



THE 19TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Tradition and Reform in the Legal Framework Surrounding Immigrant Woman in Muslim Societies

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Abstract: Migrant communities in the Middle East represent a vibrant space of identity negotiation and (re)construction, strongly influenced by the local context, itself characterised by a robust set of values deeply rooted in history and faith. Sexism is a significant problem throughout the region, as traditional, religious and social norms give men legal and economic power. The general level of male dominance over women overlaps with a particular one which regulates the status of the immigrant woman in Muslim society and family, further diminishing her role and rights. The article provides an overview of contemporary legal systems in Jordan, Lebanon and Egypt regarding the status of immigrant women and explores to what extent these systems are pervaded by sharia-based law, or whether the government's aim to ensure that they meet modern socio-economic needs. Out of all areas of law, family laws are most influenced by classical sharia. Based on data collected from constitutions and relevant national laws, the paper analyses the framework for marriages, divorces and custodies. While Muslim countries have gradually taken distance from tradition-based legislation to the benefit of women, the rights of immigrants, mainly non-Arabs, vary in terms of individual liberties throughout the analysed countries.

Keywords: Middle East; immigrant women; family law; sharia; reform

1. Introduction

The status of women in Muslim society is a controversial, long-debated issue, rooted in a strong set of religious values. Although progress has been made over the years in terms of women's rights, due to both new approaches to religious norms (El-Azhary Sonbol, 2006) and international pressure, women are still placed in an inferior position to men in terms of individual rights and freedoms.

In Muslim states in general, the ruling system is based on sharia, mainly with regards to the personal matters, out of which religious scholars developed Islamic jurisprudence (fiqh). The interaction between sharia and legal systems in Muslim societies has a long history, with varying interpretations in the literature. In general, academic society sees this interaction as a losing battle (Hallaq, 2009), critically portraying politicians' decision to interpret God's will and administer justice accordingly (Otto, 2010, p. 40) ("erroneous appropriation of the power to interpret God's will (...) and to administer justice accordingly"). At the same time, the much more conservative attitude of the authorities is justified by

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them as evidence of respect for religious perceptions, which leads to nation-building and social and economic progress. While scholars like Feldman (2008) and Hallaq (2009) capture and support a move away from religious norms, other authors like Marshall (2005) note an Islamisation of legislative provisions.

In fact, one of the areas of law most strongly influenced by Sharia is personal status and family law. Thus, paradoxically, in a global world, family laws retain their local character, with strong cultural and religious influences. The process of codification of Muslim family law began with the Ottoman Law of Family Rights of 1917. The new historical context around the fifties determined the tendency towards national codification, which continues today as probably the major mechanism of state intervention in Muslim family matters. In a more recent perspective, legislative developments at the turn of the century included amendments to the divorce law in Egypt, followed by the adoption by the Jordanian government, in the absence of parliament in 2001, of significant amendments to family law, but which were subsequently rejected for enactment in 2003 by the Chamber of Deputies, convened to approve this temporary legislation (Welchman, 2007).

However, when the general level of male dominance over women overlaps with a particular one which regulates the status of the immigrant woman in Muslim society and family, further diminishing her role and rights, it becomes even more evident that the reform of the legislative system in this area seems to be out of step with social realities and is becoming more restrictive.

2. Methodology

This paper is based on data collected from relevant national laws and data provided by international bodies with regards to family laws in Jordan, Lebanon and Egypt and to which extent they meet the international regulations. The material represents the theoretical basis for the study of Romanian communities in these states, the selection of countries being made on the basis of this criterion. To this end, the following areas of concern regarding the legal status of women in general and immigrant women in particular were addressed: marriage (civil/religious marriage, polygamy), divorce (repudiation, the legal right to initiate divorce) and custody (custody, guardianship and freedom of movement of the minor child).

The three countries have each had their own pace of reform of their legal systems, particularly in the sphere governing the individual and the family. For this material, a single period of time was used both to make a comparative analysis and to observe the possible influences that the reforms carried out in one state have had in other states.

For the purposes of the material, 'Muslim society' means a society in which the majority of the population of that state is Muslim. As regards the particular case of Lebanon, a society characterised by religious pluralism, the analysis focuses on families where the male is Muslim, while situations where the male/family as a whole is Christian are dealt with for comparative purposes only.

3. Comparative Analysis of the Family Laws

Personal status and family laws in Egypt and Jordan are based on the Hanafi school of jurisprudence. The law applies to all citizens, regardless of their religion, except the issues of marriage and divorce, in which case the Christians and Jews may apply their own laws determined by the religious prospects. This exception is valid only for the couples of the same religion (Otto, 2010).

On the other hand, the Lebanese society is pluri-religious, with no less than 18 recognised religious communities (12 Christian, 4 Muslim, 1 Druze, and 1 Jewish), each having autonomy in regulating their communal rights, including their family laws. Therefore, 15 family laws are in force in Lebanon.

Although all three states have taken some steps towards codification, none of them has yet enacted a full code of family law. The most substantial recent codifications have been achieved by Egypt through Law No. 100/1985 and Law No. 1/2000 (Otto, 2010). The latter introduced the possibility for the wife to apply to the court for divorce without the husband's consent, provided she returned the dowry received. This provision was intensely debated and contested both in Egypt and throughout the region (Welchman, 2007) and was echoed in Jordanian law by amendments to the Family Law adopted in 2001 introducing the same new divorce procedure.

In Lebanon, in the late 1990s, a draft optional civil code to regulate personal status and family laws was debated, based on the argument that such a law would benefit Lebanon's national unity (El-Cheikh, 1998-1999). It was, however, strongly rejected by religious leaders, arguing that the deliberate omission of the religious affiliation of the parties could be interpreted as allowing marriage between a Muslim woman and a non-Muslim man (El-Sheikh, 1998-1999).

3.1. Marriage

In Jordan and Lebanon there are no civil marriages, all marriages are performed according to religious rules by the competent religious court. However, civil marriages are recognised in Lebanon if they were concluded in another country. However, if both spouses are Sunni, Shia or Druze, a civil marriage concluded abroad is not recognised in Lebanon. In 2013, the first civil marriage in Lebanon was recognised, and so far it has been the only one, and does not constitute a precedent. No other Interior Minister has subsequently signed such a marriage certificate. In Egypt, on the other hand, the only valid form of marriage involving foreign nationals is civil marriage.

Muslim men can marry women belonging to another recognised religious faith, while Muslim women can only marry men of the same religion. Polygamy is permitted in all three states, with Muslim men allowed to have up to four wives.

3.2. Divorce

Most codifications on divorce are based on traditional fiqh (Welchman, 2007), the procedures consisting of unilateral repudiation by the husband (talaq), redemptive divorce based on a mutual agreement which often involves the renunciation of the wife's rights and a financial consideration and judicial divorce which may be sought primarily by the wife, but not only by her.

Women can also obtain divorce based on clauses included in the marriage contract (Otto, 2010). Since 2000, the wife can request the inclusion of rights and restrictions in the marriage contract, such as the right to work outside the home or the prohibition of the husband to marry another woman, and the violation of these gives her the right to seek divorce.

Although important progress has been made in giving women the right to seek divorce without a specific reason, the balance of power is still unbalanced. Moreover, these rules seem to keep women from vulnerable groups trapped in unwanted marriages, who cannot afford to return the dowry received in exchange for obtaining a divorce.

3.3. Custody

In the countries analysed, the legislation distinguishes between two types of custody, one referring to the legal rights over the child (*wilaya*) and the other to the care of the child (*hadhana*). Thus, decisions on the child's education, residence, obtaining a passport or international travel belong to the person holding the *wilaya*, who is generally the child's father. *Hadhana* generally belongs to the mother until the child reaches a certain age, which differs from country to country and according to religious faction. On reaching this age, children are transferred to the father's care, unless a judge decides otherwise in the child's best interests. If, however, it is considered that the child's moral and religious training is not optimal, or if the mother remarries, her right to *hadhana* may be revoked. The child's father may also impose an international travel ban on his children.

Lebanon has made significant progress in balancing the legal rights of parents over their children, in that since 2016 the consent of both parents is required for the issuance of a passport for minor children, whereas previously the consent of the father was sufficient for its issuance. This limits the incidence of abuses that the father could make with the aim of depriving the mother of the presence of the children.

4. Reform of the Legal Framework on Personal Status and Family Laws

As mentioned before, the international background has strongly influenced women status and family laws in Muslim societies. It is considered that the 4th United Nations World Conference on Women held at Beijing in 1995 had the most impact in the upcoming reforms of personal status and family laws. The Platform for Action issued with this occasion emphasised the necessity and importance of integrating gender into the policies, programs and plans of government at all levels. The modifications of family laws in 2000 in Egypt and 2001 in Jordan, giving women the right to initiate divorce, are considered to be an effect of the 1995 Beijing Conference.

The three states adhered to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which led to achieving important progress towards women's rights and gender equality. However, the reservations that the three states maintain regarding the right of women to transfer their nationality to their children, regarding the right of women to choose their surname, as well as the right to work freely outside the home, are blocking the progress of the legislative system in this area in line with the social realities of the times we live in.

More than 20 years after acceding to CEDAW, Lebanon has made its first progress towards reform by lifting reservations on Article 9 of the Convention, concerning granting women equal rights with men concerning the nationality of their children. Jordan acceded to CEDAW in 1992, but maintains most reservations, the only one lifted in 2009 being on Article 15, paragraph 4, concerning equal rights in movement of persons and the freedom to choose residence and domicile. However, reservations are maintained on important issues related to women's rights, such as nationality of children, equal rights and responsibilities during marriage, the rights arising upon the dissolution of marriage regarding maintenance and compensation, equal rights and responsibilities as parents, or personal rights, like the right to choose a family name, a profession, and an occupation. Egypt is the first of the three states to accede to CEDAW, in 1981, with reservations on the same issues. Of these, only those relating to Article 9 were lifted in 2010, the others being maintained, together with a general reservation on the interpretation of sharia.

In addition to the above-mentioned progress resulting from adherence to international regulations on the subject, it is worth mentioning a number of other important moments that have paved the way for

reforms in the three countries. It is important to note that all these changes were generally the result of pressure from public opinion, from women's organisations, which often advocated and lobbied the political decision-makers (Welchman, 2007):

- 2000: Khul Law passed in Egypt, followed in 2001 by Jordan;
- 2010: Family courts were established in Egypt;
- 2010: In Jordan, women were given the rights to divorce themselves out of the marriage if the marriage contract allows for this by mutual agreement;
- 2013: First civil marriage was recognised in Lebanon;
- 2016: Issuing passports of minor children required consent of mother and father in Lebanon;
- 2019: Residency of foreign spouse in Lebanon should be granted in case of dispute with Lebanese partner;
- A draft of the law enabling Lebanese women with foreign spouses to pass nationality to their children was submitted to the prime minister.

5. Impact of the Family Laws Upon Immigrant Women

All three aspects of family law (marriage, divorce and child custody) have particular features for immigrants who become part of mixed families, often affecting immigrant women. As far as marriage is concerned, most of the difficulties arise in the case of polygamous marriages. Initially, second, third and fourth marriages were not recognised in other countries with the same marriage regime. Later, however, some countries (such as France and Germany) began to recognise these marriages on the grounds that refusal would further deepen the vulnerability of these women. However, other countries such as the United States do not recognise polygamous marriages.

Although the aim of the study was to investigate the effect of family laws on immigrant women, in terms of marriage it was found that family laws have more impact upon marriages between a female national and a male foreigner. Therefore, women married to foreigners are not allowed to pass their citizenship to their children, nor to confer their nationality to their foreign husbands. Moreover, when it comes to interfaith marriages, which is common in mixed families, a Muslim woman cannot marry a man of another religion.

Often, after divorce, immigrant women intend to return to their country of origin, especially in cases where the decision to emigrate was prompted by marriage. As mentioned above, if the marriage results in children, they are generally placed in the mother's care until they reach a certain age. However, the mother loses the right to her children if she moves to another country, which keeps these women in a situation of captivity. Also, with the exception of Lebanon, which introduced in 2019 the provision that a foreign wife has the right of residence for a period of one year if she has a dispute with a Lebanese national with whom she has a child. This measure aims to limit the ability of men to abuse their position of power and deprive immigrant mothers of the right to see their children. In other countries, however, the woman loses her right of residence after divorce.

At the same time, after the divorce, the father can impose a travel ban on the minor child, so that the child cannot travel with his or her mother abroad, even if he or she has the nationality of the country to which he or she is travelling. The court may grant the right to international visits, but in practice these rarely happen without the father's consent and under penalty of deprivation of liberty for the mother if

the child is not returned on time. In this context it should be noted that none of the three countries is a signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction or the 1996 Hague Convention on Parental Responsibility and Protection of Children. The immigrant mother is therefore deprived of international legal instruments that protect her from possible child deprivation abuse by her husband.

Although we note progress both in terms of the status of women in Muslim society and their rights in the family relationships under analysis, the power balance is far from balanced. Despite the increasingly vocal voices of civil society and international pressure for reform of the system, it seems that opposition from religious leaders remains strong and determined. As we have seen, the legal system continues to discriminate on the basis of gender, religion and nationality, with sometimes tragic effects on mixed marriages and their children. Further reforms are needed in order to comply with the international standards regarding human rights and gender equality.

References

- *** (1921). Shia Muslims Family Law. <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=258195>.
- *** (1949). *Catholic Communities Family Law*. <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=258198>.
- *** (2000). Law No. 1 (Egypt). [https://womenlaw.info/storage/uploads/1648114451_%D9%82%D8%A7%D9%86%D9%88%D9%86%201%20%D9%84%D8%B3%D9%86%D8%A9%202000%20\(8\).pdf](https://womenlaw.info/storage/uploads/1648114451_%D9%82%D8%A7%D9%86%D9%88%D9%86%201%20%D9%84%D8%B3%D9%86%D8%A9%202000%20(8).pdf).
- *** (2004). Constitution of the Republic of Lebanon: https://www.constituteproject.org/constitution/Lebanon_2004.
- *** (2011). Constitution of the Hashemite Kingdom of Jordan: https://www.constituteproject.org/constitution/Jordan_2011.
- *** (2011). *Sunni Muslims in Lebanon Family Law*. <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=230626>.
- *** (2019). Constitution of the Arab Republic of Egypt: https://www.constituteproject.org/constitution/Egypt_2019.
- *** (2019). *Personal Status Law No. 15 (Jordan)*. <https://www.refworld.org/legal/legislation/natlegbod/2019/en/123423>.
- *** (2019). *Sixth periodic report submitted by Lebanon under article 18 of the Convention*. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FLBN%2F6&Lang=en.
- *** Coptic Orthodox Family Law 2010: <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=246386>.
- *** *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women*. <https://documents.un.org/doc/undoc/gen/n06/309/97/pdf/n0630997.pdf?token=Byg5GFvTTky40pPMNB&fe=true>.
- *** Druze Family law 2017: <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=258196>.
- *** Greek Orthodox Family Law 2003: <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244776>.
- *** Thematic report on Muslim family law and Muslim women's rights in Egypt. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FNGO%2FEGY%2F46765&Lang=en.
- *** WLUML (2005). *Dossier 27: A Collection of Articles: Muslim Personal Laws in Minority Contexts*. <https://www.wluml.org/2006/03/10/dossier-27-muslim-minorities/>.
- El Azhary Sonbol, A. (2006). *Beyond the Exotic. Women's histories in Islamic Societies*. Cairo: The American University Press
- El-Cheikh, N. (1998-1999). The 1998 proposed civil marriage law in Lebanon: the reaction of the Muslim communities. *Yearbook of Islamic and Middle Eastern Law*, 5, pp. 147-161.
- Engelcke, D. (2019). The Process of Family Law Reform in Jordan. *Reforming Family Law*, pp. 113–132.

Feldman, N. (2008). *The fall and rise of the Islamic state*. Princeton: Princeton University Press.

Hallaq, W.B. (2009). *Sharia. Theory. Practice. Transformations*. Cambridge: Cambridge University Press.

Marshall, P. (2005). *Radical Islam's Rules. The worldwide spread of extreme Sharia's law*. Oxford: Rowman & Littlefield Publishers Inc.

Otto, J.M. (2010). *Sharia and National Law. Comparing the Legal Systems of Twelve Islamic Countries*. The American University in Cairo.

Welchman, L. (2007). *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*. Amsterdam: Amsterdam University Press.

<https://campaignforjustice.musawah.org/repository/egypt/>.

<https://campaignforjustice.musawah.org/repository/jordan/>.

<https://campaignforjustice.musawah.org/repository/lebanon/>.

<https://www.al-monitor.com/originals/2013/04/lebanon-first-civil-marriage-political-change.html>.