



CEWLA
The Center for Egyptian Women's
Legal Assistance
Cairo

The Harvest: **Two Years after *Khol'***

An Analytical Study

Researchers:

Azza Soliman

Azza Salah

Huda Zakareya

Mariz Tadrous

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النساء في ظل قوانين المسلمين

Femmes sous lois musulmanes

International Solidarity Network

**Translated by Dr. Seham Abd el Salam
2003**

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Dedication

To all the committed people who struggle for the rights of Egyptian women.

To Dr. Mohammed Fathy Naguib, the chairperson of the Supreme Constitutional Court, and Mona Zulfiqar, lawyer.

Preface to the Translation

By the International Solidarity Network Women Living Under Muslim Laws

Networking and sharing information across boundaries of geography and language is a major focus of the work of the international solidarity network, Women Living Under Muslim Laws.

We believe that collaboration with women's human rights organisations such as CEWLA, Center for Egyptian Women's Legal Assistance, helps break the isolation in which women in Muslim contexts wage their struggle for autonomy, and will thereby enrich all our struggles. By making this work available in English, we also hope to link ourselves and CEWLA with the wider global struggle for women's human rights, recognising that there are many commonalities in women's relationship with the law across the world.

The topic of *khol'* and expanding women's access to divorce in Muslim contexts is of particular interest to many networkers linked through WLUML. From 1991 to 2001, we ran the Women and Law in the Muslim World action-research Programme, which examined women's rights under laws and customs, including family laws. From this research it was clear that the actual implementation of laws, determined by social attitudes and government policies, is a highly significant factor in determining women's access to their rights within the family. Well-meaning laws can reveal unexpected flaws in the process of implementation, while the inequities of poorly drafted laws or laws which are discriminatory in their basic spirit and/or text soon become evident during implementation.

Egyptian women's experience of the new *khol'* provisions, as discussed in this book, act not only as a future warning for those seeking to expand women's access to divorce in other Muslim contexts. It also confirms what legal rights activists in Pakistan have known for many years since case law firmly established *khol'* as a right available to the wife without the husband's permission in 1967. The problems and inequities experienced by women in Pakistan and legal activists' analysis of the profoundly unjust nature of *khol'* as it has been applied in real life are remarkably similar to those in Egypt.

Wherever possible, we have attempted to add footnote explanations to certain Arabic terms that may not be familiar to readers. WLUMML would like to thank Dr. Seham Abd el Salam for translating the book, and Kathleen McNeil and Jenny Morgan for editing the translation.

WLUMML hopes that this publication will signify the strengthening of collaboration between the network and women's human rights activists in Egypt as well as more generally bringing closer together all those struggling to expand women's rights within the family in Muslim contexts and beyond.

Finally, WLUMML would like to thank Ford Foundation, NORAD, Rights & Democracy, Sigrid Rausing Trust, and Swiss Development Cooperation for supporting the core activities of the network, which include our publications programme.

Introduction

by Azza Souleiman

In the past three decades, a large number of new laws have been passed in Egypt. However, none received as much public attention as Law No. 1 of 2000, the amendment to the law of personal status procedure, which provoked wide-ranging (and ongoing) debate. Discussion has focused primarily on those articles which describe and govern the right of the wife to ask for *khol*¹ from her husband. As a reflection of this, the mass media refer to the new law as 'the *Khol* Law'.

In fact, legislators introduced these amendments in an attempt to ensure the best interests of the Egyptian family. Many families had experienced a great deal of suffering because of the limitations in the legislation prior to 2000. By failing to address the culturally defined inequity between men and women in marriage, the law as it was left wives with few, if any, strategies for escaping the tyranny of an arbitrarily authoritarian or cruel husband. This caused a great deal of family disruption and social agony. For us, who work in both the legal and social work fields, it was impossible to accept such a situation.

The legislature adopted 'the *Khol* Law' with two objectives in mind: to simplify and speed up personal status law procedures, and to assemble all the rules that govern these procedures into a single law that would be clear and unambiguous.

The new law has consolidated pertinent provisions from the Regulation of the Organization of the Shari'a Courts of 1931, the 'Fourth Chapter' of the Code of Procedures (which included more than 400 articles), and procedural rules from other laws. All of these procedures have now been consolidated in 80 newly-written and clearly formulated articles.

The new law explicitly acknowledges the right of a wife to obtain *khol* from her husband, as enshrined in the *shari'a*.² According to the

¹ *Khol* is a form of dissolution of a marriage at the request of the wife in return for abandoning certain financial rights.

² While WLUML prefers the term 'Muslim laws' or 'Muslim jurisprudence' as being more precise and refuting the image of one

shari'a, women are entitled to free themselves from a marital relationship that has become governed by hatred and anger, rather than love and mercy. Women's right to initiate *khol'* balances to some degree the husband's right to initiate divorce and in no way restricts the latter's right. It also provides an opportunity to eliminate the phenomenon of non-official marriage (customary marriage) and the social hazards which result from it.

In spite of these benefits, support for this new law has been far from universal. Some Egyptians support it because it gives women a chance to minimize their suffering and saves them the trouble of lengthy court procedures. However, others believe the new law is biased in favour of women, who already, in their view, have more than their fair share of rights. Some people have asserted that women are not qualified to initiate divorce through *khol'*! That claims such as these are seriously entertained in Egypt has led CEWLA (the Center for Egyptian Women Legal Assistance) to adopt a very particular position in the debate around the new law.

In CEWLA's view, the existing law of personal status procedure, including the new articles on *khol'*, does not represent a solution for women experiencing marital problems, because it falls far short of granting wives equal rights with their husbands. CEWLA believes that justice is the goal of any law or piece of legislation; Egyptian women will continue to suffer until there are radical and unequivocal changes to the legislative system governing personal status issues. The substantive personal status law needs radical reform, as well as the corresponding procedural rules.

CEWLA believes there is a dialectical relationship between laws, and the bodies and individuals that implement them. Thus, CEWLA considers that changes to the substantive law and personal status procedures should be accompanied by creative efforts to sensitise judicial institutions to the changes in the law and to the rights-based approach to women in society that underpins the new provisions.

Unfortunately, CEWLA's criticisms of the inefficiency and procedural limitations of the *khol'* law and its application have proved to be well founded. The field study conducted by CEWLA on the application of the

homogenous interpretation of Islam, we have here remained faithful to the term used in the original Arabic version – note for English version.

law during the past two years reveals that the numbers of *khol'* petitions filed and the percentage of *khol'* judgments pronounced are minuscule.

For this disappointing harvest, we partly blame the mass media, whose superficial or cynical coverage of the new law undermined the possibility of popular support. We also blame certain members of parliament, whose view that the new law was a 'national catastrophe' was widely reported in the national press. The failure of parliamentarians -- who are, after all, representatives of the people and expected to provide leadership -- to speak out in favour of the new law also contributed to a lack of public support.

This study analyzes three aspects of the *khol'* legislation: its legal content and ramifications, the sociological context within which the law was passed, and media coverage of the law.

CEWLA has also carried out an important piece of field research: a wide-ranging study, conducted in six governorates, monitoring legal cases involving *khol'* and making a comparative study with cases involving court-decreed divorce.³ The research team selected six governorates: Quena, Souhag, Al Fayoum, Al Giza, Cairo, and Alexandria. These governorates were chosen because they reflect the main social features of the various urban, littoral, and rural communities in Egypt. They also reflect regional variations in such indicators as income levels, unemployment, education, poverty, and degree of modernization.

The first two chapters of this book provide a critical analysis of the theoretical and applied aspects of *khol'* during the last two years, and present the results of CEWLA's field study.

The third chapter addresses the sociological aspects of *khol'* through an analysis of the minutes of parliamentary debates concerning the *khol'* articles, paying particular attention to the impact on parliamentarians of mainstream social culture. The final chapter discusses the role of the media in presenting *khol'*.

³ In the overwhelming majority of instances, Egyptian law only permits women divorce on very specified grounds and through a judicial process which establishes that these grounds exist. This is in contrast to men's right of unilateral talaq which does not require any grounds to be proven or any court process. 'Court-decreed divorce' is also known as 'judicial divorce' in some countries- Note for English version.

CEWLA would like to take this opportunity to pay tribute to the outstanding lawyer, Mona Zulfiqar, whose committed, objective and disinterested efforts helped bring about the new law. We salute Zulfiqar as a person, but also the significance of her work for the promotion of justice and equality.

Acknowledgements

On behalf of CEWLA, I would like to express gratitude to all the people who contributed to this study. We pay special thanks to Ms. Mariz Tadrous, reporter on *Al Ahram Weekly*, who kindly volunteered to analyze the media discourse.

We also thank Mr. Mohammed Rashad al Khateeb, chairperson of the lawyers' syndicate in Quena; Ms. Amel Badawy, Mr. Mohammed Fahmy, Mr. Halim Unsy and Mr. Mohammed Zeidan from Suhag; Ms. Jehan Fouad from Cairo; and every person who participated in the preparation and categorization of the field data from the various governorates, particularly lawyers Ms. Abeer Aly and Mr. Mohammed Tawfik Araba of CEWLA.

We also express our gratitude to Mr. Yasser Abd el Gawwad and Ms. Hala Abd el Qader for their suggestions and opinions, which strengthened and improved our work.

I also wish to thank Dr. Fathy Naguib, chairman of the Supreme Constitutional Court, who kindly offered us his valuable book, *The Law of Instituting Procedures in the Issues of Personal Status* (qanoon igraa'at al taqady fi masaa'el al-ah'waal al shakh'seya). This proved very useful for our study.

This book is simply a starting point; further research will, hopefully, be done, and will bring greater understanding of the issues in question, which have an impact on society as a whole, not only on women. A comprehensive solution, that brings about justice and equality for members of society, will require a great deal of work by many people. The sort of partial solutions adopted so far by the government will not end the suffering of Egyptian women. A truly comprehensive solution will be possible only by radically changing the whole legislative system in the area of personal status issues.

The Legal Aspects of *Khol'* and its Application

by

Azza Souleiman and Azza Salah⁴

When Law No. 1 of 2000 was approved, it brought together scattered personal status procedures, and introduced new articles that regulate court-decreed divorce, including granting women the right to *khol'*.

This new law was the result of many years of effort on the part of activists, whose goal was to achieve for Egyptian women some relief from the agonies many have suffered at the hands of coercive husbands. While previous laws offered women the possibility of court-decreed divorce on grounds other than *khol'*, women experienced severe difficulties obtaining divorce under those laws - namely Law No. 25 of 1929, amended by Law No. 100 of 1985.

We thought it might be useful at this point to provide a short overview of personal status legislation in Egypt during the past century. Between 1920 and 2000, various personal status laws were passed in Egypt, the most important of which are:

Law No. 25 of 1920

This law had 13 articles and included rules governing maintenance and court-decreed divorce on the grounds of non-payment of maintenance and husbands who had gone missing (*mafqud*).

Law No. 25 of 1929

This remained in force until 1929, when it was superseded by Law No. 25 of 1929, whose 25 articles govern divorce, the legal relationship of children to parents (*nasab*), maintenance, *idda*⁵, dower, custody of children, and a husband's absence.

⁴ Azza Souleiman and Azza Salah are both lawyers.

⁵ *idda* is the waiting period following divorce or widowhood, during

Law No. 44 of 1979

This law had 7 articles. Its rules included essential amendments to Law 25 of 1920 and Law 25 of 1929. The new law governed divorce, maintenance, *mata'a*⁶, the official registration of divorce, and the notification to the parties of the decision. Law No. 44 of 1979 was later declared unconstitutional.

Law No. 3 of 1985

This law came into being in order to address those issues that were left without regulation after Law No. 44 of 1979 was revoked.

It included some important amendments: a wife was given the right to ask for a court-decreed divorce if she had suffered any material or moral harm as a result of her husband taking another wife. A judge had the power to grant or deny a wife a court-decreed divorce on the basis of his assessment of the harm caused her. Moreover, the law regarded material and moral harm as having equal weight.

This amendment eliminated a right that had previously been granted under Law No. 44 of 1979, namely that the very fact of a husband's additional marriage was presumed to cause harm to his first wife if she had not consented to a co-wife. In such a case, the first wife was exempted from *onus probandi* - the burden of proving harm. This right was revoked when the Constitutional Court decreed such a provision unconstitutional, saying, '*A wife has to present evidence to prove that her husband's remarriage caused harm to her*'. The Constitutional Court considered that emotional harm on its own as a consequence of the husband's remarriage did not constitute sufficient grounds to grant a first wife the right to claim a court-decreed divorce.

which the wife may not remarry, she retains the right to inherit from the husband and is to be maintained by the husband. In the event of divorce, *idda* is three months and in the case of widowhood the period is four months and ten days. If the wife is pregnant, *idda* terminates on delivery of the child.

⁶ *Mata'a* is a term used to define the monetary compensation that may be paid by a husband to a wife if he divorces her arbitrarily, that is without claiming any wrong doing on her part. *Mata'a* is paid in addition to other forms of post-divorce maintenance – note for English version.

Law No. 3 of 1985 included new articles concerning child maintenance. Children were entitled to receive maintenance from their father, and the father was obliged to make up any outstanding payments. The law stated clearly that the father's debt would accrue from the time he had stopped paying child maintenance rather than from the date of the court decree obliging him to pay.

This law also settled the issue of which spouse had the right to the marital home, but this particular article was ruled unconstitutional on 6 January 1996.

Personal status procedures

The procedural rules concerning personal status issues were mainly defined in the organizing regulation of the Shari'a Courts passed in 1931, and the 'Fourth Chapter' of the Code of Civil and Mercantile Procedures (No. 77 of 1949).

Over time these two laws were amended, and other laws were attached, namely: Law No. 462 of 1955 on the Cancellation of the Shari'a Courts; the Code of Civil and Mercantile Procedures No. 13 of 1968; Law No. 628 of 1955 on some Procedures Governing Personal Status Laws; Law No. 62 of 1976 on the amendment of the rules regulating maintenance and the 1907 regulation of the appropriate procedures to be followed in implementing the verdicts of Shari'a Courts. In addition, various procedural pertaining to the substantive personal status laws were also attached.

By the end of the twentieth century, it had become clear there was a critical need to consolidate the many procedural rules governing personal status that were scattered amongst many different laws and regulations.

What is new in the *khol'* law?

Law No. 1 of 2000 contains some important new rules, most particularly those articles pertaining to *khol'*. The *khol'*-related articles provoked controversy in the media and in public. These are the relevant provisions:

Article 20 states that:

The husband and wife can agree on khol' between themselves. If they fail to agree, and the wife files a lawsuit to ask for khol', renounces all of her legal financial rights and returns to her husband the dower that he offered her at marriage, the court should judge that such a wife is granted a court-decreed divorce.

A court should not grant a wife a court-decreed divorce on the basis of khol' except after attempting marital reconciliation. The court should appoint two persons as arbitrators, who should do their best to bring about a reconciliation of the couple within three months (according to a method which is explained in the second item of Article 18 and the first and second items of Article 19). If reconciliation efforts fail after three months, a wife should state explicitly that she hates living with her husband and is worried lest she may not observe the limits ordained by God (hodoud Allah) because of this hatred. Then she can obtain a court-decreed divorce on the basis of khol'.

Khol' should not be made conditional on a wife's being forced to give up custody of her children or her right to child maintenance, or any of their rights in return for a divorce.

In all cases, the divorce resulting from khol' is irrevocable.

In all cases, a khol' judgment is not subject to any appeal.

Article 18 states that:

Divorce and court-decreed divorce judgments should not be granted except after the failure of all possible efforts to bring about a reconciliation between the spouses. If the spouses have children, reconciliation should be attempted at least twice, with a period of not less than 30 days and not more than 60 days between each attempt.

Article 19, items 1 and 2, states that:

Item 1 *In suits for court-decreed divorce, the appointment of two arbitrators to propose reconciliation to the spouses is mandatory by law. If possible, a court should assign each of the spouses to name one arbitrator from his or her kin. At the next court hearing, if either spouse has refrained from naming his or her arbitrator, or does not attend the court hearing, the court should assign an arbitrator on his or her behalf.*

Item 2 *The arbitrators must attend the next court session to present a combined report on the conclusion of their efforts. If either of them fails to attend, or if they disagree, the court should listen to each of them individually, or to the one who attends the session, after he or she has taken the oath.*

CEWLA's field study

From the start, we had doubts about the new law. We also had doubts about the discretion afforded judges in applying the law.

However, to begin with we wanted to explore women's attitudes to the new law. We wanted to find out if the law had produced any changes for women. Had there been an increase in the numbers of lawsuits filed by women asking for court-decreed divorce?

To try and get a clear picture of the situation two years into the application of the *khol'* articles, particularly to try and find out whether women were now using their right to ask for *khol'*, we carried out a field study in six governorates representing diverse demographic environments. We selected the Cairo governorate because it has the largest population (16 million persons). Then we chose Giza because of its unique population structure that combines rural and urban environments. Alexandria was selected because it is as an urban-littoral governorate. We also selected three Upper Egyptian governorates: Quena in the south, Souhag in the middle, and Fayoum in the north.

Indicators of Women's Engagement in *Khol'*

We researched the figures both for *khol'* applications and petitions for court-decreed divorce on other grounds for the first year of application of the *khol'* law, 31 March 2000 to 31 March 2001, and then for the second year, 1 April 2001 to 31 March 2002.

Cairo governorate

In spite of the large population of Cairo, the number of *khol'* lawsuits filed in Cairo during the first year was a total of 2695. By contrast, 2509 petitions for court-decreed divorce were filed during the same period, on other grounds such as harm, non-payment of maintenance, absence, husband's imprisonment and husband taking a second wife.

The number of *khol'* lawsuits increased a little in the second year. 2740 *khol'* petitions were filed, in contrast to 2367 applications for court-decreed divorce.

The following table shows the numbers of women who filed applications for *khol'* and court-decreed divorce respectively:

Year	<i>Khol'</i> lawsuits	Court-decreed divorce
2001	2695	2509
2002	2740	2367
Total	5435	4876

It is worth mentioning that in 1999, the year before the new law, 2577 applications were filed for court-decreed divorce. By the end of our field-study, more than half these cases were still going through the courts.

We discovered a significant difference in the distribution of *khol'* lawsuits amongst the courts of southern and northern Cairo. In the first year, 1751 *khol'* lawsuits were filed in northern Cairo and 944 in the southern areas.

Figure 1: Numbers of Khol' Lawsuits By Month in Northern Cairo

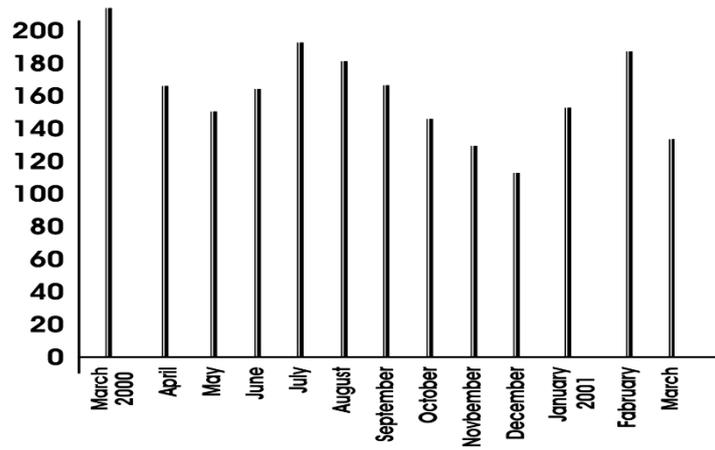
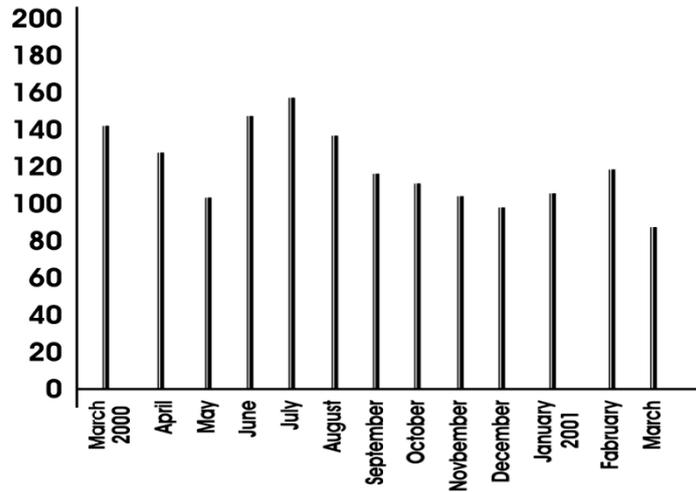


Figure 2: Numbers of Khol' Lawsuits By Month in southern Cairo



Figures 1 and 2 show that the rates and frequency of filing *khol'* lawsuits in Cairo have been unsteady. This causes a backlog of lawsuits. The backlog become clear as during the first year only 122 court decisions had been issued from the total of 2695 applications that were filed. It is important to note that these cases were distributed among thirteen personal status tribunals. This means that court decisions had been issued only in 4.5% of the total applications.

Giza governorate

1199 suits for *khol'* were filed in the Giza governorate in the first year, in contrast to 1125 suits for court-decreed divorce for reasons other than *khol'*. In the second year, there was a considerable decrease in suits for *khol'* - 1160 in total - while the number of applications for court-decreed divorce lawsuits for reasons other than *khol'* remained relatively steady at 1116.

Year	<i>Khol'</i> lawsuits	Court-decreed divorce lawsuits
2001	1199	1125
2002	1160	1116
Total	2359	2241

In 1999, 1243 applications had been filed for court-decreed divorce.

Geographically speaking, there was a significant difference in the distribution of *khol'* lawsuits between courts in the southern and northern areas of Giza. The majority of the *khol'* lawsuits (860) were filed in the southern area, while only 339 *khol'* lawsuits were filed in the north. Figures 3 and 4 illustrate the numbers of *khol'* lawsuits filed each month in the southern and northern areas of Giza respectively during the first year.

Figure 3: Numbers of Khol' Lawsuits By Month in Northern Giza

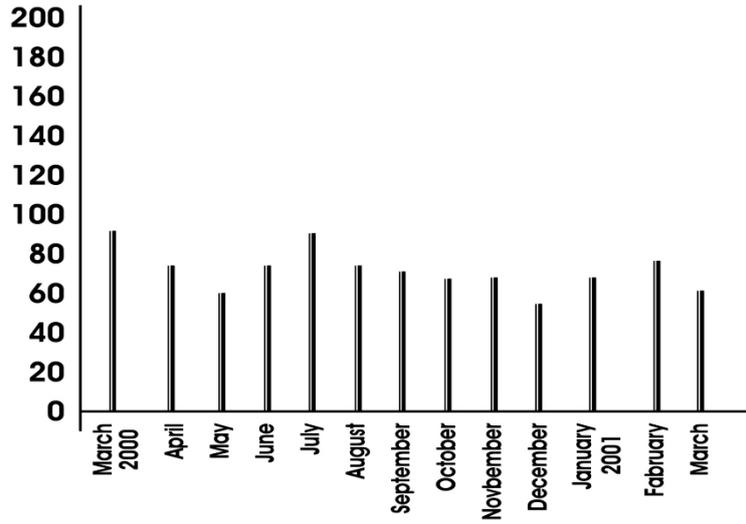
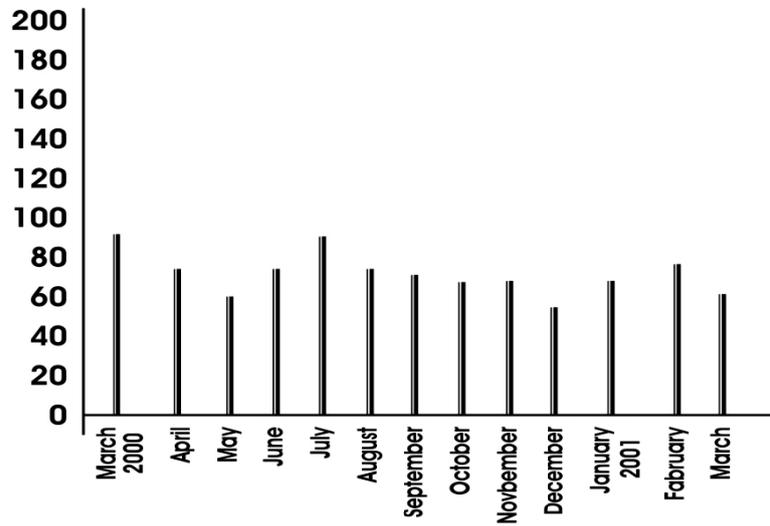


Figure 4: Numbers of Khol' Lawsuits By Month in southern Giza



In both the southern and northern areas of the Giza governorate, the number of the *khol'* lawsuits was evenly distributed among the months of the first year of application of the law.

It is worth mentioning that the seven provincial personal status tribunals only delivered judgments in 73 of the 1199 *khol'* petitions submitted during the first year - 6.9% of all the applications for *khol'*.

Alexandria governorate

Alexandria is the second Egyptian capital. It has only one court. 907 *khol'* lawsuits were filed in the first year, while in the same period 825 lawsuits were filed requesting court-decreed divorce for other reasons. In the second year, the number of *khol'* suits decreased: there were 896, in contrast to 846 lawsuits filed for court-decreed divorce for other reasons.

Year	<i>Khol'</i> lawsuits	Court-decreed divorce lawsuits
2001	907	825
2002	896	846
Total	1803	1671

In 1999, there had been 1118 applications for court-decreed divorce. Figure 5 illustrates the monthly distribution of *khol'* lawsuits filed during the first year in Alexandria.

Figure 5: Numbers of *Khol'* Lawsuits By Month in Alexandria

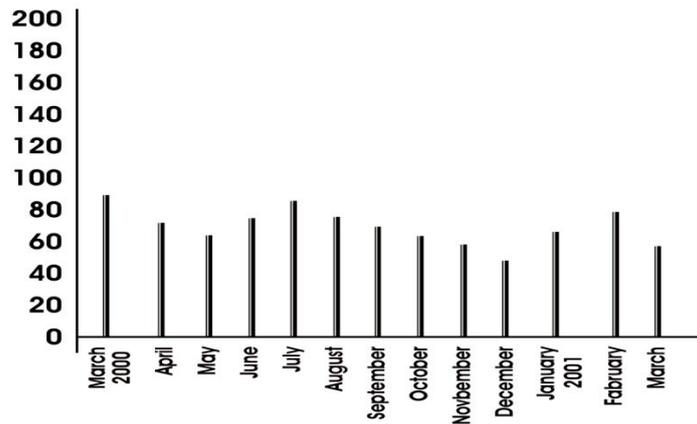


Figure 5 shows that the number of lawsuits filed remained steady during the months of the first year. These petitions were filed in the four provincial tribunals that specifically handle personal status issues.

These courts delivered judgments in only 3.1% of the *khol'* petitions filed with them in the first year.

Fayoum governorate

Fayoum is in the northern part of Upper Egypt. The study found that while 131 *khol'* lawsuits were filed in the first year in Fayoum, 293 petitions were filed for court-decreed divorce for other reasons. In the second year, *khol'* applications declined significantly, to 80, while 244 lawsuits were filed to ask for court-decreed divorce for other reasons.

Year	<i>Khol'</i> lawsuits	Court-decreed divorce lawsuits
2001	131	293
2002	80	244
Total	211	537

In 1999, 384 applications for court-decreed divorce were filed in Fayoum.

Even with such a small number of applications for *khol'*, in the first year Fayoum's three provincial tribunals delivered judgments in only two cases out of 131 (i.e. 1.5% of the *khol'* cases).

Souhag governorate

In 1999, only 250 applications were filed in Souhag governorate for court-decreed divorce for reasons other than *khol'*. However, in the first year of the new law, 186 applications for *khol'* were filed, and 352 applications for court-decreed divorce for other reasons. In the second year, the number of *khol'* lawsuits decreased considerably, to 159, while the number of court-decreed divorce lawsuits for reasons other than *khol'* rose to 490.

Year	<i>Khol'</i> lawsuits	Court-decreed divorce lawsuits
2001	186	352
2002	159	490
Total	345	842

In the first year, Souhag governorate courts delivered judgments in 5 *khol'* cases (only 2.3% of the total).

Quena governorate

In 1999 there were 500 applications for court-decreed divorce in Quena.

Quena has 6 provincial tribunals: Quena, Qouss, Naga' Hammady, Hurgada, Luxor and Abou Tesht. In Quena, 205 *khol'* lawsuits were filed in the first year, in contrast to 509 applications for court-decreed divorce. In the second year the number of *khol'* lawsuits filed increased just slightly to 208, while applications for court-decreed divorce for reasons other than *khol'* dropped to 326.

Year	<i>Khol'</i> lawsuits	Court-decreed law suits
2001	205	509
2002	208	326
Total	413	835

Not a single court judgment was rendered in Quena governorate out of the 205 *khol'* applications filed in the first year.

What these low figures mean

We can conclude from this statistical analysis that the number of *khol'* lawsuits filed in the six governorates has been limited. The numbers do not vary significantly between the urban governorates (Cairo and Alexandria) and the Upper Egyptian governorates. While the media predicted that Law No. 1 of 2000 would lead to social catastrophe and family disruption, we see that in fact there has been a very small number of women making *khol'* applications.

These results demonstrate the critical need for further research into the application of the law, with particular focus on the qualitative aspects of the application of the relevant articles. This research also needs to investigate the extent of the judges' commitment both to the letter and the spirit of the law. Such research would prove very useful to professionals in the social and legal sciences, as well as to organizations and associations concerned with the protection of women's rights, dignity and social welfare.

The jurisdiction and application of the law

When Law No. 1 of 2000 was submitted to parliament for approval, a memorandum was attached that explained its articles. Parliament made an amendment to the article pertaining to *khol'*, setting a limit on the time to be spent on efforts at marital reconciliation. In cases where the spouses have children, reconciliation is to be proposed to the wife twice within a specific time period (not less than one month and not more than two).

The law prescribes that the following terms must be met before a judge can deliver a *khol'* judgment:

1. The wife must file the application herself. It is not acceptable for a husband to file a *khol'* lawsuit on her behalf. A husband who hates his wife must not take any ransom from her and either be patient and endure marital life with her, or, if he fears harm, he can take the initiative to divorce her (as men are permitted to do according to their own will and desire).
2. The *khol'* petition should be filed - according to the method defined in the code of procedure - in the court of first instance in the area where either the husband or wife resides (Article 15).
3. A wife asking for *khol'* must renounce all her financial rights under *shari'a: idda*, maintenance, *mata'a*, and the deferred part of her dower. However, she cannot renounce the right of her children to financial support, and their other rights. By the same token, she cannot renounce custody of her children. If the report submitted by the arbitrators shows that the woman has been made to agree such terms, the court must annul these conditions and deliver a judgment of *khol'*.
4. The wife must pay back that part of the dower that was advanced to her by her husband and registered in the marriage contract. If the marriage contract does not record a specific sum of money for the dower, and if there is disagreement between the spouses as to the amount, the court should apply Article 19 of Law No. 25 of 1929, in order to define the amount the wife must return to the husband.
5. Because a *khol'* petition filed by a wife is a lawsuit asking for a court-decreed divorce, it is subject to the second item of Article 18 pertaining to court-decreed divorce, which prevents a court granting a court-decreed

divorce without first attempting to reconcile the spouses. As explained in the first and second items of Article 19, the court should appoint two arbitrators to exert their best efforts to effect a reconciliation between the spouses within a time period that should not exceed three months. The task of the arbitrators is limited to reconciliation, and they should not exceed the time limit. They are not entitled to investigate the causes of the marital dispute or the background to the woman's request for *khol'*.

6. The wife (by herself or through her representative, who must be named in the application) should state explicitly that she cannot bear to live with her husband, that there is no way she will ever be able to live with him, and that she is afraid she will overstep the limits ordained by God (*hudoud Allah*) because of this hatred.⁷

A court-decreed divorce on the grounds of *khol'*

A court-decreed divorce on the ground *khol'* is considered to be a final and irrevocable divorce. If this divorce is the first or the second divorce (i.e. there have been less than three divorce decisions decreed by a court or the husband between this same couple), it is considered to be a divorce of minor irrevocability (*bainouna sughra*). If it is the third divorce decision rendered by a court or the husband between the same couple, it is considered to be a divorce of major irrevocability (*bainouna kubra*). In this last case, it is forbidden for such a man to re-marry his divorcee except after she has undergone an 'intervening marriage' i.e., she has married another man, and been divorced from or been widowed by him. In order to meet these criteria, her marriage to this other man must have been a consummated marriage, not just a registered marriage contract.⁸

⁷ The concept of *khol'* and the question of keeping within the limits ordained by God is derived from the Quran, Surah al- Baqarah (2): verse 229, – note for English version.

⁸ *talaq* by the husband can be revoked, i.e., he can change his mind and withdraw the *talaq*, for a certain period after the *talaq* has been pronounced. However, court-decreed divorce in most legal systems is considered irrevocable, i.e., once the court has passed its order, the wife cannot withdraw and reconcile with the husband. If she wants to reconcile, the couple has to go through a new marriage ceremony. The requirement mentioned above for an 'intervening marriage' also known as *hilla*, is derived from the Quran and is designed to prevent couples from taking divorce lightly – note for English version.

The court's judgment of *khol'* is final

The last paragraph of Article 20 of the law states:

The court's judgment cannot be subject to any kind of appeal whatsoever.

A court's judgment of *khol'* is absolutely final. The reason is that the *khol'* system, as mentioned in the Holy Quran and as applied by the Prophet (PBUH), is based on principles of the requirements of *shari'a* according to which a wife must make specific declarations once and for all in front of a court (after she has returned to her husband the prompt part of the dower). These specific declarations are:

- That she renounces all of her financial rights under *shari'a*, including the deferred portion of her dower, the *idda* maintenance and *mata'a*.
- That she cannot bear living with her husband and sees no way whatsoever for her to continue married life with him.
- That she is afraid she may not be able to observe the limits ordained by God (*hudoud Allah*) because she hates to live with her husband.

The court's role is limited to attempting to reconcile the spouses. If these efforts fail, the court can do nothing except make sure the wife has made the required legal statements as listed above.

Since in such a case the court is under no obligation to examine the legal or *shari'a* grounds or to assess the likelihood of harm, there is no possibility that a court could make a wrong decision. It is impossible for a court in such a case to act unjustly or illegally. The court's role is limited to making sure the wife has returned the prompt part of the dower to the husband and has made the required legal statements. If these criteria have been fulfilled, the court must deliver a court-decreed divorce on the ground of *khol'*.

***Khol'* decisions in the six governorates under study**

We obtained 62 of the *khol'* judgments delivered by courts during the first year of application of the law, March 2000 to March 2001. We have studied them, and we have discovered that while some Egyptian judges have indeed tried to apply the law as it is, many others have created new rules of their own.

Before we develop our analysis, however, we want to give a brief overview of the reasons women in the six governorates under study -- Cairo, Giza, Alexandria, Souhag, Quena and Fayoum - gave for applying for *khol'* (even though women who seek *khol'* are under no legal obligation to give any justification for their request). We do this because the media have promoted the idea that only specific types of reasons can justify a woman's decision to file a *khol'* lawsuit. Moreover, some lawyers have attempted to support their women clients' cases by mentioning such justifications for *khol'* in their applications.

Cairo governorate

We examined 22 of the 122 *khol'* judgments delivered by Cairo courts during the first year (the 122 cases make up 5.54% of the total *khol'* applications submitted to the court that year), and identified the following reasons given by women:

Fear of not observing <i>Hudoud Allah</i>	9 cases (41%)
Mistreatment	6 cases (27%)
Taking a second wife or absence	4 cases (18%)
Violence, insults, and humiliation	3 cases (14%)

Giza governorate

Fear of not observing <i>Hudoud Allah</i>	8 cases (42%)
Violence, insults, and humiliation	6 cases (32%)
Mistreatment	6 cases (32%)
Other (failed consummation of marriage, desertion, husband's bad character or other defects)	5 cases (26%)

Alexandria governorate

We examined 6 of the 28 *khol'* judgments delivered by Alexandria courts during the first year. (the 28 cases make up 4.66% of the total *khol'* application submitted to the court that year).

Fear of not observing <i>Hudoud Allah</i>	3 cases (50%)
Violence, insults, and humiliation	2 cases (33%)
Desertion	1 case (17%)

Fayoum governorate

Ten lawsuits were studied. The court delivered only two judgments, but we looked at ten lawsuits (including the two that the court delivered judgments for) so that we could identify the following causes:

Impossibility of maintaining marital life	4 cases (40%)
Battery and insults	4 cases (40%)
Dismissal from the marital home	2 cases (20%)

Souhag governorate

Souhag courts delivered a total of 5 *khol'* judgments during the first year. The reasons for these court decisions were:

Fear of not observing <i>Hudoud Allah</i>	4 cases (80%)
Desertion	1 case (20%)

Quena governorate

Quena courts did not render any *khol'* judgments. Nevertheless, the reasons offered when asking for *khol'* could be inferred by studying the *khol'* lawsuits filed in the different areas of Quena governorate: Hurgada, Quena and Luxor. We looked at 82 lawsuits filed for the following reasons:

Fear of not observing *Hudoud Allah*
 Insult, battery, and maltreatment
 Absence of the husband
 Desertion and remarriage of the husband

The above review shows that similar reasons were offered for *khol'* lawsuits in each the six governorates under study. We discovered, moreover, that many of these petitions had been filed a considerable time previously, as women had applied for court-decreed divorce on the grounds of harm. Because the court decisions were so delayed, these women had turned their lawsuits into *khol'* applications, in the hope of avoiding further delay.

The courts' performance in implementing the *khol'* law

As we said earlier, we discovered, when we investigated the 62 *khol'* judgments we obtained, that many judges introduced rules which are not part of the law. These are some of the significant features that emerged from our study:

1. Length of time taken by courts to hear *khol'* cases before delivering judgment

Number of cases	Time to reach judgment
4	3 months
4	5 months
6	6months
3	7 months
9	8 months
4	9 months
8	10 months
6	11 months
8	12 months
2	13 months
2	14 months
1	15 months
2	16 months
3	17 months
Total	62 court decisions

This table shows that the average time taken by a court to issue a decision in a *khol'* case was eight months. In half the cases, it took even longer than that. Closer study of the 62 court decisions for *khol'* cases revealed that all the judgments that took between three to nine months had one or more of the following features:

- They pertained to divorce cases on other grounds that had already been before the courts for many years (not less than three years) before the *khol'* law came into being. The women concerned had changed their pleas to *khol'* petitions.
- The husbands of these women agreed to *khol'*.
- The two spouses mutually agreed on *khol'*.
- The lawsuits for *khol'* were filed before the marriage had been consummated.

2. Variations in lengths of time taken by the courts to reach a decision on *khol'* cases according to governorate

One of the most significant features of the *khol'* court decisions from the six governorates under study is that most of the cases filed in the smaller towns took longer to resolve than cases filed in the main cities and capitals.

Governorate	Time taken to deliver a judgment of <i>khol'</i>
Fayoum	14-17 months
Souhag	14 months
Giza	7-12 months
Alexandria	6 months
Cairo	3-9 months

3. The judges seemed to pay particular attention to the second item of Article 20, which requires the judge to suggest reconciliation and appoint two arbitrators to facilitate efforts to reach such reconciliation.

4. Some of the judgments of *khol'* delivered by courts violated one or more of the imperative legal conditions for *khol'*. For instance, the *khol'* judgments delivered by Cairo courts were particularly likely to violate the first two imperative legal terms:

- That the woman should publicly renounce all her legal financial rights;
- That the woman should return the prompt part of the dower.

For example:

- * Some courts obliged women to return both the prompt *and* the deferred parts of the dower, despite the fact that the imperative legal term states a woman has to return only the prompt part of the dower and renounce the rest of her financial rights. This happened, for example, in case No. 622 of 2000 in the court of personal status matters in southern Cairo.
- * In other cases, the court made an unduly exaggerated assessment of the dower without explaining its grounds for such an assessment. Examples of this type of violation include the judgment delivered in case No. 481 of 2000 by the southern Cairo court of personal status affairs, and the judgment delivered in case No. 1721 of 1998 by the southern Cairo legal affairs court.

5. Some judges obliged women to come themselves to court to sign the papers that renounced their legal financial rights, despite the fact that there is no imperative legal text to justify such a procedure. The norm is that in such cases, general legal rules should be applied, which mean a woman's lawyer would sign on her behalf. However, the court sometimes refused to allow the lawyers who had attended the court session to sign the papers of financial rights renunciation on behalf of their clients.

General conclusions

The text of Law No. 1 of 2000 states its meaning clearly and unambiguously, particularly as regards the conditions for a court to deliver a judgment of *khol'*. Moreover, the legislative institution that drafted the law also developed an explanatory note to help with the interpretation of its articles. This very important note has not, until now, been gazetted or officially notified.

The note gave a detailed explanation of various articles, such as Article 20 and its complementary Articles, 18 and 19. These articles specify, for instance, that in case of dispute between the spouses as to the amount of the dower (*mahr*), this amount should be determined by reference to Article 19 of Law No. 25 of 1929, which states that:

In case of any debate between the spouses about the amount of the dower, the wife has to present her evidence. If she fails to do so, the husband's claims are acknowledged, except if he alleges an amount that is inappropriate as a dower to a woman of his wife's customary status. In such a case, the dower will be assessed as an amount that would be customarily appropriate for a woman of her status.

We understand the explanatory note instructs the court on how to handle disputed compensation claims as follows:

*In cases where the prompt amount of the dower has been documented in the marriage contract, but the husband alleges that he has paid more than the documented amount, the court should render a judgment of *khol'* if the woman has paid the husband back the documented amount of money. If the husband disagrees, he can claim what he requests by filing an independent lawsuit in the appropriate court.*

In our view, the failure to officially notify these and other explanatory notes has led to massive disparities in the decisions taken by courts. Some judges have imposed obligations on women that have nothing to do with the law.

We propose the following steps to aid the proper implementation of the law:

- The gazetting or official notification of the explanatory note which will stop the law being interpreted in contradictory ways and enable justice to be administered as the law intends.

- Training programmes for members of the legal profession both on the concept of legal rights expressed in the law and the thinking underlying its passage onto the statute books.

However, such recommendations will provide only limited relief if the substantive text of the law of personal status are not amended to match the new procedural rules of Law No. 1 of the year 2000. We are all dedicated to achieving our dream of true justice. In order to make this dream a reality, we need to work tirelessly and creatively to re-formulate the text of the law of personal status, since as it stands it both reflects and helps perpetuate many forms of injustice.

The Law of *Khol'*: Between Text and Application

by Tahany Al Gebaly⁴

I have worked as a lawyer for more than thirty years, during which I have dealt with a great many cases and acquired a lot of experience. Because of this, my perspective may be somewhat different from the opinions expressed by many of the other participants. Nevertheless, I wish to acknowledge the significance of their papers, speeches, comments and discussions.

When I think of *khol'*, I remember some of the very sad stories I have encountered throughout my career as a lawyer - stories of fathers and mothers who sought my help to end their suffering. They were trying to find a way out from marriages that had collapsed, marriages that no longer bore the slightest resemblance to the popular notion of marriage as a haven of 'comfort, love and sympathy'. Some of these marriages were more like domestic civil wars. They had been so destroyed by conflict that they had lost all of their original noble and dignifying meaning.

There were tragic ironies in some of these stories. For example, some wives were very young when they went to court to ask for 'court-decreed divorce on the grounds of harm', and they were still waiting for the decree as they approached menopause. By contrast, most, if not all, of the husbands involved had married again and fathered new families.

I remember, as well, that eight years ago the relevant official agencies started to discuss the possibility of amending the law of personal status procedures. They suggested that *khol'* could be part of the coming procedural amendments as a mechanism to 'bridge the gap' (even though *khol'* is a substantive legal principle, not a procedural matter). Some officials were hostile to the merest idea of a new law of personal status, even though changing the law would be in the best interests of society and match the social changes that have occurred since the 1920s. Some officials considered the very suggestion as 'meddling in holy matters' and a 'violation of the sanctity of Islamic *shari'a'*! Some went so far as to charge that making such changes should be considered a form of apostasy

⁴ Tahany Al Gebaly is a lawyer in the court of cassation, an ex-member of the board of the lawyers' union, a member of the permanent bureau of the Arab Lawyers' Association, and a counsellor in the Supreme Constitutional Court. In March 2003, Tahany Al Gebaly became the first woman in Egypt to be appointed as a judge.

(*kufr*), in this way they could claim that whoever dared to suggest it should be subjected to Islamic legal punishment (*hudood*)!

I am proud that have I studied *shari'a*. I did so in a concerted effort to understand its true principles and intentions concerning women's rights in both the private and public domains. I feel great dismay that many people use the *shari'a* to justify violating women's rights. In my view, these people are committing crimes in the name of *shari'a*, since neither the religion itself nor *shari'a* sanction violations of women's rights.

Once I started studying *shari'a*, I came to the firm view that Merciful God has never legislated for injustice. In all honesty, injustice has always been man-made. It serves worldly interests and objectives, and sustains 'backward and unjust' political and social situations.

All through history, people have sought to maintain their position of power and privilege by claiming that it's sanctioned by culture and established custom. Such claims have been helped by scholars willing to find theological opinions and studies (*fiqh*) that support unjust privileges for the powerful. Such references selectively ignore the bulk of the tradition while depending on the least enlightened theological interpretations to achieve their desired outcomes. Through such processes progressive public culture and legislation have both been held back.

When *khol'* became the subject of national debate, many ideas emerged. Before the law was passed, *khol'* was discussed as a principle of both shari'a jurisprudence and state legislation. Later in this publication, readers will find the valuable analysis presented by Dr. Huda Zakareya of the controversial national debate about *khol'* that took place in our legislative institutions, mass media, and at public meetings.

I also have a very clear memory of what has happened in the two years since *khol'* was established as a legal instrument, to be implemented in the courts by lawyers and judges. Even in this relatively short period of time, we have been able to reach conclusions of profound significance, as the field study conducted by the committed young personnel of CEWLA demonstrates. Their most important findings can be summarised as follows:

1. In spite of the many social, economic and cultural differences between Cairo, Alexandria, Giza, Fayoum, Souhag, and Quena governorates, the figures confirm that a limited number of *khol'* cases has been filed. Therefore it is not true that *khol'* has led to severe family disruption because irrational women have seized the chance to run away from their families, as the opponents of *khol'* predicted. Most households are still intact, functioning as they should - as the shelter of family members.

It is clear that the few *khol'* cases filed were part of the general category of discord between husband and wife. Most *khol'* cases had previously been filed as suits for court-decreed divorce on the grounds of harm (*darar*). Since the women had had difficulties proving the harm they had suffered, they resorted to *khol'* instead.

2. *Khol'* is not well established as a legal and Islamic concept in Egyptian culture. Both the public and intellectuals are still suspicious of *khol'*, and judges, too, seem unconvinced and hesitant to apply the law. This is reflected in the length of time *khol'* procedures are taking, as well as in the content of court decisions. For example, a case may be formally rejected by the court because the wife has failed to pay the prompt part of her dower claimed by her husband (which may be an amount as small as one Egyptian pound), even though the very same law of personal status procedures which the court is applying in this case gives the judge the right to guide the disputing spouses toward a solution that would make it possible for the wife to obtain *khol'*. Such procedural problems indicate that use of a specialized judge or a family court might be the best solution for hearing personal status cases, including *khol'* cases.

3. Because of the evident confusion in the procedures that govern the presence or absence of the husband, as well as those that suggest different mechanisms for attempting reconciliation, and because judges differ so markedly in their implementation of complementary legal rules, we think it entirely appropriate to question the reasons why the legislators failed to gazette explanatory notes that would describe how to implement the law. We believe it is the right time to demand official publication of such notes, which would unify the procedures and end the prevailing confusion. They are also needed to resolve many of the controversial issues that have surfaced during the period that the law has been in force.

4. In Dr. Huda Zakareya's important study, she criticized those elite women activists who work in the field of women's issues and rights for believing that the passage of the law on *khol'* in itself constituted a victory. Dr. Zakareya argues that the law on *khol'* has actually perpetuated

women's oppression. She believes it would have been more appropriate for the elite women activists to propose a comprehensive and well-researched project to amend the substantive personal status law, since this law could naturally include *khol'* as one form of court –decreed divorce, and that the elite women should participate in developing the amended project discussed by the legislative committee of the National Council of Women. NCW is one of the institutions that lobby for policy and legislative changes that would have a positive effect on the status of women, and it was established for the very purpose of offering its considered opinion on such laws and legislative activities. Perhaps we need to ask for a collaborative working group composed of the legislative committee of the NCW on the one hand, and NGOs and other civil society organizations on the other, to ensure the widest participation by all parties in the preparation and formulation of the proposed amendments.

Future field research and studies would benefit from monitoring the social status and economic situation of wives who ask for *khol'*. I think that such monitoring is extremely important, because it would give us an opportunity to learn how the requirement of renouncing one's financial (but not *shari'a*) rights has affected the economic situation of women who have ended their marriage through *khol'* (and their children's economic situation as well). We particularly need to understand the economic impact on lower class women. This would enable us to evaluate the impact of the articles, which are not in accordance with the divine rules formulated by the Sunnah (traditions of the Prophet) regarding the case of Jamila, the wife of Qais ben Thabet.)

Prophet Mohammed required that Jamila give back the prompt part of her dower to her husband in return for *khol'*. She was not required to pay her husband any more than that prompt part, even if it was a question of property, not currency. By contrast, the present law states that a wife must renounce all her financial rights, even those ensured by law according to the husband's social and economic status, such as their *mata'a*

Thus, establishing the law of *khol'* has not ended our work. The social reality we live in requires that official and non-official organizations still need to co-operate to carry out the many tasks that must be accomplished if rights are to become as well established and effective as the legislator intends them to be. In particular, we still need to educate and support political decision makers, legislative institutions, the various agencies of

the ministry of justice, the courts, the mass media, and those cultural institutions that still deal with the issue of *khol'* sarcastically.

It is important also to stimulate the institutions that work in the areas of women, family, civil society and human rights, so we can help create a supportive culture to 'bridge the gaps' that have clearly emerged in the application of the law. Such institutions can also help overcome the negative aspects of the law by helping women who seek *khol'* to establish settled lives after their divorce. Women need such support because it seems that the holders of legal office care to safeguard their own positions more than they care about ensuring peaceful and settled lives for Egyptian women.

We are not exaggerating or raising empty slogans when we say that adequate social and material support for an individual is a prerequisite for his or her freedom. The whole nation would benefit from offering women security, because individuals cannot be creative if they are not free.

***Khol'*: A Socio-Legal Study**

by Dr. Huda Zakareya⁵

Egyptian jurists always claim that they formulate laws with the public interest in mind. They strongly deny any suggestion that their laws may be biased against any particular social sector, class or sex.

When we put to them the role that Egyptian laws have played in establishing and maintaining gender discrimination, jurists reply that they are simply following the four schools of Islamic jurisprudence, in particular the Hanifite school, which they claim as the main legal reference upon which personal status laws have been based. Thus people are made to believe that an irrefutable and sacred religious logic has ordained the relationship of men and woman within the family.

Custom represents the second source of personal status legislation. Custom means the behavioural codes that are adopted by people as a matter of tradition. Custom is based on the dominant social value system in any given society, and in many societies it carries the force of law.

Consequently, the social customary constants which are associated with personal status issues are confirmed by what many people consider to be religious constants, for example that 'women are weak-minded and lacking religious sense', and that 'men are the protectors and maintainers of women', etc...

If it were truly a matter of adhering to *shari'a*, women's rights as defined in *shari'a* would not have been denied. As it is, women have been systematically denied the right to dissolve their marriages through '*isma*⁹ (delegated right of divorce, or *talaq-i-tafweez*) and *khol'*. Why have the legislators selectively bypassed rights which are clearly granted in the religion? *Khol'* and '*isma* are mechanisms by which women can protect themselves against unjust treatment or abuse by a husband. Undoubtedly,

⁵ Professor of Social Sciences – Zakazik University

⁹ *isma* or *talaq-i-tafweez* is where the husband delegates his unilateral power of *talaq*. Usually given at time of marriage in the marriage contract.

jurists and other male legal professionals have ignored these legal instruments because the patriarchal social interests which are dominant in our societies find these rights inherently threatening.

Let us focus on Muslim women's right to *khol'*. Egyptian women waged a bitter battle to claim this right. The fight for *khol'* was part of a larger agenda that focused on women's empowerment. The fundamentalist (Salafiyoon) approach which upholds patriarchal interests have often accused elite women who raise these issues of being westernized. Such accusations are clearly baseless when women are affirming their right to a uniquely Muslim legal protection. In fact, the campaign around the *khol'* issue put the personal status issues legislators in a very tight corner, because it revealed that their attitudes towards personal status issues were selective and biased. They had to confront our question: are relations between men and women in the family really determined by Islamic *shari'a*, as has always been asserted?

Khol' is a right that had been intentionally hidden away by male socio-cultural actors, who are the ones with hegemonic control over personal status laws.

***Khol'*:
between two social actors - pro-social change and
pro-status quo**

The *khol'* campaign became a series of explicit and implicit conflicts between two groups of social actors. On the one hand are the reformists, who advocate justice and work to change unjust articles in the personal status laws. They include male and female intellectuals and most of the female population (i.e. 50% of the whole population). We shall refer to this group as the pro-social change group. Of course varying degrees of power are available to the different members of this group, depending on their financial resources, their social status, the degree to which people in the group have developed relations with the wider community, and the degree of consonance between the ideology of the group and the dominant values of society.

Historical analysis of the involvement of this group in law reform reveals that its dynamic elements have changed over the years. During the 1919 revolution, the power of the pro-social change group came from the emerging feminist movement. At other times, social change has happened because of increased female education, sympathy with progressive

concepts of development on the part of political decision-makers, and the support from decision-makers, such as Abd el Nasser. The pro-social change group has been influenced by individual leaders and their campaigning methods, as well as by their changes of priority over time.

The pro-status quo group includes: political decision makers, conservative religious leaders, and traditional intellectuals who cling to the old laws in order to protect the interests of men. These intellectuals advocate closing the door to any new theological interpretations (*ijtihad*).

The pro-status quo group is better placed than the pro-social change group because it is aided and supported by the law makers, who are deeply influenced by dominant values and, consequently, support the established political agenda. Usually, conservatives who favour dominant values tend to block the claims of the pro-social change group by putting up barriers that make the political arena inaccessible to them, rather than making it possible for parliament to debate their demands.

Members of the pro-status quo group, particularly men who are in government, do their utmost to use their official powers to influence the legislative authorities. Such men appearing to be telling the pro-social change group: 'If you persist in your demands, we have the power to vote you down. If you are lucky enough to gain parliamentary support, we will turn your apparent success into slow defeat. We shall hinder the implementation of the law, and turn it into mere ink on paper. The decision will turn into a non-decision. We will undermine it by whatever means we can muster - for example, by neglecting to issue an explanatory note.

We should stress that the pro-social change group must achieve triumph in every stage of their battle if they are to effect change. The pro-status quo group can achieve triumph simply by winning one round - blocking the victory of the pro-social change group.

These are the barriers raised against the proposed amendments to the personal status law:

The first barrier consists of the dominant social values, the beliefs and myths about the relationship between men and women. This dominant definition of the relationship between men and women is based on a

historically established and gendered division of labour. Men have been assigned to do the waged labour that is highly valued, and women are assigned to domestic labour and servitude. From this, gender discrimination evolved into an established cultural norm that many consider to be a sacred religious requirement, and which dominates the dynamics of everyday life.

This is the strongest obstacle the pro-social change group faces, because it allows power to be exercised without conflict or fuss. The pro-status quo group can manipulate the mass media, the process of socialization, political conduct, mosques and churches to ward off any challenge to the status quo.

However, during the 1919 revolution the emergence of a national women's movement paved the way for the establishment of the Egyptian Women's Union, in 1923, under the leadership of Huda Sha'rawy. At that time the women's movement was composed of middle and upper class women who were influenced by the ideas of Qasem Amin and Mohammed Abdu. In this case, we can assume that the pro-social change group succeeded in overcoming the first barrier because it organized its forces and had a clear objective.

The second barrier manifests itself in parliament. The pro-social change group may very well manage to put its objectives on the political agenda, but then it faces attempts to dilute the effectiveness of the policies it proposes. Here the conflict takes many forms. Sometimes negative attitudes are declared explicitly, but often they are implicit in the actions opponents take.

In the 1920s, Huda Sha'rawy presented a petition entitled 'Women's Claims' to the first Egyptian parliament. The petition proposed changes to the personal status laws - to limit the arbitrary implementation of divorce by men and to regulate polygamy. A committee to amend the law was formed in 1925. It studied the proposal of the Egyptian Women's Union, and in 1926 presented to the prime minister and the minister of justice proposals that would limit men's unilateral right to divorce and polygamy.

The women's movement then developed an addition to the Women's Claims petition and established a committee with the aim of ensuring polygamy would be allowed by judges only in elective and critical cases.

The pro-stats quo group felt this as a threat, but was not in a position to challenge the parliamentary committee openly. However, it found ways to undermine the proposed law, as a result of which the law did not provide effective restrictions on unilateral divorce and polygamy. The new law was rendered essentially powerless.

During the second term of Prime Minister Tharwat, the Cabinet worked to achieve a royal decree whereby a man who wanted to marry more than one wife had to get permission from a judge. Those who violated the royal decree were to be punished with jail sentences and fines. The subsequent cabinet headed by Prime Minister Al Nahhas, wanted to keep its popularity among men. It claimed to have sent the proposal for 'further study' by religious and legal scholars (men, of course). The proposal came to nothing

It seems, however, that the Women's Union had an impact on some parliamentarians. Elwy Pasha presented a proposal to the senate to limit the chaos and distress caused by polygamy. He suggested that a woman should have the right to divorce her husband if he married again and she felt humiliated by this marriage.

The pro-status quo group used jurisprudence as their weapon to counter Pasha's proposal. They claimed that no Islamic jurist had ever mentioned the right of a woman to get a divorce on the grounds of her husband's polygamy. They argued that Elwy Pasha's suggestions were antithetical to Islamic rules.

The usual strategy of the pro-status quo group when they are on the defensive is to request an indefinite amount of time to study the matter. In the Elwy Pasha case, committees were formed to examine both sides of the polygamy debate but no changes were made in the personal status laws.

This same method was used again in 1967, when Essam Eldin Hassouna, the minister of justice, suggested to the people's assembly (parliament) that they curtail police powers to enforce marital obedience (*ta'a*). He further suggested that the laws on *ta'a* be revised. The then chairman of the people's assembly, Anwar el Sadat, asked the minister of justice to prepare proposals for changes in the personal status law, to be considered in the next session of parliament. This session was never held.

The *khol'*

When the idea of trying to make *khol'* available to women, as allowed for in *shari'a*, was launched, it was evident that the elite women used religious discourse and terminology – the very same terminology that the fundamentalists (*Salafiyoon*) had always presumed was their monopoly. The latter had been able to get away with this because *khol'* had never been officially debated outside of books on Islamic studies (*fiqh*).

To the campaigners, it seemed that *khol'* could serve as a jurisprudence (*fiqh*) based tool of mercy to help desperate wives who had been waiting a very long time to obtain a court-decreed divorce in the ground of harm (*darar*). Such desperate situations occur frequently in Egypt because of the enormous delays in court procedures. Indeed, to get a court-decreed divorce often takes decades. Through the mechanism of *khol'*, such women would be able to obtain a divorce simply because they wanted one, by giving back the dower they received from their husbands. *Khol'* derives from a well known case in which the Prophet (PBUH) ordered Qais Ben Thabet to divorce his wife on condition that she give him back the garden he had given her. This was after she had declared that she hated him and could not tolerate living with him.

Let us consider then how *khol'* impacts on the husband and the wife respectively. Firstly, we need to determine what the expenses of *khol'* are, and who pays them.

1. A man gains great material benefit from *khol'*, even if he has humiliated his wife and treated her unfairly. This is because by *khol'* a husband will not only be exempt from paying the deferred part of the dower and maintenance, but he will also get 'compensation' from his wife in exchange for releasing her from any further marital obligations. He receives these benefits even if the wife has sought *khol'* after suffering considerable harm at his hands. We observed that the term 'compensation' (*ta'weed*) featured prominently in parliamentary debates on the law.

Within the dominant patriarchal value system, it is considered a husband's right to choose whether or not to abuse his wife with threats, physical violence, humiliation and insults. A man can turn his wife's life into a hellish ordeal with virtual impunity. One of the only means of

escape open to a wife who is suffering is to end the marriage through *khol'*.

It is worth mentioning that many husbands abuse their wives and children intentionally, in order to push their wives into asking for divorce. Then, when the woman does initiate a request, they do not respond, in order to pressure their wives into renouncing all their rights in exchange for a divorce. Usually, when a wife shouts 'divorce me' (*talaqny*), a husband replies 'grant me quittance' (*ibr'eeny*) - accept renunciation of all of your rights as a condition for my divorcing you.

Nevertheless, even such husbands have not usually been able to obtain extra compensation in exchange for agreeing to a divorce. However, the new *khol'* law grants them such compensation!

Thus, the *khol'* system is even tougher on women than the 'quittance' system (*ibra'*) that has been popularly used as a solution for the many problems wives face when seeking divorce through official routes.

2. The woman is required to 'ransom' herself (*iftidaa' nafseha*) by renouncing all the potential rights that had been granted to her. In addition she must pay compensation to her husband. Women of most social strata cannot afford the expense of *khol'*, because it deprives them of their financial substance. Most women, if they were to use *khol'*, would get out of a miserable marriage only to fall into the misery of poverty. Some women have, however, got into debt in order to pay their own ransom, preferring the prospect of a lifetime of financial suffering to the torment of their marriages.

In general terms, men, as a social category, perform waged labour and consequently control the social wealth. Most women are restricted to non-wage-earning work and domestic servitude. This is how the phenomenon known as the 'feminization of poverty' has come into being. Certainly the number of working and wealthy women is very limited, particularly in Upper Egyptian rural communities. For example, we cannot imagine that *khol'* represents a great solution to a woman who is obliged by cultural tradition to stay in the shadow of a man rather than to live on her own. In such cases, *khol'* only perpetuates the weakness of the weak and the power of the powerful.

3. The logic of *khol'* is absolutely consistent with the cultural traditions and patriarchal values that dominate Egyptian society. So we should not be surprised that the law of *khol'* was able to enter the political agenda without too many objections from the pro-status quo group. If we compare the law of *khol'* with, for example, Law No. 44 of 1979, we can see that the law of *khol'* is actually much more in harmony with the interests of the pro-status quo group.

The pro-status quo group provoked bitter strife in order to stop the implementation of laws that promoted treating women with fairness. More broadly, they have done their best to limit the political process to the area that serves their own interests. The stronger they have got, the less the pro-social change group has been able to push any of the items on their agenda into the decision-making forum. Thus, years and years of women's lobbying has resulted in nothing more than the *khol'* law. *Khol'* was accepted as a solution by many women activists simply because they were losing hope of bringing about significant change; they simply had no better choices.

The rules of the political game require an apparently open political system, which must at least seem to accommodate all groups, even those who are rejected by the authorities. The legislators from the dominant elite will always pretend that they do not monopolize all the arenas of power. And because the political community declares that it is based on pluralism, it must continue to give us (the pro-social change group) at least a narrow little space, enough so they can claim that we are being allowed to participate in the political process.

So the pro-social change group, have found themselves playing on the territory of the pro-status quo group, and they allowed us to introduce the *khol'* proposal onto the political agenda. Parliament then sent the proposal to a committee composed of specialists in law and Islamic jurisprudence (*fiqh*).

Parliamentary debates on the proposed *khol'* law

Khol' in the *shari'a* and in the statue law

A look at the results of the work of this very respectable committee reveals that *khol'*, according to the *shari'a*, is primarily intended to allow a woman to initiate divorce according to her own free will, on condition that she give her husband back the dower that was paid to her. However, the committee turned the concept of *khol'* into something that is not *khol'* at all! The committee produced a mutilated form of court-decreed divorce on the grounds of harm, which they stripped of all the advantages normally associated with court-decreed divorce, and called it *khol'*.

The committee formulated item 20 of the *khol'* law as follows:

The spouses are free to agree on khol' between themselves. If they did not agree, and a wife filed a case asking for khol', and ransomed herself and accepted renunciation of all of her financial and shari'a rights, and gave her husband back the dower that he had paid to her, a court should grant her a divorce.

A court may not render a *khol'* judgment before suggesting reconciliation to the spouses, according to the rule of the second item of Article 18 of this *khol'* law, and not before the wife states explicitly that she hates to live with her husband, that there is no way that their marital relationship can continue and that she is afraid that she cannot observe the limits ordained by God (*hudoud Allah*) because of this hatred.

From mutual agreement to husband's agreement: a male interpretation of *khol'*

Article 20 of the *khol'* law starts with an illogical, or even impossible, hypothesis: that spouses might mutually agree to seek *khol'*. If such a mutual agreement concerning divorce existed between the spouses, the wife would never need to seek *khol'* in the first place. Nevertheless, the committee's suggestion of the idea of mutual agreement on *khol'* triggered active public discussion on the issue of agreement, which soon revealed how most parliamentarians think, since they eventually transformed the idea of 'mutual agreement between the spouses concerning *khol'*' into 'the agreement of the husband to *khol'*'. Clearly, requiring a husband's consent is antithetical to the very concept of *khol'*. Equally clearly, the parliamentarians wanted to ensure that the decision to separate would always be the husband's, even in cases of *khol'*. The essential feature of *khol'*, however, is that it should be guaranteed to the wife as soon as she requests it herself and ransoms herself from wedlock. One parliamentarian insisted that any decision by a woman to seek *khol'* should automatically render the divorce null and void! He said *khol'* was not a right to be practiced according to a wife's individual will. Even if a wife ransomed herself, the husband was not obliged to divorce her! Other parliamentarians supported their colleague, insisting that the *khol'* law include a mandatory prerequisite for *khol'* be proposed to and accepted by the husband (*ejab wa qabol*). Some of them added that 'mutual agreement' on *khol'* should be interpreted to mean the mandatory agreement of the husband, who should be seen to attend the tribunal session voluntarily. In a case where the husband did not attend the session, the court would have to delay its decision of *khol'*.

Of course this would destroy the wife's ability to exercise her will. Such a formulation of *khol'* failed to offer any significant support to women in their efforts to even up the power of men and women in society.

Even though some wise parliamentarians, who had extensive knowledge of *khol'* in the *shari'a*, intervened in the debates to explain how making *khol'* contingent upon a husband's approval violated the intent of *khol'*, the idea dominated the discussion until the very end. Parliamentarian Dr. Zakareya Azmy, for instance, confirmed that *khol'* is essentially intended to occur without the husband's consent, and based his argument on the Quranic verse: 'Divorce is only permissible twice; after

that the parties should either hold together on equitable terms, or separate with kindness' (Surah al-Baqarah (2): verse 229¹⁰). Other parliamentarians, such as Elmessiery, Omar Shalaby, and Mahrous agreed that mutual agreement of the spouses could not be a valid prerequisite to *khol'*.

Nonetheless, many other parliamentarians, such as Abd el Hamid Hashem, Ragab Hemeida, and Al Eleimey insisted that a husband's consent to *khol'* should be made mandatory. Interestingly, these parliamentarians chose to ignore the example of the Prophet Mohammed PBUH and the *khol'* tradition that followed him in which women who sought the help of a judge were granted a court-decreed divorce on the sole condition that they ransomed themselves. These parliamentarians wanted to take away the judge's authority to decree a divorce, insisting the husband was the only person with this authority. Such an interpretation of *khol'* became a new opportunity to increase a husband's hegemony over his marriage.

Wise parliamentarians argued that because the husband had distressed his wife, he was incapable of making a just decision. But other parliamentarians claimed that the Prophet Mohammed did not decree the divorce between Jamila and Qais Ben Thabet, but rather advised Jamila's husband to divorce her. According to this logic, a judge's authority should not replace a husband's, and a judge should not even be able to render a court-decreed divorce. One parliamentarian argued that the Prophet Mohammed PBUH would not have granted Jamila a divorce if her husband had not explicitly consented to it.

The wise parliamentarians countered that *khol'* is meant to be a pre-paid divorce (*talaq 'ala maal*), an Islamic means by which the genders can be brought into balance. Accordingly, men were granted the right to divorce, and women the right to *khol'*. However, the debate was carried out in a general atmosphere of hostility to the idea of a woman's right to initiate divorce on the basis of her own will. Members of Parliament who opposed the law tried to limit the freedom *khol'* potentially offers to women. Since the power to grant a divorce resides with a judge, they

¹⁰ All translations of the Quran quoted here are taken from Abdullah Yusuf Ali, The Holy Quran, Sh. Muhammad Ashraf Publishers, Lahore, 1979

argued that the judge can decide to withhold the divorce if the husband does not consent to it

Returning the dower

Prophet Mohammed PBUH simply ordered Jamila to return the garden that had been given her as her dower (*sadaq*). But the meaning of the 'return of the *sadaq*' in the parliamentary debate became quite complicated. The general tendency of parliamentarians was to expand the meaning of dower (*sadaq*) to include the marital home; Amin Hammad, for instance, argued it was the modern equivalent of Jamila's garden, and a woman who is a custodian of her own children should renounce the marital home if she sought *khol'*. Parliamentarians disagreed on the meaning of 'dower' (*sadaq*). Did it mean that a wife should return the prompt part of the dower (*mahr*) that was paid to her upon signing the marriage contract, or did it mean that she should pay, in addition, an appropriate compensation to her husband for the harm he would suffer by granting her *khol'*? Some exaggerated the harm a husband might suffer, and wanted to add many costs over and above the prompt part of the dower. For example, parliamentarian Sayed Fath el Bab claimed that the husband should be compensated for all the expenses that he had incurred from the moment of marriage until the moment of *khol'*. Other parliamentarians expressed the fear that the money registered in the marriage contract might be less than what had actually been paid (some people do understate such payments to escape having to pay high marriage registration fees).

Some parliamentarians went even further, insisting the wife should return everything her husband had ever given her because only returning the dower (*sadaq*) would not be sufficient compensation: "Let us be on the safe side, and say that a wife should return everything she took upon signing the marriage contract (money, buildings, furniture, gifts, golden ornaments), whether these items were documented in the marriage contract or not."

Mokhtar Aly Saad said that a wife who now hated her husband should return everything he had offered her in the name of love and affection. He argued this would prevent *khol'* becoming a means by which women could enrich themselves! In reality, a woman who seeks *khol'* must expect to lose most of her money when she ransoms herself for her freedom.

Denying women the right to custody of their own children

The punitive attitude expressed by many parliamentarians towards any woman who would seek *khol'* clearly shaped the suggestion that such women should be denied the right to custody of the children from the terminated marriage. For example, Fayez Al Tenikhy shouted: "Does she have the right to be custodian of my children after she rejects me?! Does she have the right to live in my own flat with another man?!"

Another parliamentarian exclaimed: 'Are the children not part of the rejected husband? How come she gets the right to keep them?' These comments suggest that a woman seeking *khol'* has no motherly feelings, whereas in reality most *khol'* cases are motivated by a woman's desire to spare herself and her children unfair treatment from an abusive father.

It was clear that parliamentarians were speaking from the perspective of husbands who might be rejected by *khol'*, not from their position as representatives of the whole society. In their patriarchal arrogance they chose to represent husbands only and put wives in a tough situation by debarring them (*i'daal*) on behalf of men. They should be reminded that Allah has forbidden *i'daal*:

O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them – except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. (Surah al-Nisa (4): verse 19)

It is really frightening that parliamentarians wanted to deprive mothers, not only of their money, but also of their children. This is particularly cruel because it is a well-known fact that motherhood means everything to most women. Women are likely to forgo any right, even their right to *khol'*, in order to keep their children with them.

***Khol'* as a form of court-decreed divorce on the grounds of harm**

Khol' does not require a wife to offer proof that her husband has harmed or abused her. Some wives prefer *khol'* as a solution precisely because it preserves the privacy of the marital relationship and prevents the exposure of their husbands to public scrutiny. However, some parliamentarians, like Ismail Al Wakeel and Ahmed Sheiha, tried to

manipulate *khol'* to turn it to the advantage of men. For example, Sheiha believed *khol'* should be accepted because it would be a sort of court-decreed divorce on the grounds of harm that would benefit men. He was of the view that all the features of a court-decreed divorce on the grounds of harm are evident in *khol'*, and yet the husband would be entitled to claim his rights after the judge renders a *khol'* judgment'. Meaning that the *khol'* would be a sort of court-decreed divorce on the ground of harm, but then the husband would be able to claim financial rights when a judge delivers a *khol'* judgment. In his view, *khol'* could be manipulated to give an abusing husband a chance to claim money rather than paying money, as is the norm in court-decreed divorce on the grounds of harm.

The socio-psychological profile of a wife who seeks *khol'*

The parliamentary debate drew the worst possible profile of a woman who would seek *khol'*. Parliamentarians started by damning these women - even disparaging those that have sought *khol'* in the past! They referred to a Prophetic tradition quoted from Al Nasa'y and narrated by Abu Huraira that reads, 'Women who seek *khol'* are hypocritical women [*al munafiqat*']'. The parliamentarian who offered this quote added, 'And the Islamic rules regarding hypocrites are unquestionable'.

Dr. Al Adawy made a negative comparison between Muslim women who lived at the time of Prophet Mohammed PBUH and the women of today. He said that women who lived at the time of the Prophet were absolutely honest, and the Prophet knew about their honesty. By contrast, women of today are 'emotional, or they may say one thing and mean another.' He suggested that a court decision of *khol'* should be postponed for six months during which time it could be determined if the woman seeking *khol'* was honest.

Most parliamentarians agreed that women could not be trusted: "Their mixing with men creates marital aversion, not because a woman hates her husband, but because she loves another man."

Mohammed Ahmed Marzouq stressed that a wife was vulnerable to seduction, or she herself may succumb to the temptation of seducing a man; in either case she would destroy the household and cause the children to go astray. He objected to *khol'* on the grounds that society was ill prepared to handle such disputes. If *khol'* was accepted, he said, 'we open the doors of disturbance widely, and we set fire to households'.

Equally disturbing were parliamentarian Al Ghoul's reasons for supporting *khol'*. He claimed it would rid men of women's infidelity and save them from the violence of wives who kill their husbands and cut them into small pieces. Dr. Mustafa Al Sa'eed suggested that women may hide their real intentions and falsely claim they hate their husbands to achieve some other objective. Husny Behalou expressed his fear that many women would rush to divorce and abuse the right to *khol'*.

Esmat Mohammed Al Hady believed it would be dangerous for a woman who obtained *khol'* to keep custody of her children, because she could travel abroad or marry a notorious man. He agreed that such a woman should be denied custody of her children. Dr. Hermass said he believed that women would act hastily and regret the results. Counsellor Abd el Aziz Abd el Ghany Heiba stated that we live in a time of corruption, where people have become dishonest. Thus we cannot take what women say at face value. Instead, there must be some mechanism by which one can verify that a wife who seeks *khol'* is serious about it.

As the parliamentarians described us, we women are hypocritical, fascinated by men other than our husbands, easily seduced, impatient, disobedient (*nushuz*), violent, prone to infidelity, offensive, prone to betraying our families and damaging our children.

Now, the urgent question is...

If times really have changed, and women are no longer as honest as early Muslim women were, what have these changing times done to men? Have they not changed as well, from those early Muslim gentlemen who were both honest and gallant? Do some men of our time not enjoy torturing their wives and robbing them of their youth, claiming that it is smart to humiliate, and abuse a woman? Have those good times not passed when men who wished to replace one wife with another were bound by honour not to take back anything they had offered the first wife, even if it weighed a hundredweight (cantar). To do so is considered an explicit fault in the holy Quran:

But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back: would ye take it by slander and a manifest sin?(Surah al-Nisa (4): Verse 20)

Do we not live in a time where we read daily in the newspapers about incidents of wife abuse? Some men who abuse drugs and commit forgery have insisted on keeping their wives within wedlock in order to inflict physical violence on them. So why do our parliamentarians lament the disappearance of the early Muslim woman, but not the disappearance of men who behave nicely with their wives or divorce them without harm as is recommended: 'Divorce is only permissible twice; after that the parties should either hold together on equitable terms, or separate with kindness'?

While the parliamentarians depicted an evil image of wives who would use *khol'*, they evoked a quite different image of the husband who she has rejected by using the *khol'*. The husband would be portrayed as being generous and gracious, loving his home, caring for his family, yet tragically betrayed by an evil wife who would rob him of all the savings he had spent his life working hard to make, obtain a *khol'* divorce, and take his children before proceeding to marry another man.

They emphasized the perception of masculinity and dignity amongst men and that these do not allow a man to force an unwilling woman to stay in a marriage. Some parliamentarians expressed anxiety because a husband may offer his wife motorcars or property/land while she is bound to him in wedlock, and keep nothing for himself. Then, such a wife files a *khol'* case to harm him!! According to another parliamentarian, Mokhles Zakareya Abd el Maguid Al Sally, no husband would ever accept to live with a wife who hates him, lest he would be considered to be devoid of manliness.

We exclaim: Would a man who tortures and wrongs his wife care to appear as an ethical manly person? And how could such an evil husband be deterred from harming his wife? Could that deterrent be ensured by mere moral condemnation? Or should there be an effective law to deter such a husband?

Using classical Muslim jurisprudence (*fiqh*) to oppose *khol'*

It is evident that the parliamentarians started to discuss article 20 of the law number 1 for the year 2000, with the understanding that *khol'* is part of the Islamic *shari'a*. They evoked a traditional cultural legislative narrative that represents medieval features: backwardness, traditionalism, and fanaticism. *Khol'* had been a right for Muslim women that enabled them to rid themselves from marital relationships that they cannot tolerate. However, the debating parliamentarians started by evoking the jurisprudence (*fiqh*) that opposes *khol'*. Thus the debate was dominated by a language of moral condemnation about women who perform their right to *khol'*. Parliamentarian Abd el Aziz Mohammed Ahmed Chahine warns that *khol'* is considered a forbidden religious taboo. He recited a prophetic tradition that 'Women who seek *khol'* are hypocritical [*al munafiqat*']'. Then the parliamentarian Mohammed Ahmed Marzouq challenged the story of Qais Ben Thabet's wife by mentioning another story of a woman who asked Omar Ibn El Khattab (God bless him) to grant her *khol*. Ibn El Khattab replied: "Would you return what he has given you?" The woman said: "But I don't have anything to give". Then Ibn El Khattab said to her: "Then, be patient. Not all households are based on love".

Mohammed Abd el Hamid Hashem asserted that a woman should never go out of her house, referring to the Quranic verse addressed to the wives of Prophet Mohammed: 'and reside in your houses'.⁹ He ridiculed the assertion that early Muslim women had fought on the battlefield, saying these were unauthenticated traditional narratives that are not validated by Quranic verses. Other parliamentarians went so far as to recommend that upon marriage women sign an agreement stating they would never ask for *khol'*.

Absence of women's voices in the debate

It was woman parliamentarian Fayda Kamel who cited the stories of women's participation in wars with Prophet Mohammed PBUH, mentioning Nusaiba Bint Kaa'b, who defended the Prophet alone with her sword, and Rifaida, who treated the wounds of the Muslim warriors. However, apart from Fayda Kamel, no other woman parliamentarian defended the women who might seek *khol'* against the moral

⁹ Surah al-Azhab (33): verse 33

condemnation thrown at them by men parliamentarians, or challenged the evil image of women they evoked. We have to ask: why did these women parliamentarians refrain from participating in the *khol'* debate? Why did they not defend the best interests of women? Does this mean that patriarchal culture dominates even the consciousnesses of women parliamentarians?"

The discourse of the wise parliamentarians

One lone male voice did speak out, reminding his colleagues that a wife may suffer a miserable marriage and then suffer the long slow procedures of court-decreed divorce on the grounds of harm:

There are cases of women who tried to get a court-decreed divorce for ten or fifteen years, during which they frequented the courts and interacted with lawyers. Such a wife asks for divorce, but her husband says, 'No, I will claim her obedience to me (ta'a)'. Then, he rents a room for such a wife, who may be 30 years old in Assiut [as an example of a far away place] in order to put her in a tough situation. When the court-decreed divorce procedures end in a decision, such a wife may have reached her 50s. This is unjust!

He added that the courts were full of unimaginable human tragedies that could never be approved by Islam, a religion that promotes mercy and love. Moreover, he encouraged his colleagues to see those aspects they had neglected in their debate. He said he did so because:

We make legislation that rules the lives of women. Such women could be our sisters or daughters. Many of us may face problems related to our own children. Therefore, we should not consider that a wife or a husband are necessarily bad persons. Our aim is to end the suffering of a woman who is not at ease in her home.

But his voice was isolated. No supporting voices responded to him. In spite of the fact that some of the daughters and sisters of elite men fall victims to these concerns, the parliamentarians could not bring themselves to deviate from traditional attitudes. So even though some of those men would make great sacrifices to defend the rights and dignity of the women who are dear to them, when it came to taking a public stance, both conservative and more liberal elite men adopted the same traditional attitude.

Asma Halim says a common sense interpretation of the attitudes of such men is that they are based on contradiction and double standards. The men want to maintain the personal advantages they gain from the traditional family system - the freedom and hegemony they exercise in relation to their own wives. However, when their daughters or sisters face a personal status problem or catastrophe, these men depend on their personal capacities, authority, and social power to manipulate the situation in favour of their women relatives.

Astonishingly, although all parliamentarians acknowledged the personal status problems that are faced by women, they were reluctant to confront such problems. They neglected women's rights. It has been said that those who neglect human rights are like quiet devils.

A comparison between the dominant discourse in the parliamentary debate and pre-Islamic discourse (*hadith al jaheleya*) shows a clear similarity between them. According to the writer Safinaz Kazem :

Before Islam (in jaheleya), women faced great difficulties, because the pre-Islamic social system was heavy hearted and deviant. Sometimes, pre-Islamic people buried female children alive, or let them live in difficulty and humiliation. Wives in pre-Islamic time were part of the man's property, and they were less valued than a female camel or a mare. A divorcee used to face tough...situations (i'daal). She was forbidden to re-marry without her ex-husband's permission. If she desired to return to her previous husband, her family would refuse to let her do so...

Then Islam came to relieve women. Islam views women as equal to men; both were created by God from the same spirit. Islam held the marital relationship in high esteem; it may be equivalent to worship if it is conducted in good faith.

We must ask: did the parliamentarians who discussed the modern image of Muslim women grasp the Islamic conceptualization of women and marriage? It would certainly seem that they did not.

Christian women and *khol'*

Dr. Abd el Nasser Al Attar asserted that a Christian woman has the right to *khol'*; he based this assertion on the third Article of Law No. 1 of 2000, which reads:

Courts should render their judgments according to the applicable personal status law. In case of lack of a clear legal text about a personal status issue, a court should rule according to the most predominant opinions of the doctrine of Imam Abu Hanifa. This means that all Egyptians are subject to the rules of Laws No. 25 of 1920, 25 of 1929, 100 of 1985 and 1 of 2000 in the issues of marriage, divorce, khol', inheritance and polygamy. This is because the law is addressed generally to all Egyptians, Muslims and non-Muslims.

The rules of khol' were mentioned in Article 20 of Law No. 1 of 2000. Thus, it is valid for all persons who are subject to this law, i.e. Muslim Egyptians, and Egyptian spouses who are not Muslims but differ in their religious community (ta'efa) or doctrine (mella), even if one of such disputing spouses is Catholic, i.e. a follower of a Christian doctrine that does not approve of divorce.

However, Advisor Jameel Qaldas Bashai, former chairman of the Court of Appeal, thought that the last paragraph of Article 17 of Law No. 1 of 2000 expressed the issue as divorce, not *khol'*, and does not mention *khol'* for Christians, as it reads:

A court should reject any divorce case filed by [Christian] spouses from the same religious community and doctrine, except if the religious legislation of their Christian community allows divorce.

Qaldas referred to the parliamentary discussions that quoted the behavior of Prophet Mohammed PBUH with Jamila, Qais Ben Thabet's wife, and exclaimed:

Can a Christian wife go to the court of personal status and state that she is afraid to violate the bounds of God (hudoud Allah)? Then, the court will be perplexed. Which religious legislation defines the bounds of God (hudoud Allah) that a Christian wife fears that she may violate them? Is it fair, logical or acceptable that a Christian woman pronounces such a statement, while she is still Christian, just to get rid of her husband, while the Gospel states explicitly that divorce is not allowed

except for the disorder of adultery? Is it fair; is it good political and legislative practice; is it respectful of freedom of creed to exclude all of the essential principles of Christianity that were established 20 centuries ago, and to allow a system of khol', polygamy and divorce according to an individual's will for no reason except the difference in religious communities of the Christian husband and wife, while all Christian communities and doctrines never knew khol'?

Counsellor Qaldas stated:

Even if we agree to follow the other opinion that considers the application of Islamic shari'a in the case of Christian spouses who are from different religious communities and doctrines, the religious community or doctrine which is documented in their marriage contract must be taken into consideration, because it is unfair to apply another religious law which is absolutely different from the doctrine of the spouses at the time of registration of the marriage contract. This is supported by the fact that Law No. 1 of 2000 never mentioned the case of changing one's doctrine or affiliation and shifting to another religious community with the intention of harming the other spouse.

Counsellor Qaldas supported his opinion by mentioning the decision that was taken by the court of cassation as regards a husband who converted from Orthodox to Protestant doctrine. The decision states:

According to Christianity, changing one's religious doctrine or community with the intention to marry more than one spouse is fleeing from one's religion, and a deviation from doctrine. This means clearly that a Christian husband, after registration of his marriage contract, is never allowed to manipulate the law by simply changing his religious community or doctrine.

Counsellor Qaldas inferred that this decision applies to wives as well. Wives cannot end their marriage by changing their doctrinal allegiance. Counsellor Qaldas reminded his colleagues that Islam allows religious freedom for followers of other religions, and allows every religious community to regulate their family affairs according to their own religious legislation. Counselor Qaldas concluded that a Christian wife has no right to disobey her husband.

Friar Pasanti participated in a TV talk show, 'The Red Shaddow' (*Al Zill Al Ahmar*), on 24 March 2002. He said that in Christianity, divorce is not allowed except in cases of adultery or if one of the spouses converted to a religion other than Christianity, because in such cases marriage is nullified. He explicitly stated that the church does not recognize the right to divorce, and consequently does not recognize the right to *khol'*. The TV presenter, Sanaa' Mansour, confronted him with the fact that a hundred Coptic women were waiting for *khol'* judgments, and he stated that *khol'* is not allowed in Christian precepts (*shari'a Maseheya*), but it may be allowed in the Egyptian context if one of the spouses had changed her/his doctrine (*mellah*).

The discussion on claiming *khol'* in cases of customary marriage (*al zawaj al 'urfi*)

The second item of article 17 of Law No. 1 of 2000 states:

In cases of customary marriage,¹¹ if the husband has denied the marriage, and his wife filed a case [to ask for any personal status right], cases filed by such wives who signed customary marriage contracts after August 1, 1931 are to be rejected, except if a marriage contract is registered in an official document. However, courts can listen to the claims of wives in two instances only, irrespective of the form of their marriage registration. These two instances are cases filed by women to claim court-decreed divorce or annulment of the marriage. In such cases, If the marriage is documented in any written form, the cases could be accepted, according to the circumstances of each individual case.

The parliamentarians agreed upon this formulation after stormy discussions, dominated by their desire to condemn girls who get involved in customary marriage. Counsellor Abd el Aziz Mabrouk shouted:

If girls happen to know that they can free themselves from customary marriage, they will indulge more and more in it. Knowing that such a marriage can be ended makes it easier and less embarrassing for girls to perform it. I mean to say that an officially registered marriage cannot be

¹¹ 'Customary marriage' means instances where the husband and wife have not officially registered their marriage, even if it is a written document.

dissolved except in an official legal way in front of a court that should listen to the dispute about the marriage contract. So, I object to the text of this item, regardless of whether the customary marriage is of full legality (sahih), void (batil), or is liable to be nullified (fasid).

The chairman of the parliament then asked, 'What if a woman, who happened to once have been in a customary marriage, wants to re-marry? Cannot she marry at all?'

To this Mr. Heiba replied:

A woman who participates in a customary marriage is responsible for getting herself involved in such a mess. A mistake should never be corrected by another mistake; faults should not be compensated for.

We make legislation for the majority of the people. These cases [of customary marriage], however many they may be, are exceptional cases, hence, they are a minority relative to the whole society ... We do not want to open this door.

The chairman of the parliament continued, 'We want to understand. Does your logic mean that a woman who commits a mistake should be unable to marry again as long as she is alive?'

Mr. Heiba replied, 'She should bear the result of her mistake, and other women may learn a lesson from that and avoid committing the same mistake'.

Abd el Monem Samak made an attempt to protect girls who get involved in a customary marriage from any potential blackmail by a husband who may deny the customary marriage. Mr. Samak suggested that if a husband does so, the wife should get a court-decreed divorce or nullification of the marriage, so that her husband could not make in the future make any claims that she was still bound to him in marriage.

Then the chairman suggested a strange solution:

Let such a girl ask a competent lawyer to file a case on her behalf. If she wins, and the husband has to present the customary marriage contract, she can depend on it. If she loses, she deserves what may happen to her!

Mr. Samak insisted:

... I am emphasizing the need to ensure women's freedom from any prosecution or arbitrary treatment by their husbands, as your excellency suggested. That is why I would like to say that in a case in which a husband denies a marriage, a court should decree a divorce or nullification of that marriage and should not take any claim he may make afterwards into consideration.

The chairman closed the parliamentary session at this point.

Is *khol'* applicable to customary marriage contracts?

Counsellor Taha Al Shareif, the ex-deputy chairman of the court of cassation, explained that in the case of a customary marriage, a wife may file a case either to ask for a court-decreed divorce or for a nullification of the marriage. She is not allowed to make any other claim. The legislature excludes wives in customary marriages from exercising their right to file a case of *khol'*.

Taha Al Sharief then asked:

*What is the reason for disallowing *khol'* cases when the legislator has agreed on a proposal that recognizes the legitimacy of a customarily wed wife's request for separation from her husband by means of a court-decreed divorce? Such procedures may take many years before a court can render a judgment and the judgement may then be subjected to appeal and cassation.*

Some jurists expressed the opinion that the legislation is unfair to women because it denies the right of spouses who have engaged in customary marriage to take their marital claims to court. They consider legislation that acknowledges no consequences of a customary marriage (except the legitimacy of the relationship of the children - *nasab* - and the possibility of going to court for divorce) to be not only unfair to women but also discriminatory towards customary marriage. Such discrimination, of which women are the primary victims, is considered especially unjustified because Islamic *shari'a* permits customary marriage; indeed, before the adoption of registered and documented marriage, customary marriage was the regular form of marriage.

Counsellor Taha Al Sharief warned that if the objective of the legislature was to limit the incidence of couples hiding their relationships from society by engaging in a secret customary marriage, it would not be achieved by ignoring justice and dismissing cases that may be filed to prove the status of such a marriage, the right to custody of children, maintenance, or the deferred part of the dower. He suggested that justice might be served by the imposition of a deterrent punishment on husbands who have not documented their marriage contracts at the office of the marriage registrar (*ma'zoun*).

He reminded parliament that the authorities have the power to organize the implementation of rights, but do not have the power to confiscate such rights. Because the failure to register a marriage contract is a failure to follow the state's procedures for securing marital rights, invalidating such a marriage would only further undermine the spouses' marital rights and would not correct the original failure to protect them through registration. In other words, contracting a customary marriage is not a crime, but failing to register such a marriage after the fact is. Thus a husband who does not register his marriage contract may be condemned for committing this offense. Both spouses can claim the rights allowed by virtue of such a marriage, whether these are the legitimacy of the parent-child relationship (*nasab*), maintenance, children's custody, divorce, *khol'*, or any other claims. It is not logical that a legislator would prevent the court from hearing cases that may arise because of a marriage when that same marriage is recognized for establishing proof of the legitimacy of the parent-child relationship of the children born as a result of it.

According to the text of the Holy Quran and the personal status laws, attempting reconciliation between the spouses, or appointing two arbitrators to attempt such reconciliation, should take place before divorce is granted. How then can a court be allowed to attempt reconciliation between two spouses who are tied by customary marriage if the legislator implicitly renders the marriage illegitimate by not allowing the consequences of it to be recognized by the court?

Counsellor Al Sharief said:

We do not encourage customary marriage now, because nowadays it is a method used to violate the honour (a'raad) of girls secretly, a matter that renders it an illegal form of sexual intercourse. Customary marriage is a trick that results in the assassination of the girls' moral and physical innocence and purity. This does not harm the girl only, but it has long term harmful implications for her family as well. Imposition of a deterrent punishment on any man who does not register his marriage contract at an official registrar office will absolutely eliminate this phenomenon that has spread among young university students. We do not mean to annul a rule of Islamic shari'a. Each of the spouses in customary marriage retains the right to prove that marriage, and accordingly, to claim his or her rights from the other spouse. We should not mix the right to marriage itself with the issue of official marriage registration. The first right (marriage) is a result of Islamic shari'a, while the second right is a result of the authority of the government to regulate the everyday life issues and interactions of the people.

It is clear that the language of justice dominates the speech of counsellor Al Sharief and condemns men for the first time since the debate started.

Ethics of discussion versus the parliamentary debate

The parliamentary discussion revealed a severe lack of what we might call the ethics of discussion, which presuppose that when people participate in a discussion about public issues, they should be able to free themselves from the hegemony of their subjective norms and personal interests. If parliamentarians, who are supposed to represent the whole range of social sectors and communities, neglect these ethics, then they are not any different from the lay public.

The demagogy that dominated parliamentary discussion of the *khol'* law demonstrated that some parliamentarians are in need of awareness raising as regards appropriate parliamentary conduct. I think it is necessary to provide parliamentarians with high quality training to improve their knowledge of the rules of logic and the mechanisms of appropriate reflective thinking and appropriate linguistic terminology so that we can develop the ethics of parliamentary debate.

Implementation of the law

Practically speaking, the *shari'a* principle of *khol'* (*khol' shar'y*) was turned into a positivist *khol'* (*khol' wad'y*) by parliament. Judges have to use this positivist form of *khol'* as a reference in their decisions on personal status issues cases. Women who suffer the delayed procedures of court-decreed divorce may be eager to ask for *khol'* instead, in spite of the sacrifices they have to offer in exchange for increased speed.

What sort of woman seeks *khol'*? Mrs. S. M., for example, stated that she had suffered problems with her husband for a long time and felt that Allah sent her a solution through the passing of the *khol'* law. Nevertheless, after more than a year, she got frustrated because the procedures for *khol'* were so time-consuming. One reason for the delay was that her husband refused to come to court; he refused even to take delivery of the court's requests that he attend the sessions. Consequently, the judge postponed each session on the grounds that the presence of the husband in person was necessary. Mrs. S.M. said: 'I do not know what to do'.

Many other wives emphasized that even after the judges had declared a court-decreed *khol'*, their ex-husbands' lawyers appealed, even though a *khol'* judgment is supposed to be final (*hokm niha'y*). Although the lawyers were sure the appeal would be rejected, they nevertheless proceeded in their efforts to spite their clients' wives by delaying their reception of a final executive copy of the judgment.¹⁰

Khol' requires that wives sacrifice some of their rights; however, it offers an alternative to the slow and delayed procedures of getting a court-decreed divorce on the grounds of harm. But the *khol'* law approved by parliament is full of gaps, some of them intentional. For instance, the parliamentarians' insistence on the use of reconciliation in order to preserve the family slows down the procedure, particularly when the disputing spouses disagree on the meaning of dower. And such disagreements have been made more likely by the fact that the parliamentarians themselves disagreed on the meaning of dower. The consequence is that of 4717 *khol'* cases filed in the Cairo courts over two

¹⁰ *Al Ahrām*, 18 February 2002

years, the courts have given judgment in only 3% of them. No wonder women are still crying, 'I want a solution!'

On the other hand, of the 3765 petitions for court-decreed divorce in the same period, the courts claim 1024 of these cases have been settled. Counsellor Adel Al Shahed claims these figures indicate that judges can render quick final decisions when legal conditions allow them to do so. However happy we would be to see courts moving quickly to resolve court-decreed divorce cases, we remain sceptical that these statistics are correct (please see our data in section one of this publication).

One of the chairmen of the personal status courts emphasized that the courts do not have a common protocol for reaching compromise when they are dealing with disputes over dower. Nor have they reached a consensus on the procedures for referring cases to other tribunals. Rationalising these procedures is essential.

Elite women consider *khol'* a victory for women: why do they cheer before they have really triumphed?

It may be logical that the dominant culture prevents women from becoming aware of their rights by promoting an exaggerated picture of the potential impact of *khol'*, a picture that leads one to assume that *khol'* has the potential to bring about major changes in family life. Unfortunately, some elite public women have also illogically promoted *khol'* as having the potential to bring about major changes in family life. Some women who participated in the formulation of the proposed *khol'* law and worked to introduce it to parliament promoted a positivist formula of *khol'* that purged from *khol'* many of its advantages under *shari'a*. One of them said:

*I communicated with all of the Egyptian court chairmen, as they are all my colleagues. They explained to me that most of the cases that seek court-decreed divorce end by reconciliation and that *khol'* decreased the ratio of marital disputes and supported marital settlement. They added that husbands became more careful to keep their wives, even though some of them had previously been careless husbands. Moreover, Egyptian wives have turned out to be more responsible and reliable, because they are no longer prisoners of their marital relationships. The experience of *khol'* has proved that it has had a positive impact on family settlement.*

This statement depicts *khol'* as an active factor in the decreased divorce ratio, when *khol'* is actually a desperate solution involving great sacrifice for the wives who resort to it. Such rosy statements obscure the nature of women's suffering and make it unclear how similar a woman's decision to seek *khol'* is to another desperate person's decision to commit suicide rather than to suffer a slow death.

We must ask ourselves, why are men are likely to change their attitudes towards their wives and become more caring for them if being uncaring would push their wives into dissolving the marriage and footing the bill through *khol'*? Even if such a conclusion could be reached by an objective evaluation of the social impact of *khol'*, would it be valid? *Khol'* has only been in place for a very short time.

Would it not be more helpful for elite women, particularly enlightened ones, to raise people's awareness of the real value of *khol'*, without any exaggeration? Is it acceptable for them to spend their time congratulating themselves on their victory rather than offering Egyptian women much needed support? Can the *khol'* law be considered a satisfactory solution to the problem of Egyptian women who cannot afford to wait to get court-decreed divorce for harm? It is at best a partial solution helpful only for some. By promoting it as a satisfactory solution, we undermine our dreams of developing an effective feminist movement.

Was it necessary for the elite women to capitulate to the authoritarian interpretation of their rightful claims?

We must ask ourselves if it was necessary for the elite women to accept the limited interpretation of *khol'* that became law and acclaim it as the best that could have been achieved. Has the language of the pro-status quo group become so dominant that it has been adopted by the pro-social change group?

We need effective tools that will help us to promote a feminist social perspective. Careful objective research and reflective thinking are two of the most important tools, and they need to be used by representatives of the pro-social change group, rather than voicing statements that undermine women's rights in personal status matters.

If the feminist elites are willing to sacrifice us women on the altar of unjust laws, who else is there who will reorganize the agenda of women's

rights, define its priorities and develop the tools that will help us to lobby the law makers in the interests of social justice?

***Khol'*: between the language of the Shari'a and popular language¹²**

An important question is: why do ordinary Egyptian men reject *khol'* even though it represents an advantage for men and a burden on women?

In classical Arabic, which is used in traditional Muslim jurisprudence, *khol'* is derived from the root *khala'*, which means to take off a garment. This root is used because in *khol'*, a woman is taken off from a man as his garment is taken off from his body; the Quran says: 'They are your garments and ye are their garments' (Surah al-Baqarah (2): verse 187).

Khol' as we know it today means that a man parts from his wife in exchange for compensation. The terminology used by different theologians to describe *khol'* varies. Some of them consider *khol'* to be a dissolution of marriage (*faskh*). Others consider it to be a final term divorce (*talaq ba'in*), which could be effected by any of the four terms: *khol'*, *mobada'a*, *sulh*, or *mofadah*. Any of these terms could signify *khol'*. The legality of *khol'* is derived from the Holy Quran:

It is not lawful for you (men) to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she give something for her freedom (Surah al-Baqarah (2): verse 229).

Khol' is also mentioned in the *hadith* that was accepted by Al Bokhary and narrated after Ibn Abbaas:

The wife of Qais Ibn Thabet came to the Prophet PBUH and said: Oh Prophet of Allah, I do not find any fault in Qais Ibn Thabet's morals or

¹² The original title of this section reflected a play on words which could be more accurately translated as: "Between the language of 'The Path' (Shari'a) and the language of 'the street' (sharea)".

religion, but I hate denial of the other's rights¹³ in Islam. The Prophet PBUH replied: Would you give him back his garden? She said: Yes. The Prophet PBUH said [to her husband]: Take the garden and grant her a divorce.

Shari'a emphasizes that 'no one should harm another or get harmed by another' (*la darar wa la diraar*). This principle corresponds with Islam's more generalized emphasis on mercy and justice. Its rules require the guilty party to offer a compensation commensurate with the harm suffered by the victim and that the harm should cease. Forcing people to remain in a marital relationship is the most damaging harm, because it leads to sin.

On the other hand, if we examine the meaning of *khol'* in Egyptian slang, we observe that people use such phrases as 'a woman takes off her husband' (*takhla' al mar'a zawjaha*), or 'the man was taken off' (*itkhala'*), or 'the man became a taken off object' (*makhlo'*). These slang phrases turn the woman into a subject who actively performs *khol'* on a man who is simply an object. The term '*al makhlo'*' in slang means a weak nail that is easily removed by a pincer. Thus *khol'* implies an action taken on a weak object. On the other hand, a person who performs the act of *khol'* is an active subject. Thus popular discourse defines *khol'* as a threat to a husband's manhood. Women's agency through *khol'* undermines the husband's domestic and public hegemony. Popular sexist conceptions play a major role in raising fears of women's cunning (*keid el nisaa*), their 'lack of mind', 'lack of religion', and their 'tendency towards deviancy', all of which figure widely in the popular imagination. As the parliamentary debates discussed earlier revealed, many parliamentarians believed *khol'* would give women more power in domestic affairs, leading, in their view, to social destruction.

The traditional conceptualization of manhood is supported by rigid ideological interpretations of religion that always express a backward conceptualisation of women and are based on misinterpretations of religious texts. These misinterpretations depict women as devils and promote the idea that society needs to be purified from them, or at least protected from them by social segregation. These misinterpretations deny women all rights on the one hand and on the other upgrade men's status.

¹³ Literally 'kufir'. In the context of this prophetic tradition, *kufir* means denial of the husband's right to be loved by his wife.

They are driven by the same patriarchal attitudes that are expressed in popular thinking; in fact rigid ideological interpretations and popular thinking are almost identical in many respects. However, these rigid misinterpretations of religion have more power than popular thinking because authority that claims to be derived from religious texts has a stronger impact on most people. Sadly, men with such rigid visions proclaimed the idea that women who seek *khol'* are hypocritical (*al mokhtali'aat Hunna al munafiqat*); thus they transformed something that is allowed by Allah into something that is forbidden.

The mass media and *khol'*

The mass media outlets have used the *khol'* issue as material for jokes and sarcasm, and have caricatured women who seek *khol'*. When men and women in the street were interviewed about *khol'*, the interviewers did not explain or interpret the responses of the interviewees. Many of the media persons who introduce TV programmes have limited knowledge about legal rights in general, and *khol'* in particular, and their comments were shaped largely by patriarchal biases. Thus, many of them allowed every passer-by to ridicule the women who seek *khol'*, causing the public to fear such women. For example, an ordinary man in the street told a TV programme his worst fears about what *khol'* could do: "Do you want me to go to work in the morning and return to find that my wife used *khol'* to run off (*khala'et*) after taking everything?"

No one volunteered to explain that such a scenario would not be possible or to offer a review of the real facts about *khol'*.

The press played a similar role. The accidents pages of newspapers were frequently used to list the numbers of *khol'* seekers and ridicule them. For example, on 16 February 2002 *Al Ahrām* published a story about a woman who had been the wife of a rich business man for more than 25 years and had recently been granted a court-decreed *khol'* because her husband had married one of the servants. Another article in *Al Ahrām* on 4 February was entitled: 'Granting a court-decreed *khol'* to a wife of an engineer because he is a drug abuser'.

On 30 November 2001 *Al Akhbar* published an article entitled '40 cases of *khol'* decreed in the same court session', and on 30 June 2000, it published an article entitled 'An Upper Egyptian woman seeks *khol'* because of genetic incompatibility with her husband'. *Al Ahrām* published

in October 2001 that a court rejected the first *khol'* case on a formality. According to this article, in June 2001, Zananiry court rejected a *khol'* case. The basis of the court decision was that the wife did not return the advanced part of the dower to the husband, and she did not present any evidence to the court to prove that she returned it. The amount was one Egyptian pound.

On 30 August 2000, *alwafd* published an article entitled 'A decline in *khol'* cases after six months of the new law and a return to the principles of payment and imprisonment.'

On 17 April, *alakh'bar* published '17 wives refused reconciliation and demanded *khol'*'

On 18 April, *alakh'bar* published 'Tanta farmer reconciled with her husband'

On 2 February 2000, *alakh'bar* published 'one and a half million women are waiting for *khol'*'

Other articles include titles such as 'women become protectors and maintainers of men' (*qewama*) and 'the person who pays the *khol'* bill will go to *khol'* heaven'.

Are the accident pages the appropriate place to publish news concerning *khol'*? These pages report crimes and deviations, which suggests that *khol'* is a social scandal, not a perfectly legitimate right. Can a woman who has chosen to seek *khol'* feel secure when she knows that she may find the details of her private life with her husband and children published on the accidents page? Such reports should be considered a sort of defamation that should be subject to legal liability. Certainly, if a published report defamed a man, he could file a case and win the appropriate compensation for damages. But women can be defamed, it seems, since they have dared to creep away from their husband's shadow; this makes them fair game. The weekly magazines published elaborate interviews with psychiatrists, some of whom stated, as was to be predicted, 'It is a law to destroy households. Divorce is supposed to be hindered, not facilitated'. In the March 2000 issue of *Nisf Al Dunia Magazine*, psychiatrist Khalil Fadel asked, 'Why do women take off (*takhla'*) their husbands?'

Thus *khol'* became a subject used by the press to create thrills and amuse readers. No one asked: Would the pages of accidents and opinion get so excited if the divorce was initiated by the husband? Do they make such a splash every time a man divorces his wife? Why does no one chase down men who divorce their wives and demand to know why they have destroyed their peaceful households? Yet it is considered newsworthy if a woman dares to initiate a divorce on the basis of her own free will.

The Law of *Khol'* in the Egyptian Press

by Mariz Tadrous

For more than two years the Egyptian press gave detailed coverage of the debate over the law of personal status procedures, known as the *khol'* law. Almost all the media depicted the law as likely to initiate profound changes in the Egyptian family and, consequently, Egyptian society as a whole.

In this article, we will review and analyze the press reports that addressed *khol'* from mid-April 1999 until mid-April 2001. This sample of press articles and reviews is drawn from the newspapers *Al Ahrām*, *Al Akhbar*, *Al Wafd*, *Al Gomhoureya*, *Al Sha'b* and *Al Arby*, and the magazines *Rose Al Yousef*, *Sabah Al Kheir* and *Nisf Al Dunia*. More than a hundred articles and press reviews from these sources were analyzed.

The first part of this paper will discuss the nature of the discourse on *khol'*. The second part will explore the reasons for the Egyptian press's rejection of *khol'*, and review the rationalizations presented by anti-*khol'* journalists to justify their stance. The third part will discuss some of the factors that prompted the Egyptian press to handle the issue of *khol'* in this way. Lastly, we will attempt to reach significant conclusions from our analytical study of this press material.

Nature of the discourse on *khol'*

Few laws have raised such an extensive and controversial debate in the media as did the new family law. One of the key feminist concepts is that 'the personal is political' and the debate around personal status laws indeed reflects a number of political ideologies. In spite of the multiplicity and variety of political attitudes towards personal status issues, one single discourse was adopted by almost every public voice, that is a religious discourse that focuses on the identification of *khol'* with the rules of Islamic *shari'a*. Religious discourse was used sometimes to camouflage political programmes that opposed *khol'* for social or cultural reasons. Governmental agencies directed the official media to focus public attention on the new law's derivation from religious principles and the rules of *shari'a*

On the front page of *Al Ahrām* on 14 December 1999, President Hosni Mubarak said the new personal status law had been adopted in conformity with the Islamic *shari'a* rules (*ah'kam alshari'a al eslameya*) and religious rules (*saheeh al deen*). He said it was necessary to follow the *shari'a* rules closely to deal with a changing society.

The opposition press invoked religion as well. They said, however, that the law was antithetical to the rules of Islamic jurisprudence. The debates in the press grew hotter and hotter, and almost every person became an expert on Islamic issues. Every person who participated talked as if the sole issue was the need to protect religion from any deviation.

Theologians, religious leaders, jurists and lawyers trained in Muslim jurisprudence (*fiqh*) were interviewed and frequently quoted in articles and editorials. And most other interviewees, even if they were lay persons like sociologists, politicians, psychologists and psychiatrists, also quoted religious texts and analyzed the law in a religious framework.

I think the government's use of religion to legitimize its law actually assisted the opposition, because it allowed the opposition press to put forward contrary interpretations of the same religious texts. For example, Mahmoud Mahran, a Professor of *Shari'a* at Cairo University, wrote an article on 15 January 2000 where he stated that *khol'* would be antithetical to the principles of the Islamic *shari'a* if it were not qualified by the condition that the husband must grant his approval and agreement. Another article by Samir Fadel suggested that a wife should not be granted the right to *khol'* if she failed to prove that she was injured or harmed by her husband.

Moreover, there was vociferous and public disagreement amongst Al Azhar theologians as to how much the *khol'* law conformed to the rules of *shari'a*; this undermined the government's assertion that the law had only been endorsed with Al Azhar's approval. *Al Sha'b*, *Al Usboo'*, *Al Ahraar* and *Al Wafd* all published the critical statement released on 7 January 2000 by 'the Front of Al Azhar Ulema' (*Jabhat Ulamaa Al Azhar*).

The opposition press argued that a husband's approval was a necessary condition for rendering a court-decreed divorce under *khol'*, and that a woman who initiated *khol'* must not be given a divorce just because she wanted one but must be able to give significant justification for her

request, such as having experienced injury or harm. And whether or not the woman got a divorce should be at the discretion of a judge. They said that in earlier times, the women who claimed such rights were wiser and less impulsive, and that *khol'* was mentioned only three times in religious texts, so it clearly was not intended for general application. They based their objections to the law on religion.

Other aspects of the law were either neglected or trivialized. In many instances, there was no mention of the discourse of citizenship or equal institutional rights. In the few instances when such issues were raised, the opponents of *khol'* used them to attack the law. For example, an article published in *Al Ahrām* on 2 February 2000 suggested that denying a husband the right to appeal a *khol'* court decision would be a violation both of *shari'a* and of the constitutionally granted right to appeal.

Those who criticized the *khol'* law for benefiting mostly wealthy women did not do so in order to advocate poor women's rights; they simply wanted another reason to attack the law. *Al Wafd*, for instance, said the law would discriminate against poor women, but *Al Wafd* does not really care about poor women; for instance, when it was suggested husbands should pay 60% of their income maintenance, rather than 40%, *Al Wafd* vigorously attacked the proposal (29 February 1999).

The discourse of human rights was absent, except when it served the conservative agenda. For example, on 29 January 2000 *Al Wafd* declared the application of *khol'* was a violation of human rights because it represented a violation of family privacy and challenged men's authority and hegemony in the family. Generally speaking, the press rarely addressed the issues of women's rights, equality, or emancipation. They always spoke in terms of the family.

Although there were some exceptions, the press, whether it was for or against the law of *khol'*, was dominated by a patriarchal perspective that, by definition, promotes the dominance of males within the family and society. Officials and non-officials alike justified their views in the name of the family. For example, on 5 January 2000 *Akher Sa'a* magazine published an interview with the minister of justice, Mr. Seif Al Nasr, in which he discussed the explanatory note on the law of personal status. He did not say a single word about women's rights, nor did he suggest the law was intended to protect women from violation of their rights. His

entire interview was couched in terms of the security and stability of the family.

Moreover, the governmental media campaign took pains to emphasize that the law would not compromise the right of a man to be the main 'protector and maintainer' of his family (*qewama*). Men were assured that their status as the 'protectors and maintainers' (*qewama*) would be fully observed. *Al Ahrām*, for instance, on 19 January 2000, emphasized that the new law would not violate any of a husband's rights and that no women's rights were guaranteed at the expense of men's.

The press limited their discussion of *khol'* to the proposal regarding the law of personal status procedures. They never broadened the debate to consider the possible need to amend the substantive text of the personal status law itself. *Khol'* was discussed simply as an alternative to regular divorce in cases where a wife could not prove or present sufficient evidence of the harm she had suffered. The official newspapers underplayed the gains women might win from the application of the law. Moreover, they emphasized that the law would not constrict men's rights, and they neglected to mention any loss that a man could suffer.

One reason for this is that from the start of the process the government resolutely maintained a distance between itself and gender equality advocates and feminist groups. Just as resolutely, it declined to argue for the new law as supportive of women's rights. This did not prevent newspapers like *Al Waḥd*, *Al Sha'b*, *Al Araby* and *Al Usbou'* to question the intention of the new law.

Reasons for the press's opposition to *khol'*

The conspiracy theory

Much of the press coverage concentrated on asking who was behind the law. The famous writer Fahmy Howaidy noted that there were a lot of questions raised concerning who is behind the law and what are their goals (*Al Ahrām* on 26 January 2000). Abd el Salam Ibrahim Gheidan wrote that he was sure that 'those who prepared this proposal and all of the others who supported it from the very beginning were not sincere persons, and that they had mysterious attitudes as well' (*Al Sha'b*, 22 January 2000).

Al Sha'b and *Al Ahraar*, and to a lesser extent *Al Wafd*, stated that the whole issue of amending the personal status law was a western and Zionist conspiracy to destroy the Muslim family. Someone interviewed by *Al Sha'b* said: 'It is obvious their [Western and Zionist] guilty hands worked to revive this proposal in order to damage the Egyptian family' (*Al Sha'b*, 21 January 2000). Moreover, *Al Sha'b* emphasized that it knew that 'there were outside forces that imposed the proposal of this law and that these forces possess enough power and capability to impose the law itself'. They were not alone in trying to link the law to a western conspiracy to impose western values and a vision of women's emancipation on Egyptian society. They viewed the law as a conspiracy between western and Egyptian feminist movements.

Some articles conjectured that the law was exclusively formulated to complement the International Conference on Population and Development (ICPD) that was held in Cairo, 1994, and the International Conference on Women held in Beijing, 1995. One of the articles said: 'The proposed law aims to achieve some of the objectives that the International Conferences on Women failed to realize. It is a beginning of serious dangers' -- in other words, neither of these conferences was perceived as positive and constructive for Egyptians. *Al Wafd* said: 'This law is a result of the International Conference on Population and Development, [and it will] will lead to the destruction of the Egyptian family as a social entity' (23 January 2000).

For these newspapers, the law was an example of the negative impact of globalization on Egyptian culture; *Al Sha'b* said: 'The proposed personal status law has more dangerous connotations than merely being a catastrophic public performance of poor governance; it is associated with the Zionist globalization that attacks our society' (19 January 2000). The law revealed, the paper said, the extent to which Egypt had submitted to the pressures of outside conventions, as well as cultural imperialism and colonialism.

Magdy Houssein published a series of articles that attacked the basic principle of gender equality, which he said works to 'destroy the Oriental Islamic society...based on the integral unity of the family' (*Al Sha'b*, 19 January 2000). He added that gender equality is antithetical to the Islamic principle of *qawama* (that men are the 'protectors and maintainers of women', and consequently, have the right to exercise power over them): 'The underlying logic of the legislation of *khol'* is the concept of absolute

gender equality, a matter that absolutely and practically negates the logic of the male right to *qewama* [to be the protector and maintainer]'.

A new law viewed as unnecessary

Opponents of the law of *khol'* took the position that there were no social problems associated with the personal status law as it stood, at least not for the vast majority of people. Adel Mohammed Khalil wrote in *Al Sha'b*: 'The difficult economic situation of the society is the main pressure that affects Egyptian household members, men and women' (11 February 2000). *Al Usbu'* said: 'We should not consider some rare individual cases as a justification to amend well established situations that do not represent a common social complaint' (24 January 2000). These detractors claimed that poor Egyptian women and their families suffer a lot of economic difficulties, not personal status problems (*Al Wafd*, 24-1-2000). A comprehensive report in *Al Araby* on 16 February 2000 suggested that rural women were living under long-standing and well-established conditions, and had requested neither the right to claim *khol'* nor the right to equality. According to this writer, rural women have no family problems. Rather, they suffer from illiteracy, poverty and endemic diseases.

It is certainly important to consider the often severe economic difficulties that afflict the lives of women. However, it is a gross misrepresentation of the complexity of women's lives to assume that their economic problems render personal status issues irrelevant, or that women's concern to feed their families means they don't also experience marital problems. Such distortions of the real life situations of poor women are dangerous and are clearly attempts to manipulate their poverty in support of a specific political agenda.

The emotional and immature nature of women

The media coverage of *khol'* revealed how widespread is the belief that women are weak, perpetual minors and imperfect human beings. Public discussion often presumed that women could be misled easily by emotions. An interviewee told *Al Usbu'*: 'Women are affected by obsessions and emotional inclinations' (24 January 2000). It was also argued that women go astray easily and at the first opportunity; they are 'passionate' beings that 'may rush after [their] emotions and abandon [their] families and children'.

One of the most recurrent justifications for not allowing *khol'* was that women could get angry and rush to make a decision of *khol'* that they would regret later. One journalist claimed he had 'met psychiatrists who know that "*divorce me*" is the phrase that is most frequently used by Egyptian wives in their homes' (*Al Sha'b*, 11 February 2000).

Women were portrayed as persons who need to be protected from themselves and their unsteady emotions. Some journalists suggested such protection could be provided by two arbitrators, who would study the *khol'* request before the case was referred to a judge (*Al Akhbaar*, 31 January 2000).

Dr. Mahmoud Belal Mahraan wrote in *Al Ahrām* on 15 January 2000 that the law would be utilized

by evil hearted and psychologically sick persons who favour destroying established households and seducing and enticing vulnerable wives who are easily deceived.

An interviewee in *Al Sha'b* on 25 February 2000 stated that:

Such wives include wives who are not satisfied by living under difficult economic conditions and look forward to changing these conditions; thus, they are ready to respond to any seduction of a wealthy man, so, they will seek khol' to satisfy their greed through a better marriage.

Al Araby published an article, entitled 'The Law That Destroys Personal Status Affairs', where a man stated that the reason for granting the right to initiate divorce to men only is that women are easily moved emotionally, and that if wives are given the right to divorce, all of them would get divorced in a week (*Al Araby*, 1 January 2000).

Double standards ruled the debate entirely. No one questioned the right of a man to divorce his wife, even if he hadn't thought about it for more than a moment. It is an accepted idea that a man is a rational creature who works to protect his family. No one questioned the moral integrity of men who chase other women and abandon their helpless wives and children to scrape out a living as best they can. Some newspapers and magazines unsatisfactorily attempted to justify this

double standard. For example, one reporter expressed the view that a woman who has a family has no right to ask for divorce, even if she hates her husband. He said:

I personally think that a woman who has children has no right to ask for divorce, even if she hates her husband. I imagine also that the issue of a woman's hatred for her husband is exaggerated, because if she really hated him, she would never have married him in the first place.

The article added that a man who commits a mistake will be accountable before God, and that no law should intervene to limit a husband's freedom.

***Khol'* and disruption of the Egyptian family**

One of the reasons stated by many in the press for their rejection of *khol'* was their belief that *khol'* would result in the eventual destruction of the Egyptian family. In contrast, the official Egyptian newspapers claimed that the law would benefit and protect families and society as a whole by offering an alternative to the already existing divorce system with its very long court procedures. (See the article entitled, 'Farewell to Humiliation in the Courts' in *Al Akhbaar* on 1 February 2000; the comments of counsellor Fathi Naguib in *Al Akhbaar* on 8 May 1999; the statements of honorable Sheikh Al Azhar on the law and the protection of the family and society on 13 December 1999; and the article, 'Farewell to Women's Sufferings in the Courts' in *Al Ahraam* on 12 February 2000.) These articles gave elaborate explanations of how the long years of waiting for court decisions would come to an end after the new law was in place. They presented the *khol'* law as if it were a real solution to all the problems of divorce. The newspapers *Al Akhbaar*, *Al Ahrām* and *Al Jamhoreya*, as well as the magazine *Nisf Al Dunia*, all recognized that women who have sought a court-decreed divorce often have had to wait for many long years.

All the other newspapers predicted that the *khol'* law would lead to an increase in the divorce rates, and that at least a million and a half women would apply for *khol'* as soon as the law was passed. They also suggested that the law would lead to an increase in the number of unmarried women by discouraging men from marrying. Ezzat Al Sa'dany wrote in *Al Ahrām* on 29 January 2000, 'We have already a big number of spinsters, so what do we expect when we give women the right to *khol'*'

***Khol'* and public opinion**

A press review published in *Al Ahrām* after the *khol'* law was approved asserted that the legislative procedure had been entirely democratic and transparent. *Al Ahrām* reported the prime minister saying that parliamentarians had made amendments to the law to reflect the feelings of their constituents. However, the opposition press claimed that the law was not supported by Egyptian public opinion.

Al Wafd said in an editorial on 28 January 2000 that the government had pressured parliament into approving the law. On the same day *Al Sha'b* said parliament had ignored the opinions of those theologians who warned that such a law would be dangerous, and had approved a law that was intended to destroy the family. *Al Sha'b* claimed the government had insisted on the law in spite of widespread opposition, including from about 60 parliamentarians. According to *Al Sha'b*:

The government succeeded by threats and rewards [literally: the governmental sword and gold - '*Seif al hukuma wa zahbeha*'] to intimidate the parliamentarians and oblige them to abandon their opposing views to the law under the pressure of such threats.

Al Wafd stated that the law faced strong opposition from various sectors of Egyptian public opinion, particularly young people, and that women and men were equally opposed to it. *Al Ahraar* on 1 January 2000 said their criticisms of the law echoed the sentiments that women had expressed in interviews, because, they said, Egyptian women were unwilling to go beyond the sacred text.

The Motives behind press attitudes to the *khol'* law

There are many possible reasons for the Egyptian media's failure to give the new *khol'* provisions appropriate coverage. They include:

The dominance of patriarchal values

The dominance of patriarchal values in our society is the first and probably the most important reason. Such patriarchal values are often biased against women. Even people who defended the law did so by talking about family rights rather than women's rights.

Many of the opinions expressed were so anti-women that they threatened any advances women have made. Opponents of *khol'* went further and questioned women's right to work, saying that women should stay home while men go to work. In fact, one of the most important claims that recurred often in such articles was that men should regain their hegemony over the family.

The effect of the political parties on press attitudes

Every Egyptian newspaper reflects the ideology of the political party that publishes it. Accordingly, *Al Ahrām* reflected the attitude of the government by emphasizing the positive aspects of the law and its identification with the *shari'a* rules. *Al Wafd'*s campaign against the law of *khol'* probably had everything to do with Wafdist political leader Yassin Seraag Eldin's opposition to the law. As for *Al Sha'b* and *Al Ahraar*, they were evidently under the effect of the extremely radical conservative Islamist ideologies that opposed the law and have often clashed with the government. Such political influence on press coverage was evident in the fact that each newspaper praised the performance of those parliamentarians associated with the party that publishes it.

Poor awareness of the social situation

Another reason is that the voice of women's rights advocates was very weak, and it was often absent, particularly the voices of NGOs working on women's issues. They did not intervene to defend women against the caricatures that undermined women's value and status. These champions of women were silent.

However, very occasionally an excellent article with a feminist perspective would appear, like that by Dr. Adel Abu Zahra in *Al Ahrām* on 18 January 2000, 'Lack of Security to Men and Violation of Women's Dignity'. And in one feature in *Rose Al Yousef* magazine, many advocates of women rights were interviewed.

Conclusion

From the above review, we conclude that feminists, human rights activists, and any other group with an interest in changing the media discourse on women's issues need to prioritise the planning and implementation of systematically organized advocacy campaigns. Such campaigns should respond instantly to negative press coverage of women's issues and should work purposefully to voice alternative perspectives.

Some of the steps to be taken include writing in a professional style to newspapers in order to express objection to what they have published, making a phone call to the editor in charge of the page in question, and many other strategies through which we could express our disagreement with what has been published. (A detailed discussion of strategic engagement with the press is out of the scope of this paper.)

Usually the leaders of the feminist movement talk about the need to train journalists and raise the level of their gender awareness so that their press coverage of women's issues would show greater understanding. This may be a good thing to do. However, the leaders of NGOs and the feminist movement also need to be trained in how to address the media and how to relate their media message effectively. It is important to open channels of communication between ourselves and journalists, media personnel and editors.

It is also evident that there is strength in numbers; thus, a coalition between those with an interest in improving the image of women in the media and members of NGOs would be more effective than individual initiatives because the concerned individuals could share and exchange information. Moreover, all current efforts to improve the image of women in the media should be maintained.

We need to understand that, just as the process of achieving social change is long and slow, so working to change press attitudes has to be a long-term endeavour.