

Women's Rights In Egyptian Law: The Legal Battle For A Safer Life

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Egypt's history has witnessed notable strides in connection with women's rights. Meanwhile, Egypt is a signatory of the significant international conventions on gender equality. Nevertheless, interference to change women's position is faced with colossal failure sometimes. One of the reasons could be the lack of relevant legislation. Other essential obstacles include social practices and stereotypes that prevent the application of the rule of law. The absence of community support is the third reason. Finally, misconceiving

Islamic religious rules impacts women's rights in Egypt. Solutions include legal reform and complementary policy actions; allowing real political participation; opening the door for women initiatives; teaching gender in schools and universities; and ensuring better access to resources when it comes to economic rights is another possibility.

Keywords: Egyptian Women, Women's Legal Rights, Gender Equality in Egypt, Women in Law, Gender and Law

Introduction

Debates about gender equality are not new to Egypt. Egypt ranks lower in gender equity than many other countries worldwide. Most scholarly work analyzing gender equality and the law, as well as women's rights in Egyptian laws, focuses on the lack of legislation or on flawed laws. Lack of academic work on women's rights is an essential barrier to women's rights in Egypt. Nevertheless, other factors are equally important in promoting gender equality in Egypt. This paper includes a more profound argument on gender-related dynamics and constraints than focusing on the demand to issue new laws or to amend current legislation to protect Egyptian women's rights.

The paper presents four different case studies of causes that negatively affect gender equality in Egypt and impede the feminism movement. The first case study explains how social norms and societal practices are more potent than laws and regulations to the extent that they hinder the rule of law and prevent the application of the relevant laws, regulations, and legislative policies. The second case study discusses how a lack of community support renders the existing legal framework ineffective or at least undermines its efficiency. The main difference between the two cases is that, in the first case, social

norms that are equal to or even more powerful than existing laws prevent the latter's application. However, in the second case, there are no social norms that prevent the implementation of the law; instead, it is the community that feels burdened by the laws and accordingly decides to ignore them.

The third case study analyzes how different ways of understanding religions could affect the issuance of relevant laws and regulations, which in turn undermines the efficacy of such legislation. In this case, we have laws and regulations that are issued based on religious rules. Still, these laws imply a misconception, rather than a violation of religious rules. The last case study explains the relationship between the absence of a legal framework and gender inequality in an attempt to confirm that legislative gaps and flawed legislation are still elements that affect women's rights in Egypt, but not the only elements.

Social Norms and Challenges to the Rule of Law

According to Mahmoud Elsaman ("Between Rule of Law and Social Norms" 12-13), existing social norms are sometimes strong enough to prevent the application of laws, regulations, the proper functioning of the rule of law. An excellent example given by Elsaman is the declin-

ing appointment of women to Egyptian courts. However, the new Egyptian Constitution, following a revolution, has for the first time expressly provided for women's right to work as judges in Egypt based on the concept of gender mainstreaming (Elsaman, "Between Rule of Law and Social Norms" 12-13).

Elsaman's argument seems very sound, since the 2014 Constitution is the first legal document in Egypt that provides explicitly and without any qualifications for gender equality between men and women (The Constitutional Declaration of the Arab Republic of Egypt 4). That contrasts with the previous constitutions that used general terms to express gender equality such as "citizens are equal before the law"; "the state shall provide equality"; or "no discrimination shall take place based on sex" (The Constitution of the Arab Republic of Egypt 40). Most importantly, the new Constitution is very detailed, mentioning the various aspects of equality in terms of nationality, work opportunities, civil rights, political rights, economic rights, social rights, and cultural rights. The text of the new Constitution extends further to confirm women's rights to join the Egyptian judiciary. It seems that the intention behind such writing is to reflect the revolutionary spirit of the January 25 uprisings and turn it into constitutionally mandated

liberties. Thus, gender equality and women's rights in the new Constitution comply with the modern liberal vision of the new state (McLarney, "Women's Rights in the Egyptian Constitution: (Neo) Liberalism's Family Values").

The historical legal incident that first triggered the debate over the right of women to be appointed to Egyptian courts is Aisha Rateb's case. This lawyer applied for the position of judge in the administrative court system represented in the State Council of Egypt in 1949 (Messieh and Gaber, "A Win for Women in Egypt's Courts"). The Supreme Administrative Court declined Aisha Rateb's application based on her gender. Sixty-two years after Rateb's case, Omnia Taher, a young lawyer, filed a lawsuit claiming her right to join the State Council as a judge. The suit has not been decided yet; however, the Unit of the Commissioners of the State Council submitted their report in January 2017, advising the court to dismiss the case. It is worth noting here that Rateb's Judicial Decision of 1953 was issued in the light of a constitution that generally provides for gender equality between men and women without expressly providing for women's right to hold public posts. In contrast, the judicial reaction to Taher's suit represented in the Commissioners' report of 2017, is issued in light of the 2014

Constitution, which not only provides for gender equality, but also specifically for women's right to hold judicial posts. Accordingly, the Commissioners' report of 2017 is inconsistent with the rule of law and conflicts with a constitutional rule (Elsaman, "Between Rule of Law and Social Norms" 12-13).

Here comes Elsaman's core argument is that the existence of defective social norms adversely affects development and contradicts the application of the rule of law. According to Elsaman, social norms are informal rules that individuals feel obliged to follow either because they have an inner feeling of duty towards them or because they want to avoid the social sanctions that result from the norm (Brennan and Anoma, "Social Norms, the Invisible Hand, and the Law" 2). The prevailing social norms that prevent women from being judges in Egypt include the difficulty of administrative work, the lack of workplace stability, the oppressive social commitments of women, and the conservative nature of Egyptian society. Some argue that administrative work is difficult for women to handle, mainly because it requires women to spend long hours away from their homes and children. Also, judges are usually required to relocate to prevent them from establishing social relationships with litigants and petitioners,

to guarantee impartiality. It is socially hard for women in Egypt to leave their families and relocate (El Sayed 135). Further, it is argued that women cannot handle administrative work, e.g., prosecutors' duties related to sexual crimes. Mainly, Egyptian women are conservative and sensitive to some sorts of cases that entail sexual content, such as cases of rape or sexual harassment (Elsaman, "Between Rule of Law and Social Norms" 12-13). Generally, most opinions conclude that women are excluded from the judiciary due to the nature of Egyptian society. They state that the community itself is not ready to accept female judges.

Elsaman concludes that the existence of defective social norms deprives society of various chances for development. It might also undermine respect for the rule of law. The Egyptian case of denying women's right to work as judges deprives Egyptian society of women's contribution to enhancing the judiciary. Moreover, defective social norms in Egypt have violated the rule of law by breaching the relevant constitutional principles.

Another example of how social norms impair the rule of law and prevent the implementation of gender equality as established in the 2014 Constitution is political rights. Article 11 provides that:

The State shall ensure the achievement of equality between women and men in all civil, political [...] rights in accordance with the provisions of this Constitution. The State shall take the necessary measures to ensure the appropriate representation of women in the houses of representatives, as specified by Law. The State shall also guarantee women's right of holding public and senior management offices in the State. (The Constitution of the Arab Republic of Egypt 4)

According to the OECD, over the past 20 years, the level of women's representation in the Parliament has remained either under 3% (following the elections in 1995, 2000, 2005, and 2012) or at 13% and 15% (following the votes in 2010 and 2015). For the first time, a quota system was instated for the 2010 and 2015 parliamentary elections. Currently, women hold 15% of the parliamentary seats, the highest proportion of women ever to serve in Egypt's parliament. Nevertheless, while these improvements are encouraging, the percentage of female elected parliamentarians in Egypt remains low compared with the majority of countries in the Middle East. Meanwhile, 15% female representation in the Parliament is a meager ratio compared with 85% of male representa-

tion (OECD “Women’s Political Participation in Egypt”)

Egyptian society has been influenced by resilient cultural arguments that discourage women from participating in public life. Egyptian women’s participation in public life is dealt with as a challenge to traditional social roles for women, which establish that leaving political work in the hands of men achieves better results for society. Socially, women are said to lack the ability to make effective political alliances. Social norms, for example, are reported to have dictated that public events in villages and governorates are appropriate for male politicians to campaign at, but not for women. The same applies to mosques, which reduces women’s opportunities to convince citizens to vote for them (OECD “Women’s Political Participation in Egypt”). Another blatant example of the breach of the rule of law based on social norms is legislation that contains clauses contrary to what has been established in the Constitution. Sometimes the constitutional guarantees have been undermined with limiting clauses such as “to be regulated by law.” (El-Ashry and Arafa, “Gender Equality in the Arab and Muslim World”) In this case, constitutional guarantees have little effect in practice where legislation continues to contain gender inequality (El-Ashry and

Arafa, “Gender Equality in the Arab and Muslim World”).

This argument sounds correct in that having such generic terms can undermine the efficacy of gender equality as a constitutional principle. Nevertheless, in the case of the new Egyptian Constitution, none of these terms were used to confirm gender equality. Thus, while the Constitution makes it clear that

The State shall ensure the achievement of equality between women and men in all civil [...] social [...] rights following the provisions of this Constitution (The Constitution of the Arab Republic of Egypt 4),

the Egyptian Penal Code discriminates against women. The penalty for committing adultery goes up to two years for women, which is severer than for men, whose punishment is limited to a six-month sentence. Evidentiary standards also differ in that a man must commit adultery at the marital house, while women’s act is punishable wherever it occurs (Law Promulgating the Penal Code, 274 and 277). The reason behind such discrimination in penalty is that the negative psychological effect of the incident on men is considered more severe than on women.

It is worth noting here that this distinction has no basis in *Shari’a* law.

Dumping Family Responsibilities and Lack of Community Support

According to the new Egyptian Constitution, the State is committed to achieving employment equality among all citizens. The Constitution also provides that

the State shall ensure the achievement of equality between women and men in all [...] economic [...] rights. The State shall [...] ensure enabling women to strike a balance between family duties and work requirements (The 2014 Egyptian Constitution 4).

In the same context, the Egyptian Labor and Employment Law has a set of specific rules on the employment of women to enable women to carry out their duties to their families and children without suffering prejudice or deprivation of rights at work (Law No. 12 of 2003 on Labor Law). For instance, it prohibits discrimination in employment opportunities, work conditions, and salaries.

Moreover, it grants women some special privileges related to their physical nature, such as paid maternity leave, childcare, breastfeeding hours, and protection against dismissal during these times.

Other benefits include granting women the choice to terminate an employment contract for marriage, pregnancy, or maternity. The only limited legal restriction on jobs for women is related to those jobs that do not fit their nature, such as mining, working with asphalt, loading, and unloading (Law No. 12 of 2003 on Labor Law).

The above legal framework should have ensured at least an employment rate close to that of men; however, according to Amal Khairy, women are actively discriminated against, with only 26% of them in the labor force (Khairy and Mohamed "An Analysis of the Gender Pay Gap"). Moreover, statistics show inequality in payment by gender, particularly in the private sector (Khairy and Mohamed "An Analysis of the Gender Pay Gap"). Also, favorable working rights granted to women by the Employment Law sometimes result in discrimination against them. Thus, employers are overloaded with obligations towards women employees, which leads them to prefer a male workforce. The various types of work leaves, requiring employers to establish nurseries once the number of female employees reaches a certain percentage, and the requirement to implement security measures if women work at night and others are examples. Furthermore, a rough working environment for married women in par-

ticular leads them to prefer public sector jobs, thinking that they are less challenged by the lower workload (El-Ashry and Arafa, "Gender Equality in the Arab and Muslim World").

Lack of community support need not impair the application of the rule of law. Also, it does not reflect legislative gaps, and a comprehensive legal framework exists. However, women's rights are still negatively affected by the lack of support and of facilities provided by the community. Also, family burdens and societal overwhelming of women with more obligations and requirements stand between women and gender equality.

Misconceiving Islamic (*Shari'a*) Law

Article 3 of the Constitution provides that

The principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their status, religious affairs, and selection of spiritual leaders (The New Egyptian Constitution 3).

This provision has always existed in Egyptian constitutions throughout Egypt's modern history. The basis of family law in Egypt has always been Muslim law or *Shari'a* Law, as the majority of Egyptians are Muslims. Minorities (which make up

less than 10% of the population) such as Christians are subject to their own rules (El-Kharboutly and Hussein, "Law and the Status of Women in the Arab Republic of Egypt" 35). The strong effect of *Shari'a* Law becomes evident in the general reservations Egypt made to the CEDAW agreement that "Egypt is willing to comply with this Article provided that such compliance does not run counter to Islamic *Shari'a* law." (CEDAW). Reservations apply to Article 2 on *Policy Measures*, Article 16 on *Equality in Marriage and Family Life*, and Article 29 (2) on *Administration Of The Convention And Arbitration Of Disputes* (CEDAW).

Having said this, the critical question in connection with family issues is how *Shari'a* Law is interpreted and conceived, since it is the primary source of family law rather than the family law rules themselves. Another, related question is who interprets *Shari'a* Law. The expression *Shari'a Law* means, first, the rules derived from the primary sources of Islamic law 19/06/20 14:20, namely the Holy Book of *Qur'an* (Glossary of Islamic Legal Terms 99), which Allah dictated word for word to his Prophet Muhammad (PB). The second source is *Sunna* (Glossary of Islamic Legal Terms 90), which means the practice of Prophet Muhammad (PB), taking the form of actions, oral statements, or

consensus in an attempt to explain *Qur'an*. Then come another two supplementary sources called secondary sources (Bassiouni and Badr 138-140) that include the *Ijma'* and the *Qiyas* (Glossary of Islamic Legal Terms 99). *Qur'an* is the primary source of *Shari'a* Law, working as the legal code and a reference for Muslims' behavior. The *Qur'an* is the highest source of the *Shari'a* Law, with rules that are not arguable and cannot be modified by rules derived from any other sources (Bassiouni and Badr 138-140).

Through the Sunna (Glossary of Islamic Legal Terms 99), Prophet Muhammad (PB) interpreted, explained, and completed the principles revealed in the *Qur'an*. Hence, the Sunna cannot contradict the *Qur'an*; otherwise, it is not a trusted Sunna and should not be considered. Where the *Qur'an* and the Sunna do not guide on specific issues, the supplementary sources of *Ijma'* and *Qiyas* apply. *Ijma'* is established through the unanimous opinions of the professional and knowledgeable Muslim jurists of each era. In the end, any conclusion reached through *Ijma'* must conform with the primary sources of the *Shari'a*, the *Qur'an* and the Sunna. *Qiyas* is a method of analogical reasoning that aims to govern a new situation with an old rule as long as this latest situation is similar to that dictated by the old law. *Qiyas*

derives its reliability as a source of the *Shari'a* from the *Qur'an* and the Sunna (Bassiouni and Badr 138-140).

Based on the above, it seems that *Shari'a* law is not inflexible dogma. Also, changes in society necessitate an adaptation of law to time and circumstance. However, many factors affect the interpretation of *Shari'a* law and, accordingly, women's rights and gender equality in the Muslim world. Outdated beliefs and traditions, state policies, the absence of female Muslim jurists (particularly in the committees established to interpret *Shari'a* law), and the low rate of education led to misconceptions of Islamic practices and accordingly to discriminatory norms against women that are claimed to be based on *Shari'a* law.

A good example is the interpretation of the *Qur'anic* verse on polygamy. The verse reads,

And if you fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that ye shall not be able to deal justly, then only one... (Yusuf Ali Sura 4, Verse 3).

A radical interpretation of the verse allows Muslim men to marry more than one wife. Mohamed Abdou, a leading 19th-century Egyptian theologian and reformer, notes

that the welfare of the society is superior to the satisfaction of the sensual desire of individuals, and that the stipulations on polygamy are particularly challenging to meet (Amira, "Islamic Law and Gender Equality" 27).

Amira Mashhour's reading of the *Qur'anic* verse on polygamy, together with the historical context, leads to the conclusion that Islam discourages polygamy. Mashhour correctly argues,

The verse was revealed after the murderous battle in which there was a large number of male Muslim casualties, thus increasing the number of widows and orphans for whom protection was required. That is why this verse was introduced to protect the widows and children of martyrs. Hence, allowing the survivors to take additional wives was a way of providing the widows and orphans with some physical and financial protection (Amira, "Islamic Law and Gender Equality" 27).

The Egyptian Family Law was developed to amend the conditions of polygamy over time by requiring husbands to confess any existing marriage and to officially notify the first wife of the new marriage. Also, the wife's right to ask for a divorce if her husband takes a second wife is recog-

nized (Law No. 100 of 1985 Amending No. 25/1929). Meanwhile, other jurisdictions, such as Tunisia, prohibit polygamy, though Tunisia is a Muslim country.

Another example is divorce rules. According to *Shari'a* Law, divorce is a man's right, provided he follows the relevant restrictions and limitations of the *Shari'a*. The details of divorce are outside the scope of this article. In return, women have a similar right, which is *Khul*. *Khul* means leaving part of a woman's dowry to her husband to get a divorce. *Khul* is an absolute individual right for women. Though this is the situation in *Shari'a* law, Egypt's family law was unjust to women in the area of divorce for ages. To seek a divorce, women had to go through a long process of showing evidence of harm caused by their husbands and other elements. In 2000, a new law was issued to allow women to seek a divorce in the form of *Khul* (Law No. 100 of 1985 Amending No. 25/1929).

A third example is inheritance law. Two types of rules govern inheritance in *Shari'a* Law. *Ashab Al-Frood* are ten defined persons, six of whom can be women entitled to a *defined share* of the estate. *Al-'Asabat*, are those entitled to the balance of the estate after distributing the shares of the *Ashab Al-Frood*. In *Al-'Asabat*, when a man and a woman have the same level (such as

a brother and sister), the woman is entitled to half as much as the man. The rationale is to assign a financial responsibility to the man to provide household expenses after the father's death, to give sisters the expenses for marriage, and to provide for his own family as head of the household. In contrast, his sister will be provided for by her husband. Egyptian inheritance law codifies only the first part of the rule, which is giving a sister half her brother's share, without the second part, assigning the brother the financial responsibilities explained by *Shari'a* Law (El-Ahsry and Arafa, "Gender Equality in the Arab and Muslim World" 3). Some countries, such as Tunisia, try to avoid *Shari'a* Law inheritance rules, claiming that it is unfair. However, the reality is that *Shari'a* Law inheritance rules are not adopted in the right context, as explained.

To sum up, the misconception of Islamic *Shari'a* Law has contributed to a long-prevailing misunderstanding. Most importantly, laws are issued based on this misunderstanding or radical perception of *Shari'a* Law, which should be reconsidered.

The Absence of Organizational Legislation and Flawed Legislation

Though the Egyptian Constitution provides, "...[T]he State shall protect women

against all forms of violence..." (The New Egyptian Constitution 11), no laws have been issued or amended to combat domestic violence against women; sometimes a relevant law is promulgated, but it is so poorly drafted that it cannot efficaciously detect abuse, as in the case of female genital mutilation (FGM).

According to the OECD, domestic violence, particularly by partners and family members, is considered permissible because of the relationship of the woman to the perpetrator. A 2015 study found that almost half of the women aged 18 to 64 and ever married reported spousal violence (OECD). 70% of domestic violence crimes against women are perpetrated against wives, rather than daughters and mothers. Few countries in the Middle East area, particularly North Africa, have laws against such violence. Another example is marital rape. No provision in Egyptian law prohibits marital rape.

On the other hand, the Egyptian Penal Code has been amended recently to criminalize FGM. Also, in 2012, the Egyptian Supreme Constitutional Court recognized FGM as an infringement of the physical integrity of a human being. Nevertheless, statistics show that 9 out of 10 women in Egypt aged between 18 and 64 were victims of FGM. The percentage increases in Upper Egypt and the rural areas. The

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question here is why FGM is spreading in Egypt while it is illegal. The answer is found in the poor drafting of the criminalizing law.

To explain, Article 242 of the Egyptian Penal Code defines FGM as acts of female genital mutilation, by removing any of the external female genital organs, whether in part or whole or by inflicting any injuries to these organs without medical justification (Law Promulgating the Penal Code 242).

Adding this limiting clause *without medical justification* renders the provision devoid of meaning, or at least undermines its value by opening the door to bending the rules. Most importantly, the law does not define what constitutes *medical justification*. Moreover, Article 242 (a) criminalized requesting FGM, but did not mention aiding or abetting the practice (Law Promulgating the Penal Code 242).

These examples show that lack of laws or having a defective law remains one of the main reasons behind the inability to provide the proper legal protection for women's rights.

Any Way Out?

As we see from the above four case studies, many factors affect having a safe, legal

environment for women in Egypt. The absence of law is a crucial one, as evidenced in case four. Other factors, too, affect the rule of law and prevent the application of laws. In case one, social norms are more effective than legislation to the extent that they hamper the implementation of the rule of law. Case two shows that lack of support from the community can lead to gender inequality despite good legislation. Finally, in case three, the misconception of *Shari'a* Law, as well as some other external factors, might lead to gender inequality in the laws and regulations based on *Shari'a* Law. Here is another essential argument of this paper. Gender equality and protection of women's rights in Egypt cannot be achieved by merely amending a law or adding a few provisions that restate the right of women to practice their rights freely without discrimination. Other measures must be adopted to overcome these obstacles.

Enabling real political participation and opening the door for women's organizations and initiatives is an efficacious possibility. Elsadda correctly argues that any politically motivated gender equality laws arising out of a corrupt agenda rather than years of work on a women's rights regime do not lead to real achievements (Elsadda, "Women's Right Activism" 84-93). Elsadda

gives an excellent example in the establishment of the Egyptian National Council for Women under Mubarak and his ex-first lady, who appeared as the champion of women's rights. Thus, instead of supporting the women's rights movement, the Egyptian National Council for Women competed with existing women's organizations and tried to monopolize speaking on behalf of all Egyptian women. The result is that most of the legislative reform that has taken place in this era led to immense social problems on the ground, rather than satisfying the demands for women's rights (Elsadda, "Women's Right Activism" 84-93).

Teaching about gender at schools and universities could be an important step. Thus, the radical traditions and wrong societal practice and misunderstanding of women's rights are a strong obstacle embracing new attitudes in practice. This underscores the importance of gender education, particularly in rural areas. Similarly, ensuring better access to economic resources and employment opportunities is another possibility.

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