going to be abused by women because of their assumed lack of moral values and rational thinking. One MP said that the law would be abused by women who wanted to leave their husbands for richer and more attractive men. Another MP feared that if the law was passed, husbands who were enduring the hardship of migration in Gulf countries would be unilaterally divorced by their fickle wives! Other MPs thought that this law would be rewarding adulterous women since it gave them a legal exit out of their marriage. Another argument that was

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<sup>15</sup> The waiting period is three menstruation cycles for the divorced wife or until the time when she gives birth if she is pregnant at the time of divorce.

<sup>16</sup> The government appoints the two highest positions in Al Azhar, i.e. Sheikh Al Azhar and the Grand Mufti.

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made against the law was that it would only benefit rich women who are able to forfeit their dower and alimony in exchange for divorce (Zakareyia 2003).

On one level, the arguments that were made by the critics of the law in the Parliament can be simply classified as misogynist attitudes towards women that may have been encouraged by patriarchal norms and values. While this explanation may have some truth to it, it is inadequate. The fears that the MPs expressed are also closely tied to the gap between the socioeconomic conditions of many of the families and the model of marriage that is promoted by public culture and dominant religious discourses. In many Egyptian families, husbands can no longer make claims to the “guardianship” and “supremacy” that are bestowed upon them by the cultural and religious public discourse because they are no longer capable of providing for their families (Rugh 1993, Sherif 1999, Hoodfar 1996, Singerman and Hoodfar 1996). Married women, on the other hand, juggle a multiplicity of roles such as economic provider/contributor to their families, manager of the conjugal household and its resources, and care provider. The tensions arising from the evolving changes in gender roles in marriage are exacerbated by stifling socio-economic conditions that have led to the migration of Egyptian workers, high rates of divorce, and increases in female-headed households (Bibars 1985). In other words, the above-mentioned opinions of the members of the Parliament (all of whom were male) reflect societal tensions and attitudes that are shaped by changing socioeconomic conditions and family relations as well as competing discourses about the cultural and social reproduction of Egyptian families.

On the other hand, the government’s efforts in family law reform need to be understood within the context of two competing and sometimes conflicting agendas which it has undertaken. On the one hand, the government is constantly striving to assert its religious legitimacy by partaking in and legitimizing dominant religious discourses that regulate family relations and gender roles. The significance of this goal has increased after the rise of the influence of Islamic groups in the 70s and onwards. On the other hand, the government sees family law reform as a means of modernizing the country, enhancing the development process, and maintaining the support of international organizations that generously fund the country’s various development projects.<sup>17</sup> These conflicting goals of the government have often translated into an uneven and mixed process of reform in family law (Lone 1995, Shaham 1999, Ibrahim 2000, Mashhour 2005, Sonneveld 2002, Moors 2003, Singerman 2005).

The agendas and discourses of feminist groups are also heterogeneous and this had its mixed effects. Some of the influential women’s groups try to advance their agendas for

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<sup>17</sup> Much of the recent literature on family law in Egypt notes the chronological proximity between various family law reforms that have been adopted by the government and the holding of international conferences on women’s issues and rights. For instance, PSL No. 44 of 1979 was passed before the July 1980 United Nations World Conference on Women in Copenhagen; PSL N. 100 of 1985 was enacted before the UN Conference on Women in Nairobi that took place in the same year; the new marriage contract proposal was considered by the government right after the International Conference on Population and Development in Cairo; and the latest legal reforms; and Law No. 1, Law No. 10, and Law No. 11 were passed before the UN Conference on Women in 2005 and the 2005 World Summit. See for example Shaham 1999 and Sonneveld 2002.

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reforms in family law using a combination of discourses drawn from Islam, human rights, and feminism (Bibars 1985, Lone 1995, Karam 1996, Zuhur 2001, Sonneveld 2002). But some activists, on the other hand, adopt a distinct Islamist agenda of reform. For example, Heba Raouf, an academic and Islamic woman activist, sees that eliminating oppression against women and fulfilling their rights should be part of comprehensive Islamic reforms that aim at the empowerment of the whole family (Karam 1996). On the other end of the spectrum, there are very few feminist groups that opt for a secular rather than a religious discourse to advance their cause. One notable example is Aida Seif El-Dawla of the New Woman Group who says, “The attack on women can only be countered by a feminist discourse grounded in the framework of human rights. To engage in an Islamic discourse, or any religious one for that matter, is dangerous and useless in the struggle for maintaining what rights women already have-let alone what they still have to achieve” (Quoted in Karam 1996: 2). For the most part, however, most of the feminist activist groups find it necessary to appeal to an Islamic framework and to use religious arguments in order to advocate for their reform agendas (Zuhur 2001).

The heterogeneity of feminist agendas and discourses is not in itself a drawback. On the contrary, the multiple efforts of the different groups could strengthen the legitimacy of feminist activism. However, the challenge arises when different groups have to reach a consensus on which specific reforms (in family law) are legitimate and which have priority. Is it restricting men's right to polygamy? Is it women's right to initiate divorce? Or is it a better and more effective system of implementing court orders for alimony and child support? Another challenge that still confronts all feminist groups and activists is that their cause and goals continue to be subsumed under larger nationalist and religious agendas (Lone 1995, Karam 1996, Moors 1999, Zuhur 2001, Mashhour 2005). This has often been one of the obstacles to comprehensive and substantive reforms in family law.

## **4. Family Courts in Egypt: An Ethnographic Study**

### **4.1. Purpose of Study**

In October 2004, Law 10 of Family Court was passed. The aim of this legislation is to establish a new legal system through which all personal status cases are to be handled. The philosophy of the new system is to make the legal process in family dispute cases non-adversarial, attentive to the best interest of the family, accessible, and affordable. To achieve these aims, several changes have been made in the structure, procedures, and tasks of the court. First, all law suits pertaining to personal status are to be filed in a family court. According to Law 10, a First Instance<sup>18</sup> family court will be established in the jurisdiction of each District Court. The judicial bench of the family court consists of three judges assisted with court-appointed social worker and psychology specialist. In addition, one of these two experts has to be a woman. For the purpose of efficiency and a more just litigation process, all disputes concerning a particular family are compiled and processed in one court file.

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<sup>18</sup> Before the establishment of the Family Court, some PSL lawsuits (e.g. divorce) were filed in the First Order Court. Other suits such as maintenance cases were filed in District Court. So women often had to file suits pertaining to the same dispute at different courts, which was time-consuming and costly.

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The most significant aspect of the new system is the incorporation of mediation into the legal process. Thus, before a litigant can file a suit, she/he is obligated to file for mediation. The mediation is conducted in family mediation offices housed in the family court. It is carried out by three mediation specialists who have training in law, psychology, and social work. Mediation efforts are to be carried out between the two disputing parties within a period of fifteen days. Upon the consent of the two parties, the mediation period can be extended to two more weeks if there is a chance of resolving the dispute. If mediation efforts fail, the disputants can file a court case within a week. However, when mediation efforts succeed, the agreement that is reached is legally binding.

Mediation is also carried by the two psycho-social experts who work with the judges. These experts are obligated to attend all divorce, obedience, custody, paternal visitation rights, and refutation or establishment of paternity cases. While the case is in process, the experts are ordered by the judge to meet with the litigants to provide mediation services. The experts also assist the judges by preparing reports on the social and psychological dimensions of the disputes.

Lastly, another important reform that Law 10 introduced is the abolishment of appealing court sentences at the level of the Court of Cessation. This means the sentences of the First Instance Family Court can only be appealed at the Court of Appeals whose verdict then becomes the final one.<sup>19</sup>

This study will conduct ethnography of the litigation process in selected family courts in Greater Cairo. The purposes of the study are as follows:

1. To examine how this new judicial system is implemented and the ways in which it is used by female and male litigants.
2. To identify the ways in which the system is benefiting and/or disadvantaging female litigants.
3. To analyze the gender politics that are played out in pre-litigation mediation efforts, litigation procedures, and interactions between court personnel and litigants. The study, in particular, will look at the dominant notions of marriage, female and male sexuality, and gender roles and relations that are embedded in the legal process and how they impact female litigants' access to justice. Moreover, the study will examine if and how female litigants are negotiating, manipulating, or transforming these notions to strengthen their legal positions and achieve their goals.
4. To assess the implementation and impact of two specific legal reforms, namely, the *khul* law, and a series of laws that were enacted to strengthen the rights of women in maintenance cases.<sup>20</sup>

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<sup>19</sup> The court verdicts in *khul* cases, however, cannot be appealed at any level.

<sup>20</sup> Law 11 of 2004 established the Family Insurance Fund which enables female litigants to collect court-ordered alimony and child support from the government-owned Nasser Social Bank. The bank undertakes the task of collecting the money from husbands. Another reform is female litigants' right to court-ordered temporary maintenance while their law suits are in process if it is established that they have immediate financial needs (Article 16 of PSL No. 100 of 1985). And lastly, Article 76 in Law 1 of 2000 stipulates that husbands who fail to pay court-ordered maintenance will be imprisoned for a period of a month.

## **4.2. Literature Review**

Laila Takla’s book on family courts is the pioneer work on the subject in Egypt (Takla 2004). The purpose of the book is to present the philosophy behind family courts and to explain the advantages of such a legal system. Takla, being one of the main advocates who spearheaded the efforts to establish family courts in the country, stressed that the idea behind family courts is not to advance women’s legal rights but to address the best interests of the families and children who use the court to resolve their disputes.<sup>21</sup>

Apart from Takla’s book, the literature that has been published on family courts in Egypt so far falls into two main categories. First, there is a series of legal books that has been produced by judges and lawyers (Al-Lamsawy and Al-Lamsawy 2006, Zuwein 2006, Sheta 2006, Mansour 2006, Al Bakri 2004). This literature mostly explains the structure and functions of the Family Court through an analysis of the different articles of Law 10 of 2004. On the one hand, some of these authors saw the establishment of the Family Prosecution Department and the central role that is has been assigned in all PSL cases as a positive innovation (Al Bakri 2004, Zuwein 2006).<sup>22</sup> On the other hand, some of this legal literature criticizes the role that Law 10 assigns to the court-appointed experts on the grounds that it undermines the authority of the judge (Mansour 2006). Since this literature is produced by judges and lawyers, this critique reflects the attitude of some of the judges towards the new system.

The second category of literature on family courts specifically addresses the advantages and the drawbacks of the new system and their effects on Egyptian women. In 2004, a workshop on family courts was organized by the Association for Advancement and Development of Women in which several academics and women activists presented papers on the strengths and weaknesses of family courts as a mechanism through which to strengthen women’s legal rights. Since the new system was just introduced at the time, the analyses in these papers focused on the written legislation itself (Abdel Sattar 2004, Abdel Kader 2004, Al Sayed 2004, Al Menshawy 2004). In subsequent years, other academics and women activists circulated papers that outlined the drawbacks of the implementation process and its impact on female litigants (Bibars 2007, Al Samaluti 2007).

In addition, a recent study was conducted by the Ombudsman’s Office at the National Council for Women on the problems that women encounter in family courts. The study collected data from the complaints that the Ombudsman’s office receives from female litigants in PSL cases (Ombudsman’s Office, National Council for Women 2007). Also, the research team in the study conducted a discussion group with 13 lawyers about their

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<sup>21</sup> The author’s emphasis on the family-oriented rather than woman-oriented feature of the new legal system may be a response to the public media at the time which presented the recent legal reforms in PSL (including establishment of family courts) as merely a government agenda to advance women’s rights at the expense of the stability of Egyptian families.

<sup>22</sup> According to Law 10 of 2004, the Department of Family Prosecution is obligated to provide its opinion on all PSL cases that are reviewed by the court before the judge issues sentences. Prior to Law 10, this opinion was optional. Also, according to the new law, the Department of the Family Prosecution has to investigate disputes about the husband’s income in maintenance cases.

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views and experiences with family courts. The main finding of the study was that the effectiveness of the family court system was impaired by the following weaknesses. First, the lack of specialization among the judges affected their competence in reviewing PSL cases. Second, there was a series of factors that hindered the role of mediation offices such as lack of adequate resources, training, and supportive societal attitudes. The litigation process still suffered from lengthy and sometimes ineffective procedures. In addition, the court-appointed social and psychological experts were not well-utilized in most cases. Lastly, the study reported the difficulty of implementing court sentences because of the lack of well-trained and competent law enforcement agencies.

Aside from the study by the Ombudsman's Office, all the literature on family courts either focuses on legal explanations of Law 10 of 2004 or provides general critical analyses of the system. What seem to be lacking are field-based studies on the litigation process in the court. Yet, it is important to note that there are several important studies on specific kinds of PSL court cases such as *khul*, judicial divorce, maintenance, and custody, which illuminate some aspects of court procedures. For instance, Soliman and Salah El Din (2003) examined *khul* cases over two years (since the enactment of the law) in six governorates: Qena, Suhag, Fayoum, Giza, Cairo, and Alexandria. The study reported the following findings: First, there was no steady increase in *khul* cases, unlike what was predicted in the public media when the law was first passed. Second, most of the cases lasted from 6 to 17 months with longer periods of litigation being more common in regional governorates. The study also found that some of the procedures in these cases were unfair to women and violated the spirit of article 20 of Law No. 1 of 2000. For instance, some of the female litigants in these cases were ordered by the judges to pay the deferred as well as the advance parts of the dower although it was customary for wives to collect the deferred part of the dower at the time of divorce or the death of the husband. In other words, these women were forced to pay more than what they had received from the husband in exchange for their divorce.

Halim et al (2005) conducted a comparative study of *khul* and judicial divorce cases. The authors examined the court records of 104 *khul* cases and 102 judicial divorce cases in Cairo, and Suhag, and Assuit. The research team also conducted interviews with some of the female and male litigants in these cases. The findings of the study showed the following: women in both kinds of cases were seeking divorce for similar reasons, the most common of which were the husband's failure to provide, the husband's desertion, and spousal abuse. The advantages of filing for a *khul* rather than a judicial divorce were the lower costs and shorter period of litigation.<sup>23</sup> On the other hand, there was a lot of stigma attached to *khul*. This study, like the previous one on *khul*, also highlighted similar gaps in court procedures pertaining to *khul*. As a result, these problems prolonged the litigation process and sometimes forced women to forfeit more rights than they were legally obliged to. For example, husbands sometimes disputed the amount of advance dower which was registered in the marriage contract and claimed that they had paid a lot more. In such cases, some judges repeatedly postponed court sessions until investigations

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<sup>23</sup> More than half of the *khul* cases reviewed in the study lasted 6-12 months. Slightly more than half of the judicial divorces, on the other hand, lasted 1-2 years. Also, 28 per cent of the judicial divorce cases lasted more than two years.

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were conducted by the Family Prosecution Department. Also, delivery of court summons to husbands was very difficult since some husbands deliberately refrained from receiving the summons so that the law suit would drag on. The authors concluded that despite the advantages of *khul* as a legal right that gave women a way out of an unwanted marriage, the implementation of the law had many gaps that diminished its benefits.

Lastly, ADEW conducted a series of studies on a number of women who filed *khul* and maintenance court cases in Cairo, Qalyubia, Gharbia, and Menia (ADEW 2006).<sup>24</sup> The findings on the *khul* cases revealed similar problems in the litigation process as those reported in the above-mentioned studies.

To conclude, so far there has been only one study that examined the different aspects of the litigation process in the Family Court and how they impact female litigants (The Ombudsman's Office 2006). In addition, there has been research on specific kinds of law suits in the Family Court (the most notable example being *khul*). Both kinds of research point to a number of problems in the implementation of laws, which undermine the benefits of the new legal system. The contribution of this study is to illuminate through an ethnographic study the performance of law (and its reforms) in family courts, to examine how gender politics play out in this process, and to identify the tensions, the limitations, as well as the moments of negotiation and positive change.

### **4.3. Methodology and Research Design**

#### **Methodology**

In this ethnography, Egyptian family law (and its reforms) will not be studied as merely written legislation that is either implemented poorly or effectively. Instead it will be studied as a dynamic process that involves the practices, the views, and interactions of the actors who partake in this process. The research team will study this process ethnographically (i.e. through repeated observation and analysis of different aspects of the process and through in-depth engagement with some of the actors).

#### **Data Collection and Research Tools**

The fieldwork for the study started in March 2007 and will be completed by October 2007. The following data collection tasks are taking place:

**Preliminary interviews** are being conducted with key figures that have contributed to the advocacy work that led to the recent reforms. Three interviews have been conducted with Dr. Iman Bibars, Director of ADEW; Ms. Nehad Komsan, Director of the Egyptian Center for Women's Rights; and Ms. Azza Soliman, Director of the Center for Egyptian Women's Legal Assistance. Additional interviews will be conducted with Dr. Laila Takla, the lawyer activist and former member of the Parliament, Dr. Fatma Khafagy, Former Ombudsman, National Council for Women, and Ms. Mona Zulfucar, prominent lawyer, woman activist, and member of the National Council for Women.

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<sup>24</sup> The number of women interviewed was 10 in each kind of lawsuit. ADEW also conducted a third study on the effects of divorce on the living conditions of women.



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**In-depth interviews** have been conducted with 53 female litigants in the following cases: in *khul*, judicial divorce, maintenance, paternity, custody, destruction of marital furniture, and possession of the conjugal house. Twenty-five interviewees were selected randomly from the clients of the ADEW's Legal Assistance Program<sup>25</sup>, and the remaining 28 interviewees were randomly selected from the clients of informant lawyers. The interviewees who were recruited from ADEW clients were residents of Cairo, Giza, Qaluybia, and Gharbia. The other interviewees were residents of Cairo and Giza.

**In-depth interviews** have been conducted with 12 mediation specialists from four mediation offices. In each of these offices, the interviews were conducted with 3 mediation specialists who carry out all dimensions of the mediation work (legal, social, and psychological).<sup>26</sup>

**In-depth interviews** are being conducted with 10 male litigants. The interviewees have been selected randomly from the clients of a number of informant lawyers. The selected interviewees either filed for obedience, paternity visitation rights, or are involved in *khul*, maintenance, and divorce cases.

**Open-ended interviews** are being conducted with a number of judges and court-appointed social and psychological experts.<sup>27</sup>

**Focus group discussions** have been conducted with two groups of lawyers (male and female). Two additional focus group discussions may be conducted if time permits.

**Non-participant Observation:** A series of observation sessions (of mediation work) is being conducted in four mediation offices. A series of observations are also being conducted of court sessions in two family courts in Giza and Cairo.<sup>28</sup>

**Content analysis** is being carried out on court files of 15-20 PSL cases some of which belong to the interviewees. The files include mediation reports, court sentences, lawyers' briefs and depositions, case summation, and other documents presented to the court for evidence such as marriage certificates, birth certificates, and proofs of husband's income.

#### **4.4. Research Challenges**

The main challenge that has been confronted by the research team has been the difficulty of obtaining access. Access to mediation offices and court rooms has been difficult and slow to achieve. Access to mediation offices was obtained a month and a half after the fieldwork had started and through the assistance of a mediation specialist/researcher who has previously worked with Social Research Center in previous projects.<sup>29</sup>

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<sup>25</sup> This program provides free legal services to poor female litigants in PSL disputes.

<sup>26</sup> The selected mediation offices are in Giza and Cairo.

<sup>27</sup> In my initial proposal, I identified the number of judges and experts to be interviewed as 10 each. This is not realistic and will most likely not be possible since access to judges and experts so far is very difficult to obtain.

<sup>28</sup> To maintain the anonymity of the interviewees, the researched family courts and mediation offices will not be identified.

<sup>29</sup> A letter of support from the National Council of Women improved access to some mediation offices.

Access to court rooms has also been difficult to obtain in the first two months of the study. The court rooms are so small and inadequate that in almost all PSL court sessions, judges only allow into the room the litigants (and lawyers) whose case has been summoned. The proceedings of each case lasts less than a few minutes since the judge has to preside over 100 or more cases a day. Also, some of the judges that I have indirectly approached (through a third party) have been reluctant to participate in the research because of tumultuous relations between the organization representing judges (Judges’ Club) and the government at the moment.

This problem has been resolved as follows: I have been able to secure the consent of the chief judge in one of the family courts in Giza to attend his court sessions every Thursday. I have also been granted permission to attend court sessions in this same court room that concern litigants from whom I have obtained consent. Therefore for the past month, I have been attending all sessions in this court room every Thursday. I have also been attending some court sessions that concern the cases of the litigants that have been interviewed for this study.

I have also been attending sessions in the Family Court of Appeal since they are held in spacious court rooms and are open to public. However, all the exchanges between the judicial bench and the litigants take place right in front of the bench. Therefore, it is sometimes difficult to follow in detail the interactions between the judicial bench and the litigants from the seating area.

So far I have been able to conduct several informal interviews with one judge and five psycho-social experts in Giza and Alexandria.<sup>30</sup>

#### **4.5. Preliminary Findings**

Since I am still in the process of conducting fieldwork and doing preliminary analysis, I do not have at the moment any complete and comprehensive findings that would address all the issues that are raised by this study. However, I can briefly present a few preliminary results. They are:

a. Mediation and arbitration, the most distinct features of the family court system, for the most part are not benefiting female litigants. The presence of either or both disputants in mediation sessions is not obligatory according to Law 10 of 2004. Therefore, in most cases husbands do not show up. In some cases, even wives (who are usually the claimants) do not show up. Thus many of the mediation sessions are mostly attended by the legal representatives of the disputants. This has turned these mediation sessions into routine and insignificant procedures. Lack of resources such as adequate training and well-equipped and suitable workplaces also diminish the effectiveness of mediation work. In addition, the absence of supportive attitudes (from lawyers) and litigants towards the role of mediation is also another obstacle. Despite all the above-mentioned limitations,

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<sup>30</sup> Because of the difficulty of obtaining official permits to interview judges, I am now considering an alternative strategy, which is having informal discussions and encounters with a small number of judges over an interval of time.

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the results show that mediation offices have been mostly effective in settling maintenance disputes. This has been beneficial to female litigants since agreements reached by mediation offices are approved by the court and thus are legally binding. With these written agreements, female litigants have been able to collect their alimony or child support money from Nasser Bank. However, this successful role that mediation offices have been playing has been disrupted by the recent governmental decree which has stopped disbursement of maintenance money to litigants on the basis of agreements reached by mediation offices. The decree was in response to an increase in the number of fraudulent cases in which litigants pretended to have maintenance disputes and have gone through mediation to obtain these written agreements.

b. During court proceedings, judges, lawyers, and mediation specialists voice highly gendered views on female sexuality, female rationality, and gender roles. These views sometimes work for the litigants and other times work against them. For instance, in one of the divorce cases, the lawyer built his legal argument on two facts: first the husband did not support his wife, and second he frequently travelled and left his 'young beautiful' wife alone with his brother who was living with them. So the lawyer concluded that the husband was not fulfilling two of his fundamental duties as a husband, namely supporting his wife, and controlling/protecting her sexuality. The judge granted divorce on the grounds of 'harm' inflicted on the wife and listed similar legal arguments in the court sentence. Another example is the views expressed by mediation specialists about the irrationality of wives who file for *khul* and their flawed moral character. These views seem to affect the specialists' position on what a wife should give up in exchange for *khul*. Some of the interviewed specialists, for instance, have argued that the wife should give up not only the advance dower but also the furniture in the conjugal home.

c. In their choice of legal strategies, female litigants display a good understanding of the kinds of gendered claims that are more likely or less likely to strengthen their legal positions. For instance, in several cases the interviewed women disclosed that sexual abuse was one of the main reasons why they wanted to end their marriages. Yet, these women often made strategic choices about the reasons they cited as grounds for their legal claims (e.g. failure to provide rather than sexual abuse against the wife, or abandonment instead of sexual abuse against the daughter) because they believed these reasons were more persuasive and easier to establish to the court.

d. The results regarding *khul* confirm the findings of previous studies (e.g. the reasons that drive women to file for *khul*, the problems with court procedures in *khul* cases, and the societal attitudes towards *khul*).

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