



Women's Rights Under the New Personal Status Law

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Women's Rights Under the New Personal Status Law

Introduction

The Personal Status Law is one of the thorniest laws that regulate the most serious issues facing our society, as it regulates the relationship of individuals among themselves in terms of lineage, marriage, and the resulting kinship, birth, educational mandate, custody, and mutual rights and duties.

The Egyptian woman has suffered a lot with regard to the successive personal status laws. For example, being unjustly expelled from the marital home along with her children are one of the problems facing the woman. She finds herself either forced to return her children to her family's home because of her financial inability to obtain another home. This exposed her to greater problems, as her and her children may suffer severe psychological harm due to her feeling of oppression or lack of privacy for her and her children and the interference of the parents in all matters of her life. She starts thinking about searching for job opportunity to rent another house, in order to preserve her and her children's independence and face life alone with them.

Another example is her right to guardianship, whether over herself and her money, and her right to work and travel without the need for her to obtain the consent of the husband, who may refuse, just because of his stubbornness, disrupting her interest, or her right to guardianship over her children, whether in the educational guardianship over them or guardianship over their money and health.

Likewise, many divorced women suffered the scourge of oral or absentee divorce, where the divorced woman finds it difficult to prove the occurrence



of the oral divorce and the husband leaves her pending without obtaining any rights. In absentia divorce, she is surprised that the husband has divorced her in absentia. Sometimes he even takes her back again without warning, as if she is a puppet in his hands.

Moreover, obedience is one of the things that wives suffer from. The husband may take advantage of the warning of obedience until the wife makes an objection to the warning of obedience. In the end, she is forced to ask for a divorce on the grounds of acquittal or to ask for Khul', waiving of all her rights. Everyone is fully aware that the obedience is just a word that some husbands use to put pressure on their wives and waste their rights, until he finally stigmatizes her as "disobedient" so that she loses all her rights or gives up her desire for her rights just to obtain her freedom without losing her dignity.

In order for the political leadership to preserve the cohesion of the Egyptian family as the basic building block of the Egyptian society and nation, and in response to the calls of some families to amend the personal status law for it to be in line with the course of life now, President Abdel Fattah El-Sisi called for the establishment of the new personal status law. The new law aims to preserve the family and protect the rights of the wife. It will not take the side of one party at the expense of the other. Moreover, it focuses on the rights of children, reduces the number of divorces and restricts polygamy, as divorce takes place before a judge and must be documented.

President Abdel Fattah El-Sisi sent a number of messages regarding the Personal Status Law in May 2022, as it is considered one of the most serious issues facing society. A fair law is required to limit family disintegration,



which affects the future generations. Personal status problems contribute to the reluctance of young people to marry and form a family.

Therefore, a committee was formed to draft the new personal status law that takes into account all groups. A preliminary draft of 188 articles was prepared to be finalized in February 2023 and put forward for community discussion.

Therefore, **this report will aim** to show the rights that women will acquire under the new Personal Status Law by knowing:

1. The meaning of the personal status, its law and beginning.
2. The main objective of the law, the committee that prepared it, its composition, and the most prominent of what has been drafted so far.
3. The most prominent features of the new Personal Status Law, and new conditions for marriage within it.
4. Women's rights under the new personal status law and women's support for the law.
5. The rights of the child under the new personal status law.

Meaning of Personal Status and Its Law and Its Beginning

First: Definition of Personal Status

The term personal status is a modern term that is foreign to Islamic jurisprudence. Islamic jurists have previously researched about what is related to the private and public social conditions of man in the books of jurisprudence, however, they did not call this personal status. The first to use this term in Islamic jurisprudence was the scholar Muhammad Qadri Pasha in 1886.



Judge Alaa El-din Kharofa defined personal status as ‘rules that regulates a person’s condition and his relationship with his family and society.’ The Egyptian Court of Cassation defined personal status as ‘The totality of what distinguishes a person from other natural or familial characteristics that the law has arranged a legal effect on his social life, such as being male or female, being a husband, widower, divorced, or legal father, or being fully or incompletely competent due to his young age, dementia, insanity, or being fully competent. or restricted by one of its legal reasons.’

Second: Definition of Personal Status Law

The Personal Status Law is defined as "a set of legal rules that regulate the relationship of individuals among themselves in terms of lineage, marriage, and the resulting kinship, birth, guardianship, custody, mutual rights and duties, and the dissolution that may result in rights to alimony, custody, inheritance, and will."

Therefore, the Personal Status Law is the law that regulates family affairs starting from its inception by the marriage contract and the consequent rights and duties of both parties. It regulates the methods of dissolution of this contract by divorce or death and the consequences for each member of the family thereunder and what he must do. It also regulates the affairs of children and their rights and the rights of their parents over them. Therefore, it is considered the law that accompanies man from the beginning of his creation as a fetus until his death and even after death in matters of inheritance and will.

The New Personal Status Law



The Main Objective of The New Personal Status Law

The main objective of the new Personal Status Law is to prepare an integrated personal status project that seeks to abolish the plurality of the current laws, which amount to 6 laws. The old law is not organized and comprehensive for all matters, which makes judges return back to Hanafi perspective. The law will put solutions to all problems to facilitate the judges' works.

Moreover, it aims to preserve families through the Egyptian Family Welfare Fund. It ensures the families support in critical times. The government contributes to this fund as much as citizens contribute to it.

The increase in divorce cases in Egypt is also one of the main motives for establishing such a law in order to reduce them, as divorce cases in Egypt in the previous years reached large numbers.

Official statistics on the number of divorce cases in Egypt

- 1- Statistics indicate that there have been more than 5 million divorces from 1965 until now.
- 2- The Central Agency for Public Mobilization and Statistics (CAPMAS) revealed that Egypt registered 254,777 divorce cases in 2021, compared to 22,239 cases during 2020, an increase of 14.7% compared to the previous year. This means that there is a divorce case that occurs every two minutes, and between 25 to 28 cases every hour, and 630 cases per day, an average of 18,500 cases per month.
- 3- The increase in divorce rates among young people in the age groups of 25 to 35 years has made Egypt at the forefront of the world in terms of divorce cases.



- 4- The highest percentage of divorces is in the first and second year of marriage from those who have months-old children. The largest percentage in divorce cases occurs between the ages of 18 and 20 years.
- 5- Twelve percent of divorces occur in the first year of marriage. Nine percent in the second year, and 6.5% in the third year, meaning that in more than a quarter of divorces occur less than 3 years after marriage.

Committee for the Preparation of the New Personal Status Law:

The Minister of Justice formed a committee on June 5, 2022 to prepare the law. It consisted of 10 judges, including two female judges. A period of 4 months was given in order to finalize the draft on October 5, 2022. The committee is responsible for preparing a draft law on Muslims' personal status and family courts with the aim of limiting disputes and achieving prompt justice through a balanced vision that guarantees the rights of all individuals.

The committee received more than 4,733 proposals from those interested in personal status. Each proposal was classified according to the sections of the law, such as marriage, divorce and alimony. The committee read more than 20,000 proposals. The Minister of Justice decided to extend this deadline until the committee finishes its work.

The committee held more than 20 discussion sessions, during which a mandate for 188 articles was drafted. It is supposed to complete its work during February 2023, put the project forward to a community dialogue in March, then submit it to the Council of Ministers, refer it to the House of Representatives for discussion and amendments if needed, and the ratification of the President of the Republic at the end of the current legislative term, next



June 30. Its executive regulations should be issued by the Ministry of Justice during the 6 months following the law's issuance.

With the issuance of the law, six laws related to personal status will be repealed. The committee will complete the drafting of the law, especially with regard to the status of procedures and matters of guardianship over money.

A group of judges and civil society organizations from Al-Azhar, the Church, Dar El-Iftaa, human rights organizations, women's rights organizations and other institutions participated in the preparation of this law, as well as professors from the Faculty of Medicine, Psychiatry, Sociology and insurance companies. It includes a set of important amendments that preserve the Egyptian family and protect the rights of both spouses and their children.

The Most Prominent Features of The New Draft Personal Status Law

- 1- The law aims to formulate an integrated and detailed personal status that it is easy for everyone to understand and assimilate its texts, especially individuals who are not working in legal matters.
- 2- The new draft law addresses problems that previous laws did not address, like engagement problems and customary marriage.
- 3- Create a family welfare fund and an insurance policy to support it in both expenses and challenges related to personal status matters.
- 4- The state is committed to providing financing sources and support the fund.
- 5- A law granting new powers for judges that dealing with urgent cases in order to support the family.
- 6- Developing a new system that collects the disputes of each family in front of one court.
- 7- Develop new procedures to reduce the divorce phenomenon.
- 8- Preserving the financial estate of the husband and his share of the common wealth that was created during the marriage.



- 9- Redrafting the marriage and divorce documents to ensure that they include what the two partners agreed upon in cases of marriage and divorce.
- 10- Divorce documentation like in the case of marriage documentation.
- 11- Putting no obligations on the wife except from the date of her knowledge of the divorce.

New Conditions for Marriage in the Draft Personal Status Law:

- **Conducting medical examinations for the spouses before marriage, with the results of the medical examination being automated by the Ministry of Health to confirm the validity and integrity of the analyzes.**

The importance of conducting medical examinations such as a comprehensive examination for males and females to ensure the absence of any disease, and drug analysis for both parties who are about to marry, even if the marriage is after the age of forty, the woman is subject to breast cancer examination and lymph node analysis.

- **The marriage contract takes place with the permission of a committee consisting of a judge and a health advisor to give approval to the person authorized to contract the marriage.**

The committee assesses the psychological state of both parties intending to marry, informs both parties of the health status of the other party and educates them. It provides them with counseling, psychological and social rehabilitation. It raises awareness of the importance of premarital medical examination, providing medical consultations about diseases, and disclosing the condition of a person who is a carrier of a genetic disease, if any was found in one of those who are about to get married. In the event that there are negative results in medical analyzes and the emergence of something that



prevents the spouses from having children, such as infertility, for example, the marriage is not rejected. The procedures are carried out according to the desire of the spouses after knowing this matter.

- **Establishing a fund to support the family, in which some money is put from those who are about to get married.**

A Family Welfare Fund is established and financed by those about to get married and the government. They put an amount of money, which is added to the expenses of the marriage contract. This is to avoid the occurrence of several crises affecting children as a result of lack of understanding between spouses and failure to spend on them:

100egp for marriage, another 100egp in case of divorce, 100egp for revision, 50 for the first extract of the birth certificate, 50egp for issuing the death certificate, family record or national number card, and 1% of the delayed dowry stipulated in the marriage contract with a minimum of 100egp.

The economist, Dr. El-Sayed Khadr, confirms that the establishment of the Family Welfare Fund is a positive thing, given that pregnant women who are breadwinners suffer hardship and suffer economic costs. The fund guarantees these families and women their needs, as it is part of the continuous support for social protection programs by the Egyptian state and the extent to which it will continue. The Fund will overcome all challenges and stand by women, especially divorced women. The idea of the Fund is necessary in order to maintain the support of Egyptian families.

- **Preparing a prenuptial document to agree on some conditions**



The law stipulated the preparation of prenuptial agreement. Through this document, the two parties agree on somethings before marriage, provided that it does not violate the Sharia. The law also allows the legalization of customary marriages that were issued before the law, but after that it will not be recognized by the law.

Women's Rights in Light of The New Personal Status Law

Under the new Personal Status Law, women would enjoy many rights and benefits. The law has worked to protect and preserve their rights and facilitate them in the event of family disputes by bringing together all cases before one court.

Many women and human rights activists supported the features of the new law and felt that the new law was in the interest of all parties, especially women and children, and worked to protect women.

First: The Rights Enjoyed by Women Under the New Law

The new Personal Status Law addresses a number of important issues that protect women's rights, the most important of which are the following:

1- The case of polygamy with a judicial permit and with the consent of the wife:

The law was based on a legal vision based on the opinion of religious scholars and Al-Azhar scholars. The law deals with the issue of polygamy. It does not prohibit it as a law, but regulates it through the husband going to court to obtain a marriage license and polygamy.



The court informs the current wife(s) of this and they give their opinion. If the former wife agrees, it will take effect, but with agreement on the status of the children, their alimony and care. The husband is committed to what has been agreed upon. The current wife has the right to divorce and retain all her rights if this agreement is not applied in the future. However, if the woman rejects polygamy, she has the right to request a divorce and take all her rights.

2- Compilation of divorce cases in one file:

The new law included making family issues and divorce cases in one file. If there are 17 cases resulting from divorce, they will be compiled in one file. In the divorce paper, everything related to alimony, custody, the wife's financial rights and educational mandate is agreed upon.

All the cases that result from divorce are adjudicated in the same divorce lawsuit, which contributes to saving thousands of families from years lost in the courts.

3- Custody of the mother and widow:

As for the mother's custody: The custody of the mother for children lasts up to 15 years, like the previous law, but the position of the father has been changed to make him second only to the mother.

According to the current law, the father comes in a very distant rank, if the mother dies, the child returns to the maternal grandmother, which is an inhumane vision because it is possible that the grandmother may prevent the father from seeing his children, sentencing them to the loss of both their father and mother together. The family consists of two parties, a father and a mother.



If one party is absent, the child returns to the other party until the child grows up normally.

The new law made the father take care of the children after the loss of the mother. In the event of divorce, if the mother was found not entitled to custody by a court ruling, the father was the custodian.

With regard to the custody of the widow: the law specifies that custody of the widow shall not be forfeited in the event of remarriage unless it is proven that the mother's new husband is invalid or dishonest. Custody of the mother shall not be forfeited by her marriage to another unless the judge decides otherwise in the interest of the child in accordance with the social and psychological report of the child's condition, in which case she is not entitled to rent housing and custody.

4- A non-custodial right of accompaniment:

The new law allows the non-custodial parent to take the child to his home on short or long vacations for a number of days. However, it requires the father to commit to spending with the mother on the care of the child. It enables the non-custodial party to enjoy parenthood with regard to the child. It will also enable the non-custodial party to see the child, so he will not feel the loss of the other side of his family.

5- Engagement: Returning Gifts and Preventing Rumors:

The Personal Status Law solves some problems during the engagement stage. If the engagement is dissolved with the agreement of the two parties, then each of them gets what they spent and prevents the fiancée from obtaining jewelry in the event that the marriage did not take place.



Speaking ill of the other party is also criminalized when the engagement is legally dissolved.

6- *Khul'*:

Article 20 of the new Personal Status Law stipulates that the spouses must mutually agree to divorce. If they do not agree, and the wife files her lawsuit at her request, redeems herself, divorces her husband by giving up all her legal financial rights, and returns to him the dowry that he gave her, the court rules that she divorces him.

The court does not order divorce by *khul'* except after attempting to reconcile the spouses by assigning two arbitrators to continue efforts for reconciliation between them within a period not exceeding three months.

7- Lawsuits between spouses in the Personal Status Law:

The new Personal Status Law allowed both husband and wife the freedom to resort to the judiciary to resolve the dispute between them, and granted each of them the right to file lawsuits. The wife now has the right to file 27 lawsuits before the Family Court, compared to 11 lawsuits for the husband.

The wife's lawsuits are represented in: Alimony – *Khul'* – Delayed dowry – Empowerment – Birth expenses – Study expenses – Breastfeeding wages – Bedding and covering allowance – Divorce lawsuits for harm, discord, desertion and insanity – Proof of lineage and other lawsuits.

The husband's lawsuits are represented in: Obedience warning – Evidence of disobedience – Claims not to be subjected to alimony by virtue of disobedience – Return of the jewelry and gifts – Claims to reduce alimony – Cessation of claiming small alimony – Denying paternity – Visitation rights – Revocation



of custody – The child moving in with his Father when reached the maximum age of custody –Claim for damages against any party as a result of damage or non-compliance.

8- The end of the era of oral divorce: -

The new law has included articles to regulate verbal divorce and oral restitution through a set of disciplined texts that oblige the husband who verbally divorces his wife to first document the divorce with an authorized person and notify his wife of it. It is also in the case of returning her orally. Also, the provisions of this verbal divorce or oral return apply from the time of the wife's knowledge, as in many cases some husbands conceal the divorce or return from their wives, and it is later discovered in the courts.

9- Prenuptial agreement:

This document works to protect women's rights by agreeing on some conditions. It will be a basic reference when any dispute occurs so as not to resort to the court. It includes a set of conditions agreed upon by the parties before marriage, provided that it does not violate Sharia, including the wife's condition not to marry another or any other requirements.

10- Legalization of customary marriage:

The new law will legalize the customary marriage that took place before the law was issued, but after that it will not be legally recognized. According to the draft law, in the event of a customary marriage, the wife will not be able to claim her rights in the courts because she agreed to a customary marriage that is not documented.

11- Equalization of wealth upon divorce:



The law stipulates the equalization of wealth upon divorce by writing a text upon marriage that allows the division of the wealth, property and money that was created during the marital period. In the event of divorce, it is divided equally or proportionally according to the agreement, in contrast to the other rights resulting from the divorce. However, this agreement does not include the material return, inheritance, or gift that belongs to one of the spouses or was before marriage.

12- Parentage issues:

The law stipulates that parentage is established or denied by a number of means, including evidence, witnesses, and all medical tests and scientific means. In the case of rejection of the tests, this indicates that the parentage is proven. It is necessary to resort to a DNA analysis in order to prove the lineage in marital disputes. In the event that the husband refuses to take the test, these children are considered his children.

Second: Support by Women and Women's Rights Activists for the New Law

A group of women and women's rights activists have supported the new personal status law, most notably:

- 1- Dr. Hala Badran, an women's rights activist, said that the Egyptian state is interested in amending the law and assuming support for the family. The state is interested in encouraging laws that work to protect women. Provisions have been put in place to reduce divorce cases, so that in cases of divorce, the law has taken care to put a set of points stipulating that



divorce takes place in a manner that respects both parties and that there are no disputes.

- 2- The National Council for Women, headed by Dr. Maya Morsi and all its members, thanked President Abdel Fattah El-Sisi, as he highlighted the need to discuss family issues impartially, honestly, and without bidding. Maya Morsi affirms her pride and gratitude for these statements, which confirm the keenness of the political leadership to come up with a balanced and fair personal status law. She said that the adoption of this law is an urgent necessity because these issues affect all members of society, especially women and children, and that coming up with a fair and equitable personal status law will achieve the stability of the Egyptian family and serve as a message of reassurance to future generations with the idea of the institution of marriage, and that in case of disagreement, each party will get their right fairly.
- 3- Nehad Abo El Komsan, President of the Egyptian Center for Women's Rights and member of the National Council for Human Rights, praised the features of the new draft personal status law. It will guarantee the rights of women by establishing the principle of hard work and endeavor within the draft law by preserving the financial disclosure of the husband and wife, and the joint wealth reflects the establishment of the principle of hard work and endeavor. If there is wealth formed during the marriage period, we put our money on each other's money after the divorce, but the money that comes to the husband through inheritance or pre-marriage employment is not included in the common wealth.
- 4- MP Amal Salama, a member of the Human Rights Committee in the House of Representatives, said that the new personal status law will allow a



divorced woman to obtain temporary alimony within 48 hours of her divorce, with a minimum of 1,500egp in order to preserve the cohesion of the family. She will go to the court to file a lawsuit for her and her children's expenses through the one inclusive court for all family cases, with the judge ruling for her within 60 days from the date of filing the case.

The Rights of The Child Under the New Personal Status Law.

Dr. Hala Badran, a women's rights activist, said that the draft new personal status law is very important because it contains new articles that include the rights of everyone, and that the law is biased towards the child. The principle of the law is the interest of the child who is harmed when the divorce occurs. Therefore, the interest of the child is above the interest of all. The suffering begins with the occurrence of divorce in terms of alimony and children's education expenses and other matters that cause crises for the child.

The economist, Dr. El-Sayed Khader, said that the Family Welfare Fund will preserve the Egyptian children and protect the children of all the different parties from social deviation and endure their rights are not lost. It also has a positive impact on protecting the rights of the child and not losing their future.

The fund looks at children in the first place and protects them during the resulting conflict period. It will also be a safety valve for them in terms of continuous financial support to meet the family's requirements to provide them with a decent life.

The law is concerned with the issue of children's education: as the law sets conditions for children's education. It prevents the father from transferring his children from advanced private educational institution to a lower educational



institution as long as his financial capabilities allow for that. Some transfer their children from private and international schools to experimental schools despite the ease of their financial conditions and the fact that the children being in these schools are not a hindrance to them.

Conclusion

Time has passed since the current personal status law, which has become inappropriate with the development of community life. Thus, voices have risen calling for the formulation of a new personal status law aimed mainly at preserving the cohesion of the Egyptian family from loss as the base of society that must be preserved and supported.

The new Personal Status Law has worked to achieve a balance between the components of the family in rights and duties and gave women many rights in order to preserve and protect them, including: establishing the principle of hard work and striving by preserving the financial disclosure of the husband and wife, and allowing divorced women to obtain temporary alimony within 48 hours of her divorce with a minimum of 1,500 pounds in order to preserve family cohesion. The Family Welfare Fund will overcome all challenges and stand by women, especially divorced women.

The husband is also required to obtain a judicial license to request marriage, and the court informs the current wife(s) of this and they give their opinion. It also compiled family cases and divorce cases in one file, which contributes to saving thousands of families from years lost in the past, and set the custody of the mother of the child until the age of 15 years.



The new law also allowed the non-custodial party to take the child to his home on short or long vacations for a number of days. The father, along with the mother, is required to commit to spending on the care of the child. The law obliges the husband who divorces his wife orally to document the divorce with an authorized person first and notify his wife of it, similarly in the case of oral return. The prenuptial agreement will be a basic reference when any dispute occurs, and the wealth is equal upon divorce.

Recommendations

- 1- Seminars need to be conducted to introduce the new personal status law and its effects on the stability of the Egyptian family.
- 2- The draft law needs to be quickly finalized and put forward society' debate in order for all elements and groups express their opinions on the articles of the law.
- 3- It is necessary to take into account that everyone has access to the law and knowledge of its articles, because it is not an ordinary law, but rather a law that the people will deal with in marriage and divorce and the long journey between the two spouses.
- 4- Media outlets should allocate episodes to discuss the new law because it affects the Egyptian family, as it is the society base that must be preserved.
- 5- The importance of spreading awareness to introduce the law and the required amendments through talk shows and simplified news materials that are broadcasted in talk shows on channels and newspapers, that takes into consideration people in villages and hamlets and responds transparently to all questions.
- 6- The new law should consider rights of all different groups, achieving a balance between them in terms of rights.