Khul‘ divorce in Egypt: public debates, judicial practices, and everyday life
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1 Maintenance & obedience: a history of Personal Status Law in Egypt

1.1 Presenting: “urīdu Hallan”
In urīdu Hallan (1975), Duriya, a middle-aged woman from the upper class, wants to divorce her husband. Since her only son has grown up and has just left the parental home in order to study abroad, she decides that the time is ripe to divorce her unfaithful, alcoholic and abusive husband whom her father forced her to marry twenty years earlier. When she requests a divorce from him he refuses, saying that he can not understand why she suddenly wants to divorce him after twenty years of marriage unless her eye is on another man. As a consequence, Duriya is left with no other choice than to file for divorce in court. But, her case is endlessly postponed and she finds herself dividing time between work and court without any results. As her case drags on, she becomes more interested in learning the difference between women’s divorce rights in Islam as compared to the divorce rights she has as an Egyptian Muslim woman under the Egyptian legal system. She discovers that Islam gives women the right to divorce their husband unilaterally through a procedure called khul’.

One day, she finds the police at her door—sent by her husband—to force her back to the marital home through a so-called “ta’a” (obedience) ordinance. In the film this means that when a wife leaves the marital home without her husband’s permission he is legally permitted to force her home and lock her up until she becomes obedient to him again. Instead of returning “home” Duriya runs down the stairs and flees to her brother’s apartment. There she meets a friend of her brother and after a while the two fall in love. Slowly Duriya starts to hope for a new future.

Now the obedience ordinance has angered her to such an extent that she decides to make an appointment with the Minister of Justice. During her visit she tells him about the hadith (Prophetic tradition) on khul’ in which a woman approached the Prophet Muhammad telling him that she hated living with her husband although she thought of her husband as a good and religious man.14 The

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14 The hadith on khul’ (the Habiba hadith in the following) is transcribed in four of the six authoritative compendia of the Prophet, this being the collections of al-Bukhari, Muslim, Abu Dawud, al-Tirmidhi, al-Nasa’i, and Ibn Maja. Al-Bukhari reported that: “The wife of Thabit b. Qays b. Shammas [Habiba] came to the Messenger, peace be upon him, and said: ‘O, Messenger of God, I do not hate Thabit neither because of his faith nor his nature, except that I fear unbelief.’ The Messenger of God, peace be upon him, said: ‘Will you give back his orchard?’ She said: ‘Yes’ and she gave it back to him and he [the Prophet] ordered him and so he [Thabit] separated her” (1868, 266). In the hadith, the Prophet ordered Thabit b. Qays to divorce his wife Habiba after she returned to him the orchard which he gave her as a dower. The consent of Thabit b. Qays was not sought after. This is in contradistinction to the four
Prophet asked her if she was willing to give him back the *mahr* (dower) which he gave to her upon marriage. She agreed and, after she returned it to her husband, the Prophet divorced her from him. The Minister of Justice is impressed by Duriya’s knowledge of Islamic law and he promises to study the matter. He abolishes the obedience ordinance in the sense that the police are no longer allowed to force a woman back “home.”\(^{15}\) Notwithstanding the importance of this change, he does not give women the right to divorce by way of *khul’*, nor does he set out to facilitate the existing divorce procedures so as to put an end to a practice which makes women spend years in court without necessarily obtaining a divorce at the end of that period. The latter is what happened to Duriya. After four long years the judge still refuses to grant her a divorce. Instead of marrying the man whom she has fallen in love with, she remains legally married to a man whom she hates and from whom she has already been separated for years.

In actuality Duriya is a character played by Fatin Hamama, one of Egypt’s most famous actresses. Situated in the mid-1960s and released in 1975, *urīdu Hallan* (I Want a Solution) had a profound influence on the public, both in and outside Egypt, and many claimed that it breathed life into reform initiatives of the old Personal Status Laws which were last amended in the 1920s. Even today, *urīdu Hallan* is frequently rebroadcasted on television and on a list of the hundred most important Egyptian films in a century of Egyptian cinema (1907-2007), the film ranked 60. One women’s activist even claimed (in 2004) that she still uses *urīdu Hallan* in her legal-awareness and consciousness-raising programmes since the film knows how to move even the most fervent opponents of women’s rights.\(^{16}\)

In this light, lawyer Abu Bishoy drew my attention to a particular scene in *urīdu Hallan* where Duriya meets an old woman from the lower classes in court who is crying softly. When Duriya asks her what is wrong with her, she sobs that after a marriage of more than thirty years her husband has divorced her to marry a younger woman. He had thrown her out of the house and since then she had been living on the streets. Begging the judges to help her by forcing her unwilling husband to provide for her, she dies before her case is issued a ruling.\(^{17}\)

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\(^{15}\) It was really abolished in February 1967.

\(^{16}\) Personal interview with Hoda Zakariyya, May 2004, Cairo.

\(^{17}\) The issue of women being thrown out of their houses after long marriages in which they had raised their children and taken care of the household became the subject of another film that was released in 1987 and which bears the title *al-qānūn lā ya’rif ‘aīsha* (The Law does not Know Aisha). There are other films on women and personal status rights (see Shafik 2007, 135). As I have restricted myself to the films which were brought to my attention by the Egyptians I encountered, other films on personal status rights are not included in the present analysis.
Four years after the release of urūdu Hallan, a new law on Personal Status was issued (law no. 44 of 1979) which included a clause that gave women the right to *mut'a*, a compensation of at least two years alimony in cases where a husband divorced his wife even though the marriage had been consummated and there was no fault on her part. The law also included a clause that gave women with children in their custody the right to stay in the marital home. According to lawyer Abu Bishoy, the *mut'a* clause was a direct result of the influence which urūdu Hallan had on the government as the film was a shameful reminder of, and a critic of, a government which had ignored the plight of women in the courts and which had neglected reform of PSL for more than fifty years. Let us now return to the evolution of PSL in Egypt.

**1.2 Egypt’s first Personal Status Laws: emphasizing the conjugal relation**

In urūdu Hallan, Duriya wants to divorce her husband but she does not want him to pay her alimony after the divorce. As a matter of fact, being a wealthy woman with a good job, she does not want his money at all. The only thing she wants is to get rid of him. Her lawyer, however, makes clear that every Egyptian marriage is based on the maintenance-obedience relation. Even in the case where a woman is wealthy or has her own sources of income, it is still a husband’s duty to provide financially and materially for his wife in return for which she should remain obedient to him. The film suggests that obedience means that Duriya should not leave the house without her husband’s permission. Because she did, her husband had the right to force her back to the marital home through the already mentioned *ta'a* ordinance. Although Duriya succeeds in convincing the Minister of Justice of abolishing it, she is not able to push the rights of “disobedient” women one step further by having them granted the right to unilateral divorce. Hence, not heeding Duriya’s attempt to shake the traditional maintenance-obedience relation, the legal and social pillars underlying the husband-wife relationship stayed firmly in place.

The maintenance-obedience relation was codified in the 1920 PSL, Egypt’s first Personal Status Law. This law also gave women more grounds for divorce. These grounds, which were expanded in the PSL of 1929, reflect a wish to

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9 This is in line with article 1 of PSL 25 of 1920, which states that it is a husband’s duty to maintain his wife, even in the case where she is financially independent or from another religion.

10 These grounds are: prolonged absence of the husband without legitimate cause for a period exceeding one year (art. 12 of law 25/1929); imprisonment of the husband for a period exceeding three years (art. 14 of law 25/1929); mental or incurable and grave sickness of the husband of which the wife had no knowledge at the time of the conclusion of the marriage (art. 9 of law 25/1929); a husband’s failure to
encourage the formation of a specific relationship between husband and wife in which the husband worked outside the home to earn a living for his family and where the wife in her role as mother and housewife remained at home. Only in cases in which a husband did not live up to his duty of providing (due to illness or imprisonment for example) a woman had the right to request a divorce from him. In an attempt to further strengthen the formation of the conjugal relation and in order to curb the high divorce rates which were threatening it (it was still fifty percent at the beginning of the 1930s), reformers and women activists also sought to curb men’s exclusive rights to divorce and polygamy. Yet, despite the fact that they took Islam as a point of departure in order to highlight where the ordinances of Islam were not applied in daily reality, the opposition proved too hard to fight (Badran 1995, 135; Shaham 1997, 9).

In 1931, a procedural law on the organization of sharia courts (law no. 87/1931) was introduced. This law, which was replaced in 2000 by procedural law no. 1 of the year 2000 - the colloquially called “khul’ law” - included a new marriage contract which was stripped of the right to include substantive stipulations (Zulficar forthcoming). This change was a significant departure from the past where scholarly studies of Ottoman court records have revealed that it was quite common for women to include substantive conditions in their marriage contracts. By leaving it up to the woman and/or her family to decide which conditions they wanted to include, if any, there was more room to give shape to the marital relationship. The codification of women’s rights “into law and implementation by the modern legal system broke with the old Islamic legal system that had been practice oriented” (Mitchell, cited in Hatem 2000, 40). It is especially the greater flexibility and freedom of the old system that contrasted with the new system. Where the independence of men and the dependence of women had also been prevalent in the Ottoman period, at least to some extent, in the new system the categorization of women’s grounds for divorce and the abolition of the inclusion of stipulations in the marriage contract specifically, gave women less opportunities to influence the conditions of the marital relationship.

provide maintenance or harm (art. 6 of law 25/1929; amended by law 100/1985) (cf. Bernard-Maugiron 2004, 360).

2 For the case of Palestine, Moors also notes that PSL reforms have placed greater emphasis on the conjugal relation (1995, 87, 138).
23 For more information on the Egyptian women’s movement at the turn of the twentieth century, see Baron (1994) and Badran (1995).
26 For more information on this subject for the case of Ottoman Syria and Palestine, see Tucker (1998).
Apparently, we should be cautious to view reform of PSL as essentially progressive and liberating to women since, in the words of Abu-Lughod: ‘…new ideas and practices considered “modern” and progressive […] might usher in not only forms of emancipation but new forms of social control’ (1998, 6. See also Sonbol (1995, 1996)). Reformers, however, presented the PSLs of 1920 and 1929 and the 1931 law, as modern and beneficial to women. They argued that compared to the official Hanafi family law of nineteenth century Egypt, which only permits judicial divorce in cases where the husband does not consummate the marriage or when he commits apostasy from Islam, the 1920 and 1929 PSLs gave women four additional grounds to divorce (cf. Arabi 2002, 183). By using the principle of takhayyur (adopting elements from the other three schools of law in an eclectic manner) the legislator had resorted to the Maliki school of law which gives women more grounds for divorce than the Hanafi school of law. However, Mona Zulficar, lawyer and one of the main forces behind the “khul’ law” of 2000, claims that “With this law [law no. 87/1931], the Egyptian legislature expressed its view that there was no further need for substantive conditions in the marriage contract, since these were already covered by the law. This was not completely true, as the laws passed in 1920 and 1929 placed no restrictions on polygamy, for example, and did not codify khul’” (forthcoming).

1.3 Personal Status Law under Nasser: socialism without reform

After the 1920 and 1929 PSL reform and after the marriage contract was stripped of its possibility to include stipulations in 1931, it was not until 1979 that PSL was amended again under Sadat. This is somewhat surprising since under Nasser’s rule (1956-1970) many social reforms were introduced. Large-scale agricultural reforms were introduced by redistributing land, free medical care and education. By making admission to university competitive, the state assured the entrance of the middle class in institutions of higher education. What is more, after graduation the latter were promised a job in the government as a result of which the state became the principal employer of college graduates. The annual increase in the number of graduates and state employees consisted of both men and women as, under Nasser, women were encouraged to get an education and a job. Through the constitutional amendment of 1956 the state even promised to support women’s effort to reconcile public work with family obligations by providing them with maternal leave (Hatem, cited in Botman 1999, 42).

Women were also granted other constitutional rights. After some women activists went on hunger strike when the new independent government planned

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27 Perl and Menski claim that classical Hanafi law only allows a woman to divorce her husband if she can prove to the court that he is not able to consummate the marriage (1998, 285). They do not mention apostasy as a reason for divorce.
not to allow women the right to vote in national elections, the government quickly gave in to their demands and in 1956 their right to vote became anchored in the constitution (Hatem 2000, 46). However, whereas it was compulsory for men to be registered in the elections rolls, in the case of women it was optional. The 1956 constitution also decreed that all Egyptians were equal and that there was no difference on the basis of gender, religion, creed, language and ethnicity (Hatem 2000, 48).

Hence, both the constitutional decree saying that men and women were equal and the fact that an increasing number of women started to work outside the home in government jobs, seemed to undermine the maintenance-obedience relation. By providing a nation-wide state school system and an individual salary for working wives, the state had changed women’s position of dependence on men and, in the process, prevalent notions of space and space segregation were transformed. This, however, was not reflected in the PSL where the basis of the maintenance-obedience relation was not changed.

It is remarkable that the Nasser government dared to introduce far reaching reforms in all fields of law, which were governed by secular (French) codes, while it shied away from introducing accompanying reforms in PSL, the only field of law still governed by shari’a principles. Women were equal to men, they could vote, they could work outside the home, they could even become a minister but in order to do so they had to leave the house, an act for which they still needed the permission of their husband. As long as the husband was providing, a wife was still legally obliged to remain obedient to him. In case she rebelled, often by leaving the house without his permission, the husband could still petition a ta’a claim in court and, if he won, the judge would declare the wife nashiz (disobedient) as a result of which she would be deprived of the right to be maintained by her husband. Yet, we can of course wonder if women still needed their husbands’ money in a period in which a growing number of women were engaging in education and (government) jobs. In such a context, it seems sufficient that the ta’a ordinance was amended and that women could no longer be forcefully returned to the marital home.

In uridu Hallan a clear answer is provided to this question as the film makes a number of points about changes taking place in society. Although many women in the film work, one cannot escape the impression that these are mainly upper class women who are divorced, in the process of divorcing or in any other way no longer tied to children and their husbands who work. What is more, even when women worked outside the home, their main task was still that of a mother.

In this light Bernard-Maugiron and Dupret say that the “…reformist momentum in the field of personal status was interrupted and relegated to the domain of questions of secondary importance when the Arab Republic of Egypt was declared in 1952” (2002b, 2). See also El-Alami (1994, 116).
and a housewife. Duriya, for example, only started working after her son had grown up and it was only after he had left the house in order to study abroad that she felt that the time was ripe to file for a divorce.

Most significantly, despite Nasser’s hopes of redistributing wealth and dissolving class differences and, notwithstanding his revolutionary middle class aims, the question as to what difference Arab socialism really made to the Egyptians becomes painfully clear in the film. Duriya desperately claims to her lawyer that she does not want her husband’s alimony at all and that she certainly does not want this to obstruct a smooth proceeding of her case. The only thing she wants is to divorce him as soon as possible. This scene clearly contrasts with Duriya’s female counterparts from the lower classes who do not file for a divorce but who all file maintenance and custody cases. These women, who apparently have no sources of income of their own, are dependent on their husbands’ income for a living. The contradiction becomes tragically clear in the scene in which the poor, old woman whose husband has thrown her out of the marital home after a marriage of more than thirty years, begs the judges to help her by forcing her unwilling husband to provide for her. However, in this period of Arab socialism nobody could help this old woman and she was left to starve in the streets.

Botman also observed that, notwithstanding the fact that Egypt went through a phase of secularism and socialism under Nasser, women’s increased participation in education, the labour force and politics had not gone hand in hand with a change of gender relations in the family (1999, 63). With the maintenance-obedience relation still firmly in place, women were subjected to two different messages. While they had the same rights as men and while they were allowed to work, their main task was still that of a mother and a housewife who—as long as her husband provided for her—had to pay obedience to her husband and had to ask him permission to leave the home in order to work.

It does not become clear in the film why the Minister of Justice changes the ta’a ordinance but does not grant women the right to a unilateral khul’—a right Duriya explicitly requests from him and describes to him as being in accordance with the sunna of the Prophet (sayings and doings of the Prophet). And, to extrapolate this question to reality, it is not clear why the Nasser government shied away from reform of PSL. The reason behind this might become clearer if we consider that the ta’a ordinance was changed in the year 1967, a year that transformed the Middle East as the Egyptian, Syrian and Jordanian armies were

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29 In this thesis, maintenance refers to nafaqa, the duty of a husband to provide for his wife as long as they are married, while alimony refers to the ‘idda-period, a three menstruation-cycis period in which the women is divorced but not yet allowed to remarry and in which the husband must maintain her. Until today, maintenance claims still constitute a primary reason for women in Egypt specifically, and in the Middle East in general, to turn to court. See also 6.4.
defeated by Israel in the Six Day War of June 1967. This led the Ministry of Justice to claim that although more fundamental changes in PSL were planned they were postponed since Egypt’s defeat in the 1967 war had changed the political climate and agenda (Hatem 2000, 52). Of course one can only guess as to the precise meaning of this statement but I believe that it also refers to the emergence of Islamism as the dominant ideology and the revival of Muslim religiosity (al-sahwa al-islamiyya) which spread in the Muslim world from the late 1960s and early 1970s onwards. Long before the 1967 defeat, Nasser was entangled in a fight with the Muslim Brotherhood. In 1954 and 1956 this led to sweeping arrests of its members followed by Nasser’s declaring a state of emergency in 1958, and the execution of Sayyid Qutb in 1966. However, it was the 1967 defeat which also turned large segments of the population back into the arms of religion. In such a situation, it is not unlikely that the government shied away from introducing changes in a sensitive field such as PSL, fearing that this would further drive the masses into the arms of the Islamists.

Egypt’s defeat in June 1967 left the country in despair and left many people in bewilderment, wondering what had gone wrong. In seeking an explanation, the period of Arab Socialism and its lack of religious involvement were reassessed and people concluded that the military defeat was God’s punishment to a country that had deviated from the true path of religion. In order to link up to the new religious mood of the Egyptian population, Nasser decided to promote religion as a national cause. He even described the crisis as a lesson sent by God to the nation in order to “purify” it (Zeghal 1999, 381). This move by Nasser into the realm of religion would culminate under Sadat, eventually leading to a public sphere in which the language of Islam became increasingly dominant and in which an increasingly diversified field of participants all claimed that their specific interpretation of the Islamic sources was the right one. In urīdu Hallan, where Duriya starts to study the sources of Islam in order to learn about her legal divorce rights in Islam, we are given a prelude of how elite women with no background in Islamic studies would become participants in the public debate. Islamists, however, are absent in the film which is striking but understandable if we follow Abu-Lughod’s observation that the religious awakening and the portrayal of Islamists and the modern urban religious man and woman was “strictly ignored” in television drama until 1992 (1998, 254; 2005, chapter seven).30

In what follows I will show how elite women became involved in a public debate in which the language of Islam dominates.

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30 In 3.5 I elaborate in more detail on the absence of Islamists in works of fiction in Egypt.
1.4 Personal Status Law under Sadat: Islamization and internalisation

After Nasser had died in 1970, Sadat stimulated the establishment of Islamic student associations at the universities and he released the Islamic fundamentalists from prison, since he saw in the Islamist movement an ally to offset leftist and Nasserist political trends in the country. Through this policy of inclusion, and the relative liberal political climate which he created, the field of participants in the public debate widened.

On 11 September 1971 Sadat adopted a new constitution. The shari’a was declared a major source of legislation and in 1979, a High Constitutional Court was established which had to decide on the constitutionality of any new piece of legislation. By including the question of the application of Islamic law in the constitution, the government had set an agenda for Islamization. The constitution also amended women’s equal right to citizenship by stipulating that gender equality only applied when it did not contradict the shari’a (Botman 1999, 79). This of course was confusing since the shari’a, as reflected in Egypt’s PSLs, claims that it is a husband’s duty to maintain his wife if she has surrendered herself to her husband.

Yet, in this period of religious awakening Sadat also officially instituted in 1974 the infitah, or “Open-Door” policy which aimed at opening up the Egyptian economy to the greater world market as well as to search for outside finance and technology (Hillal Dessouki 1981). Opening up to the outside world had a social cost and it led to an increasing foreign influence in domestic policies as Sadat, who wanted to establish closer ties with the “West”, and in particular the United States, had to take into account the demands of the international community and in its wake national organizations for women’s rights, on whom the government depended for money. Hence, while Sadat gave political Islam a freer hand and while he was responsible for turning the shari’a into a major source of law, he was also responsible for meeting the requirements of international development agencies and, as a consequence, he introduced major reforms in PSL.31 The field of participants in the public debate was to widen again. In addition to Islamists, it was now ready to also include women activists whose relationships with international women’s organizations turned them into influential players and a factor to be reckoned with.

During the process of drafting the new constitution, questions had arisen about the role of the shari’a in the new constitution. In the early 1970s, a committee

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31 According to Welchman the period 1975-2000 can be identified as a third phase of Muslim family law reform in the Arab world. Due to “changed global, regional and national circumstances in Arab states... amendments to Muslim family law demonstrate an intense political contingency reflecting national and international pressures and dynamics” (2007, 42-3).
for the Revision of Family Law was appointed and by making the following suggestions they attempted to introduce major reforms in Personal Status Law. For instance, polygamous marriages were to require the permission of a judge; divorces should only be pronounced in court; and cases involving family problems should be handled by a female judge (Esposito 1982, 60-1). However, in 1975 this draft law was blocked (ibid, 62).

When the prospects for advocates of reform of PSL looked bleak, domestic and international forces gave reform of PSL a new impetus. First of all, urīdu Hallan was released in 1975. Although the film was set in the mid-1960s and formed a critique on the previous Nasser government which had failed to reform PSL, it simultaneously pressured the Sadat government to take up reform of PSL. The same applies to the first United Nations conference on women which was held in 1975 in Mexico and which was headed by none other than Jihan Sadat, the wife of President Sadat. The conference “caused the regime, which was searching for stronger ties with its new allies, particularly the United States, to promote gender issues” (al-Ali 2000, 74). In the mean time, Sadat was still working to achieve a peaceful resolution with Israel (and the United States). With international pressure increasing and with the Copenhagen second world conference on women coming up in 1980, Sadat had no choice but to work on reforming PSL quickly. This became clear in 1979 when the peace treaty between Israel and Egypt was signed. Parliament was dissolved and new elections were held. In the meantime the constitution was revised again and Sadat instituted mandatory quotas for women in the electoral system. From now on, women were automatically assigned thirty seats in Parliament and 10 to 20 percent of the seats in the twenty-six government councils of the country (Botman 1999, 82).

In May 1979, no consensus was achieved on matters of Personal Status Law. Not wanting the draft law to be blocked again by the opposition groups, Sadat looked for an alternative way of effecting legislation. Shortly after the conservative sheikh of al-Azhar, ‘Abd al-Halim Mahmud, died (Zeghal 1999, 387) and during the absence of Parliament, Sadat used his constitutional right to issue an emergency decree in which he passed into law one of the proposals, formulated after interpretation by Islamic scholars of all four Sunni schools (law no. 44 of 1979). The new law became well known as Jihan’s Law, named after the wife of President Sadat who is said to have played an instrumental role in the passing of the law (cf. al-Ali 2000, 74; El Alami 1994, 116).

The new law changed the laws of Personal Status of 1920 and 1929 considerably, as the conjugal relationship was altered in various ways. For example, a woman’s right to maintenance was not affected if she went out to work without the consent of the husband (Fawzy 2004, 35). The provision allowing a husband to have his wife return to the marital home by force was now officially
abolished (ibid). Additionally, women’s grounds for divorce were expanded: the first wife was allowed to obtain a divorce when a husband took a second wife without her consent; and if a husband did not inform his new wife that he was already married. Women who were divorced without their consent and without just cause, were eligible to at least two years of additional maintenance (mut’a) in addition to alimony during the ‘idda period. After the divorce, women became entitled to stay in the marital home until they remarried or the custody over their children ceased (El-Alami 1994; Esposito 1982, 61-2; Fawzy 2004, 36).

The law provoked much controversy which was not only related to the content of the law but also to the personal involvement of the president and the fact that the law was implemented during a period of parliamentary recess (Bernard-Maugiron and Dupret 2002b, 4). It was held to be particularly offensive that this new law designated polygamy as darar (harmful) (Fawzy 2004, 37-9), while the Koran itself approved of polygamy. Other grounds, on which the law was rejected, included the article which gave women with children the right to stay in the matrimonial home in cases of divorce. The article enraged men who feared that they would be thrown out of their houses into Cairo’s difficult housing market. Opponents also rejected the law because it would only lead to the Westernization of society (Bibars 1988, 37-9). Moreover, the legal right of women to work outside the home was seen as being contradictory to her divine duty as a mother and wife.

After the introduction of the 1979 law, judges decided not to follow its letter. They considered the law unconstitutional, because it violated the shari’a (Bernard-Maugiron and Dupret 2002b, 16; El Alami 1994, 116-7; Fawzy 2004, 36). They appealed to the Constitutional Court -which had only been established in 1979- to decide on the constitutionality of the law. On 4 May 1985, the High Constitutional Court of Egypt declared the 1979 law unconstitutional. The emergency decree had been issued while no true state of emergency had existed and it was therefore declared invalid. The prospects for feminists looked bleak since they were likely to have to resort to the 1929 Personal Status Law again. However, the decision of the Constitutional Court was not based on the observation that the law ran counter to the stipulations of the shari’a.

It is remarkable that Sadat, who first appeared to be more conservative than Nasser, introduced far-reaching reforms of PSL in 1979 and when he also

32 In a dossier about divorce in Egypt, Fahmi presents a collection of press articles on the debate which surrounded the implementation of PSL 44 of 1979 and PSL 100 of 1985 (1987, 105-61).

33 This observation should not lead us to believe that the High Constitutional Court always shies away from judging whether a law or a decree is (not) in accordance with the principles of shari’a. Arabi, for example, argues that the HCC adopted the classical doctrine of legal interpretation (of al-Sha’afi) in order to judge whether or not a law or decree is in line with the constitution which states that the principles of Islamic Law are the main source of legislation (2002).
signed the UN Women’s Convention\(^{34}\) in 1980, it looked as if Sadat had turned into a great advocate of women’s rights. At the same time, however, Sadat included reservations in the Women’s Convention in which it was stated that the convention should not contradict the *shari’a*.\(^{35}\) Sadat wanted to keep Egypt’s image up abroad, while at the same time he did not want to play into the hands of the Islamists who had a large following among the population, as well as al-Azhar, which was also pushing during this time for the implementation of the *shari’a* and whose support the government needed in its fight against the Islamists and on whom it depended for its religious legitimacy. For that reason, Sadat again amended the constitution and article two of the April 1980 Constitution turned the principles of *shari’a* from a major source of legislation into the main source of legislation in Egypt.

Following the assassination of Sadat in 1981, the international community, whether consciously or not, continued to bring pressure on the subsequent government under Mubarak to take up the reform of the Personal Status Law again. Immediately before the Egyptian women’s delegation departed for the third United Nations Forum on women in Nairobi, a watered-down version of the annulled 1979 Personal Status Law was enacted in July 1985. The government understood that it would not do for Egyptian women to take their grievances to this international meeting (Badran 1995, 135; Karam 1998, 146). The main difference between the 1979 and the 1985 laws was the absence of the clause that restricted men’s right to polygamy (El Alami 1994, 117). The 1985 law still offered a woman the possibility to divorce her husband if he took a second wife, but she needed to prove to the judge that polygamy had caused her material damage. In contrast, the 1979 law simply deemed polygamy injurious to the wife. Like in the old law of 1929, the judge once again had to decide whether polygamy was harmful to the wife or not.

**1.5 Personal Status Law towards the new millennium: re-invention of *khul’***

Although women’s groups recognized that the 1979 PSL was unconstitutional, they still claimed that its content was in line with the *shari’a* as the law had been approved by the Sheikh of al-Azhar, and both the Ministers of religious endowments, Justice and of Social Affairs (Bibars 1988, 145). For that reason, they felt disappointed when a watered-down version of the 1979 PSL was implemented in 1985. To increase the likelihood of future reforms of PSL being accepted by the Egyptian masses (cf. Singerman 2005, 167-9; Zulficar (forthcoming)) they opined it had to be in accordance with both the constitution and the *shari’a*.

\(^{34}\) The implementation of this convention is monitored by the UN committee on the Elimination of All Forms of Discrimination against Women (CEDAW) (Welchman 2007, 35).

\(^{35}\) See also Welchman (2007, 35) for Arab states in general.
In the period after the implementation of the 1985 PSL, a group of women activists sought cooperation from the Ministry of Justice, particularly a high ranking official named Fathi Naguib in order to work on improving women’s rights, in much the same way Duriya does in the film urīdu Hallan.36 There was one important difference, however. Whereas Duriya had requested the Minister of Justice to implement a unilateral form of khul’ divorce, these women activists, who called themselves “The Group of Seven,” first set out to re-introduce the old Islamic marriage contract which had included the right to enter substantive stipulations in the contract.

In 1992 the Ministry of Justice set out to draft a new marriage contract in the context of drafting a new procedural PSL in 1992 (Zulficar forthcoming) but the amendments, which were proposed by the Ministry, did not contain the right to include substantive conditions in the marriage contract. Then, three national and international conferences in 1994 and 1995 came as a godsend: a national conference on women held in Cairo in June 1994, the International Conference on Population and Development (ICPD) of the United Nations held in Cairo in September 1994 and the Fourth World Conference on Women held in Beijing in September 1995. Especially during the ICPD, which was held in Cairo and attended by more than 180 states and 1254 NGOs, the Egyptian government tried to present to the world an image of a modern and liberal Egypt in which women were not oppressed. With foreign pressure increasing the government officially adopted the new marriage contract (Shaham 1999, 466). This draft was rejected after it met with a lot of resistance from the Egyptian women’s movement which claimed that the draft demanded rights, such as the right to education and travel, which Egyptian women were already entitled to by the constitution (Zulficar forthcoming).

In 1995, the National Women’s Commission approved a third draft in which the activists again requested the right to include substantive conditions.37 Although the draft was approved by the then Grand Mufti, Tantawi, the then Sheikh of Al-Azhar did not approve it (ibid, 9; Shaham 1999, 462). Only a few days

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36 According to Singerman, by lobbying the Ministry of Justice women activists were pursuing a back-door approach (2005b).

37 This draft of the new marriage contract included the following stipulations: agreement as to the ownership of the furniture in the marital abode and to whom it should devolve in case of divorce; agreement as to who should keep the conjugal home in case of divorce, without recourse to the current law on maternal custody; a specific amount of compensation to be given in monthly instalments or in cash to a wife who is divorced against her will, in addition to her other legal rights; the right of a wife to obtain employment and education or to continue her education, as well as her right to travel abroad for a legitimate cause; agreement that the husband may not take a second wife; agreement as to the wife’s right to divorce herself (which does not deprive the husband of his right to divorce his wife); agreement that the wife may renounce all her financial rights in exchange for an irrevocable divorce, if such divorce is not due to a fault on the part of the husband (īhāl) (al-AhramWeekly 1-7 June 2000).
before the Egyptian delegation went to attend the Beijing Fourth International Women’s Conference, in September 1995, did the ruling party of Mubarak agree to discuss the draft in the People’s Assembly (Karam 1998, 146).

Although the new marriage contract was drafted under the leadership of prominent lawyers and religious jurists who took care that it would not transgress the delimitations of Islam, it provoked widespread public discussion (cf. Karam 1998, 146; Shaham 1999). Two headlines published by the newspaper al-Ahram Weekly, reading “A Contract for Equality” and “A prelude to Westernisation,” (25-31 May 1995, 13), give a good impression of how the contract was received respectively by proponents and opponents. Most opponents to the draft contract were either conservatives or Islamists. For example, Jad al-Haqq, who was the Sheikh of al-Azhar at the time, stated that the new marriage contract “legitimises the forbidden and forbids the legitimate.” The Sheikh also objected to the law on non-religious grounds, saying that it would discourage young people to marry (Zulficar forthcoming). In view of this it was often argued that including stipulations in the contract would turn the marital bond into a trade contract, something which would lead to heavy materialism inside families (cf. al-Wafd 11 February 1995).

Shaham wonders why the Sheikh of al-Azhar rejected the new marriage contract while its content to a great extent resembled that of law No.100 of 1985, a law to which the sheikh had approved. Shaham comes to the conclusion that although all parties involved in the public debate resorted to the language of Islam, the actual reasons for their opposition were not religiously motivated (1999). The sheikh of al-Azhar, for example, was afraid that the new marriage contract would develop into a civil marriage contract (cf. al-Wafd 11 February 1995). As a consequence, ‘ulama’ would lose their last bastion of control, namely, Personal Status affairs. The government’s motives were inspired by its wish to improve its image internationally. Nevertheless, it did not want to lose its Islamic legitimacy domestically and when the sheikh of al-Azhar opposed the new marriage contract firmly and vocally, the government decided to sacrifice women’s groups’ demands. Nevertheless, the importance of the international context should not be underestimated as a wave of family reform proposals is awakened inside Egypt, whenever the convening of a United Nations World Conference on Women is seen on the horizon (Shaham 1999, 481).

According to Mona Zulficar (one of the members of “The Group of Seven”), the campaign for the new marriage contract developed into a campaign for a new procedural PSL in 1995 (forthcoming). Since the project of the new marriage contract lacked popular support, the Group of Seven decided to put it on the shelf and they turned their attention to changing PSL itself (Singerman 2005, 173-5). Since the Group of Seven wanted to begin with something small, changing the
procedural law came to mind (Singerman 2005, 175). Five years later, on 26 January 2000, the Egyptian Parliament passed a new procedural law on Personal Status: Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters. Three days later, the president of Egypt, Hosni Mubarak, promulgated the law in the Official Gazette as Law No. 1 of the year 2000. The new law aimed at facilitating and speeding up litigation in matters pertaining to Personal Status disputes such as divorce, by compressing the 600 clauses of the old procedural law into seventy-nine. However, the new law also contained a few substantive clauses such as the legalisation of divorces from ‘urfi marriages and women’s right to travel without the consent of the husband (cf. Bernard-Maugiron 2004, 356). Although these clauses provoked much controversy, it was the substantive clause which included a new interpretation of khul’ which provoked most controversy. According to this new interpretation of khul’, a woman has the right to divorce her husband on any grounds, as long as she renounces all her financial rights. Like in urīdu Hallan, the Habiba hadith (discussed in section 1.1) provided the Islamic justification for the implementation of a form of khul’ divorce in which the consent of the husband was not a prerequisite to divorce. In urīdu Hallan, the heroine Duriya could only exclaim “if only there was khul’”, but twenty-five years after the film’s release, Egyptian women who want to divorce their husband can now say “I want khul’.” If a woman is prepared to renounce her financial rights as well as to pay back the dower, the husband cannot prevent his wife from obtaining an irrevocable divorce. In this way, khul’ has turned upside down a marriage system which depended both legally and socially on the maintenance-obedience relation. Not surprisingly, this landmark legislation caused much controversy in Egyptian society, an issue which forms the subject of the next chapter.