



FAMILY STATUS ISSUES AMONG EGYPT'S COPTS: A BRIEF OVERVIEW

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The following article discusses the impact of the Egyptian Family Status Law of 1955 (which is still in effect) on the country's Coptic population. It provides a concise overview of these laws, especially in light of the dearth of resources in English on the topic. While the Family Status Law is considered part of the "civil" code of law, it still has religious elements, referring to the Shari'a as a basis for Muslims, and to the corresponding religious principles or regulations for each of the non-Muslim communities. However, due to the general constitutional stipulation "Islam is the religion of State and principles of Shari'a are the main source of legislation," courts quite often ignore the law and rule based on Shari'a. Thus the situation is a reflection of the difficulties of being a non-Muslim minority in an "Islamic" country and society.

INTRODUCTION

In 1955, a family status law was applied to all Egyptians. While considered part of the "civil" code of law, it still has religious elements, referring to the Shari'a as a basis for Muslims, and to the corresponding religious principles or regulations for each of the non-Muslim communities. However, due to the general constitutional stipulation that "Islam is the religion of State and principles of Shari'a are the main source of legislation," courts quite often ignore the law and rule based on Shari'a.

The legal marriage age in Egypt is a somewhat confusing matter due, in part, to contradictions between the age of majority according to civil law and according to the Shari'a. This in particular represents a serious loophole in the case of "forced conversions" of young Coptic women. Moreover, the conditions set by the law for divorce and remarriage are not always in line with the church's teachings, generating many problems. While the conditions of child custody in the case of divorce are outlined in the law, if one spouse converts to Islam, the children are forced to follow the converting parent. In addition, Christians are barred from adopting children, since the Shari'a does not permit adoption.

Thus due to the Family Status Law, and more so its application, the Copts have become entangled in a number of problems. While a draft unified personal status law for Christians of all denominations was prepared in 1980 and further revised in 1998, it continues to collect dust, as the government has been reluctant to deal with it.

Prior to 1955, family status issues were handled by the various communities. In 1938, the Coptic Community (*Melli*) Council adopted an ordinance that outlined nine reasons to be considered for divorce. In 1955, however, Family Status Law 462 was adopted and applied to all Egyptians. Accordingly, the various community courts were abolished and were replaced by civil courts (personal status courts). Article 7 of the law stipulates the application of the religious basis for divorce (Shari'a for Muslims, and the corresponding religious principles or regulations for each of the non-Muslim communities), provided that both spouses belong to the same denomination (as will be discussed below). The non-Muslim communities include:

- Coptic Orthodox, who currently represent over 90 percent of Christians in Egypt. "Official" estimates report that Christians make up six percent of Egypt's population, while the generally

accepted, “more realistic” estimates¹ place the figures at 12 to 15 percent of the country’s total population (or about 10 million).

- Coptic Evangelicals (Protestant), representing four to six percent of Christians.
- Coptic Catholics, representing one to two percent of Christians.
- Other minorities belonging to churches with foreign origins, including Orthodox (Greek, Assyrian, Armenian, etc.), Catholic (Armenian, Chaldean, Latin, Maronite, etc.), and Anglican. They represent about one percent of Christians.
- Jews, with only a few hundred left.

MARRIAGE AND DIVORCE

Marriage

There is no strictly civil marriage law in Egypt. Rather, “standard” marriage procedures are “religious” and “civilian” at the same time. The authorized priest, for Christians, or the *ma’zoun*, for Muslims (literally “the authorized” imam), performs a religious ceremony and also acts as an agent for the state. The *ma’zoun* or priest issues a formal Act of Marriage and also completes a state register, which provides detailed information and lists witnesses. It is this formal registration that is of importance to the state, whereas the religious ceremony is considered a personal matter.

As state agents, it is the duty of the *ma’zoun* or priest to record basic legal details such as identity, age, consent, value of the dowry, etc. Certain conditions must also be met. For example, in the case of Muslims, the bride-to-be cannot be under a marriage contract with another man. For Christians, however, neither party can be married or engaged. For the *ma’zoun*, a Christian woman is permitted to marry a Muslim man, but the reverse is forbidden. For the priest, both candidates must be Christians of the same confession (denomination).

Beyond these “standard” procedures, other practices have become increasingly common. The most widely talked about practice is the *urfi* marriage² (literally, “nominal” or “traditional”). While other marriage procedures require both registration and for it to be a public act, the *urfi* marriage only requires a single document (a “piece of paper”) be signed by the two partners in complete secrecy. Much debate has been generated in the media regarding the legitimacy of this practice (it is acceptable according to Islamic law, or Shari’a) and its increasing prevalence (although there are no figures available, its increasing popularity among youth and especially among university students has been reported). It is interesting to note that the media has repeatedly cited the existence of this phenomenon among Copts—even if it is rare. In the eyes of the Church, such a practice is considered adultery.

A restricted form of civil marriage, in the presence of a public notary, would be possible in the following circumstances: 1) Both partners are foreigners; 2) A foreigner marrying an Egyptian, though an Egyptian Muslim woman cannot marry a non-Muslim; or 3) An Egyptian Muslim man marrying a non-Muslim Egyptian woman.

The matter of legal marriage age in Egypt is somewhat confusing. According to Article 44-2 of the Civil Law, the age of majority is 21 years. Article 2 of Child’s Law #1996-12, however, stipulates that a person is considered a child until the completion of 18 years. The Family Status Law sets the minimum marriage age at 18 for men and 16 for women. For those who have reached the minimum marriage age but have not yet reached the majority age, marriage is allowed with consent of the guardian. On the other hand, the Islamic religious authorities (al-Azhar) consider the age of maturity to be 16 years (for both sexes), and in some cases younger, since according to the Shari’a it is the age of puberty that is of importance (and this varies).³ While this might not appear to be a major issue, indeed it is one of the most serious loopholes in the case of “forced conversions” of young women.

“Untying” the Knot

The termination of a civil act of marriage must be authorized by the state. The meaning of the term “divorce” differs for Muslims and Christians. For Muslims, it is a man’s prerogative and is according to his own will. The court will simply comply with the man’s will after verification that his intentions to divorce are true. The man can also revoke his divorce request and remain with his wife. Yet after a three such revocations, the marriage must be dissolved. He then cannot “remarry” his wife unless she goes through a consummated marriage to another man and then divorces him. A woman can seek divorce for a number of reasons, which are regulated by the Shari’a-based law. The court’s main role, in any case, becomes one of attributing rights to the separating spouses and their offspring.

A revision to the Family Status Law, promulgated as Law 2000-1 of January 2000, improved the conditions of divorce for women.⁴ For example, it allowed women to resort to *khul*, a mechanism whereby she can obtain a divorce in return for ceding the *mahr* (dowry, or bridal gift), the *mu’akhar* (a sum usually paid if the husband initiates the divorce), and alimony.

For Christians in general, marriage—from a religious standpoint—cannot be broken by the single will of either spouse or by their combined wills (mutual consent), since it is a sacrament. For those interested in keeping communion with their own church, its consent must be sought, according to certain conditions. This consent becomes more critical if a divorcee (following a ruling by a civil personal status court) wishes to remarry within his or her church. If that church deems a divorce was not according to its teaching, remarriage will not be authorized. Thus, the individual is left with the option of remarrying in another church (usually Protestant, which is more lenient in that regard), after “converting” to the new denomination.

Generally speaking, according to Church doctrine, a marriage can be terminated through “annulment” or “dissolution.”⁵ The term

“divorce” is used in the courts and also in the Church when resulting from “adultery” (to be discussed in detail below).

For the Coptic Orthodox, Articles 50 to 58 of Law 462 stipulate the same nine points in the 1938 guidelines referred to above. The plaintiff may be granted divorce if his or her spouse commits or falls under one of the following categories:⁶

- Adultery
- Conversion to another religion.
- Absence for a period of five consecutive years with no news of whereabouts.
- Being judged and sentenced to seven years imprisonment.
- Mental illness, a contagious illness, or impotence—with no recovery for at least three years.
- Serious domestic violence.
- Debauchery or immoral behavior.
- Separation for at least three years as a result of untenable marital life.
- Joining a monastic order.

Death would naturally liberate the surviving spouse to remarry without need for a court ruling. If the legitimacy of parenthood is called into question, the courts will deal this matter.

According to the same law, other matters such as alimony, custody, inheritance (or even the recently introduced possibility of *khul*) are dictated by the Shari’a and apply to everybody, irrespective of their religion or confession. Furthermore, if one spouse “converts” to another denomination (e.g. from Coptic Orthodox to Protestant), the Shari’a is applied in the case of divorce. The relevant article of the Law 2000-1 reads:

Court rulings are made according to the Personal Status and Endowment laws in application. When there is no specific text in these laws, the most agreed-upon opinions (jurisprudence) according to Imam Abu Hanifa are to be used. However, in family status disputes between non-Muslim Egyptians, united in

denomination and confession, who had organized community courts up until 31 Dec. 1955, rulings are made according to their respective (religious) Law, without disturbing public order.⁷

While not specifically mentioned in that article, Shari'a is applied by the courts in the case that the couple was not united in denomination or when one (usually the party seeking the divorce) "converted" to another confession. This absurdity and more so its application by the courts creates a serious loophole.

THE REALITY

By the 1960s, it became clear that the civil courts had "liberally" applied the rules set in the 1955 law regarding Christian marriages—contrary to the spirit of trying to salvage the marriages as much as possible. Another important factor, which comes into play both directly and indirectly, was (and still is) the fact that some 98 percent of Egypt's judges are Muslim.⁸ Despite attempts to apply the law diligently, the predominant (Islamic) cultural concept regarding divorce inevitably leads to a tendency to grant divorce rather easily.

Then-Pope Kirolos (Cyril) VI of the Coptic Orthodox Church asked some of his bishops to examine the situation. Among these bishops was the current Pope Shenouda III. In 1971, shortly after ascending to St. Mark's seat as the 117th successor, Pope Shenouda III issued Papal Decree No. 7. The decree ordered the Clerical Council for Family Affairs (CCFA) to make the rules stricter and to only grant permission to remarry in cases in which a court's divorce ruling was essentially based on adultery.

It must be noted here that the Catholic Church does not approve divorce for any reason, even adultery. The Protestants, who are now relatively the most lenient about divorce, had until the early twentieth century prohibited divorce except in cases of adultery.

In practice, the Coptic Orthodox Church's CCFA still reviewed the cases presented for divorce with a broader scope of discretion.⁹

First, marriages could be "annulled" in cases of a major "fraud" discovered early on that would hinder normal marital life and thus expose the innocent spouse to the temptation of adultery. Examples of such cases would include if the husband were impotent, homosexual, or had a serious illness that his wife was not previously aware of.

"Dissolution," allowed in cases of "death" or "adultery," would not be limited to the literal meaning of the latter two terms. For example, the case of a spouse joining a monastic order (in reality almost unheard of) would "technically" be categorized under "death," since a symbolic death prayer is recited upon becoming a monk or nun. Most of the nine points of the 1955 Law would still be directly or indirectly valid, with the emphasis instead on saving the marriage rather than facilitating divorce.

Nevertheless, problems arose after the rules were made stricter in 1971. It is estimated that thousands of spouses who were divorced by the civil courts are attempting to obtain permission to remarry within the Coptic Orthodox Church. Media sources have reported some 50,000 cases of civil divorce, while a knowledgeable family status lawyer¹⁰ has estimated that there are approximately 12,000 cases pending of those seeking permission from the CCFA to remarry. In addition, he criticizes the bureaucratic, inefficient, and insensitive attitude of the Council, which has led to frustration among the concerned persons and families unable to reach reconciliation.

SITUATION OF CHILDREN

In Egypt, children are considered to be the father's legitimate offspring, even if they are the product of "adultery." In cases where the paternity is questionable or unclear, medical examinations (as of recently, including DNA tests) are performed. In the eyes of the Church, children are innocent and have the right to be baptized, even if they are born out of wedlock.

The conditions of child custody in the case of divorce are outlined in the Family Status Law, with the mother typically retaining

custody until the child has reached 12 years of age, after which boys may join the father. However, if one spouse converts to Islam, this general rule is ignored.¹¹ In this case, the court usually rules that the children are obliged to follow the parent with the “more noble religion” (i.e., Islam). Thus, the child is forced to convert as well.

Under Islamic law, adoption in the usual sense of the word is not permitted. “Adopted” children must carry the name of their biological parents if known. If the biological parents are unknown, the Ministry of Social Affairs must choose a family name different from that of the adoptive parents. Adopted children are also forbidden from inheriting their adoptive parents' estates unlike biological children.¹² On the other hand, the draft Family Status Law for Christians (see below) allows couples who adopt to give the child the adoptive parents' family name.

LEGAL INTIMIDATION

The Copts in Egypt are subject to various societal pressures, including in the areas of family status. There has been increasing intimidation from the judiciary system—supposedly the society's guardians of justice. The examples previously cited relating to children caught up in cases of religious conversion are not unique.

It has often been said that the second article of the Egyptian Constitution, which states that the principles of Shari'a are the main source of legislation, is directed to the legislators. Yet the judiciary does not seem to take this stand.

A recent example serves to shed some light on the implications of this constitutional stipulation.¹³ On February 23, 2007, the High Administrative Court, presided by Justice Muhammad al-Husayni, and including five other member judges (all Muslims), ruled in the case no. 13719/59 that following a divorce ruling by a civil family status court, the Coptic Orthodox Church was required to issue permission to remarry *in the Church*.¹⁴ Beyond the paradox of the seeming interference in the Church's teachings and

rituals, the ruling stated that it was “based on Shari'a—considering that it was the general and public legal order whose application is obligatory.”

Many still remember the 1987 case in which an Egyptian judge ruled that polygamy was permissible for Christians. This highlights how the Coptic community finds itself forced to submit to Islamic Shari'a regulations.

LOOKING FOR A WAY OUT

In order to address the various family issues, work on a unified personal status law began in 1978, when the Coptic Church formulated a draft law for the Family Status of Christians to replace the relevant parts in the 1955 law. The draft was prepared by a committee of eight jurists: two from each of the Catholic and the Evangelical Churches, and four from the Coptic Orthodox Church. It was signed by the heads of all the churches in Egypt. In 1980, the draft was sent to the Ministry of Justice and the People's Assembly (Parliament) for consideration. It collected dust for two decades until the issue resurfaced.

When the People's Assembly announced in 1998 that it planned to discuss a new personal status law, Pope Shenouda III called upon the representatives of Egypt's various churches to revive the project and update it with the necessary amendments. The (revised) draft consists of 146 items divided into five sections. The first section is devoted to issues such as engagement, the basis for and procedures of marriage, the nullification of the marriage contract, and the rights and duties of both spouses. The second explains financial commitments towards parents, children, and relatives.

The third section of the draft discusses the limits of parental responsibility and authority over children. The fourth deals with legitimate and illegitimate offspring. The fifth section discusses divorce, separation, and adoption issues.

In the chapter on divorce, the definition of adultery (as stated in draft Article 115) was expanded to include any act that would confidently indicate extramarital relations.¹⁵

- The wife running off with a stranger or spending the night(s) away from home;
- Letters sent to a third party indicating marital infidelity;
- The “suspicious” presence of a stranger inside the family home;
- A husband inciting his wife to commit adultery or debauchery;
- Pregnancy that could not be attributed to the husband due to absence or illness;
- Homosexuality.

For some, the draft could be described as a more restrictive substitute to the current legislation, which allows divorce in several cases in addition to adultery—the only cause mentioned in the Gospel. However, the churches differ on this matter, arguing that married couples must commit to the marriage contract. Family is considered priority and the fundamental component of society. Thus, its collapse would lead to the downfall of the entire community.

As aforementioned, according to the current Personal Status Law, Christian couples who belong to different churches (denominations) are subject to Shari’a if they take a personal status dispute to court. It is commonly believed that this has provided a way out for those seeking divorce, since they can simply convert to obtain a favorable ruling.

The proposed law adopts the principle of “the spouses are bound by the terms of the original contract.” If one spouse, for example, were to convert to another denomination or religion, he/she would still honor the other spouse’s rights according to the original rules. In other words, the Shari’a based rules would not apply.

The draft, hence, does not recognize conversion to another church as a reason for divorce if there is suspicion that it was used to facilitate divorce. If the two spouses are from the same church, then the new legislation will apply to them, even if one of them converts to another denomination.

In any case, the revised draft law has joined its predecessor in collecting dust as the authorities are still reluctant to legislate it.

Why has this law been shelved for so long? There is no clear answer. In Egypt, matters concerning the Copts are usually considered extremely sensitive. Hence, such issues are often ignored or handled with extreme care, because, as is often said, “the atmosphere does not allow it.” Some advance, as more concrete points, such issues as addressing adoption and the removal of Shari’a as a reference—as is the case currently—for spouses of differing denominations. However, such stipulations are not accepted by the religious majority.

Whether this proposed law is the right solution or not, most agree that ignoring the issue is unacceptable. Some argue for a purely civil marriage law, as in the West; but this is not expected to come any time soon due to public resistance, as this would allow inter-religious marriages and would grant equal rights to both men and women.

CONCLUSIONS

When it comes to family status issues, the Copts appear to be entangled in a number of problems. The current law, and more so its application; the stand of the traditional churches regarding divorce—considered by some to be too strict in principle as well as insensitive and inefficient in practice; and the apparent refusal of the government to issue a new draft law on family status for Christians all pose serious problems. A new law that would authorize purely civil marriages is not on the horizon for now or for the near future. However, some consider such a law—or some variation of it—a necessary and timely step.

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NOTES

¹ Numerous articles and reports refer to the more realistic figure. Refer, for example, to: U.S. Department of State, *Egypt: Country Report on Human Rights Practices - 2006*, March 6, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78851.htm>.

² Iman al-Qasir, "Urfi Marriage" (in Arabic), *BBC Arabic.com*, June 23, 2005, http://news.bbc.co.uk/1/hi/arabic/talking_point/newsid_4123000/4123258.stm.

³ Faraj Ismail, "Opening the File of Accusations on Kidnapping and Islamization of Coptic Women" (in Arabic), *al-Arabiya.net*, December 26, 2005, <http://www.alarabiya.net/Articles/2005/12/26/19832.htm>.

⁴ Amira Ibrahim, "Hope on the Horizon?," *al-Ahram Weekly*, No. 420 (March 11-18, 1999), <http://weekly.ahram.org.eg/1999/420/fe1.htm>.

⁵ Imad Thomas, "Divorce of Christians between the '38 Ordinance, the Unified Law and Civil Marriage" (in Arabic), *Alhbar Saarah [Good News]* (magazine of the Evangelical Church), March 2006, <http://www.akhbarsarra.com/news.php?Id=1051>.

⁶ Ezzat Andrawos, "The Second Article of the Constitution is Behind the Persecution of Copts" (in Arabic), http://www.coptichistory.org/new_page_965.htm.

⁷ Egypt's State Portal, "Text of the New Law No. 1/2000 on Family Status" (in Arabic), Article <http://www.egypt.gov.eg/arabic/laws/personal/introduction.asp>.

⁸ No official statistics exist, but the records of judiciary personnel published in the papers have supported such an assumption. See, for example: Youssef Sidhom, "A New Collection of Racial (Discriminative) Presidential Decrees" (in Arabic), *Middle East Transparent*, November 6, 2005, http://www.mettransparent.com/texts/youssef_sidhom/youssef_sidhom_reading_in_unsaid_things_109.htm.

⁹ Bishop Grigorios, "Divorce in Christianity," (in Arabic), December 4, 2006, <http://www.stgeorgecz.org/Forum/viewtopic.php?t=1752&view=previous&sid=0554c9587c371944475414b0b3c8357e>.

¹⁰ Me. Naguib Gobrael, a Cairo-based lawyer. See Me. Naguib Gobrael, "Why Christians Convert" (in Arabic), *El-Fagr*, http://www.elfagr.org/Elfagr_L_Details.aspx?NewsId=2453§ion_related=956.

¹¹ Report by *Watani*, (Arabic) March 11, 2007, p. 11.

¹² Ibrahim, "Hope on the Horizon?"

¹³ Adel Guindy, "The Most Common Denominator, Not Submission" (in Arabic), *Elaph*, March 17, 2007, <http://www.elaph.com/ElaphWeb/ElaphWriter/2007/3/219341.htm>.

¹⁴ Text of ruling was reported by *Sout al-Ummah* newspaper, May 3, 2007.

¹⁵ Andrawos, "The Second Article of the Constitution is Behind the Persecution of Copts."